

Republic of Iraq  
Federal Supreme Court  
Ref. 8 / federal /state order/2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/3/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestor of issuing the State Order: the Representative Basim Khazal Khashan – his agent the Barrister Ahmed Saeed Moussa.

Whom requested to issue the State Order against:

1. The Prime Minister/ being in this capacity.
2. Mustafa Abdul Lateef Mushatat/ the Secretray General of the Cabinet.
3. The Minister of Electricity/ being in this capacity.

### **The Brief of the Request**

The Representative Basim Khazal Khashan presented by his agent his draft dated 23 February 2022, for which the legal fee was met on the same date and registered in the number (8/ Federal/State Order /2022) and requested the Federal Supreme Court to issue an urgent state order, including: (stop all measures to sell properties approved by the Prime Minister in violation of his powers as head of the day-to-day caretaker government), until the matter of the case initiated by him before this Court is resolved in the number (34/federal/2022) concerning the challenge to the constitutionality of overreach, for the reasons whose conclusion lies: (Based on the letter of the Office of the Prime Minister of the Issue (3010/2290099) dated 9 January 2022, Mr. Mustafa Abdul Latif Mushatat, Prime Minister, agreed to

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sell plots of land in Al-Sarafiya location which belong to the Ministry of Electricity to the Under-Secretary and another number of employees. His approval of selling these plots was considered an exceeding for daily caretaking of his government which regarded resigned from the date of solving the ICR on 7/October/2021, it is also considered a violation of the Constitution and perjury). Therefore, he requested to issue the state order according to the details above-mentioned.

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, in his draft dated 23 February 2022, requested an urgent state order, which included: (stop all procedures for the sale of properties agreed to be sold by the President The Council of Ministers exceeded its powers as head of the caretaker government daily, until the issue of the case initiated by him before this court is resolved by the number (34/federal/2022) related to the challenge to the constitutionality of overriding powers, and the Federal Supreme Court finds that the issuance of an urgent state order at the request of an independent or implicit in the constitutional proceedings before it has not been addressed and has not been addressed in the Federal Supreme Court Law No. (30) of 2005 amended or the Bylaw for the conduct of the proceedings of the Federal Supreme Court No. (1) For the year 2005, it is therefore subject to the provisions referred to in articles (151 and 152) of the Amended Civil Procedures Law No. (83) of 1969, to the extent commensurate with the nature and specificity of the constitutional proceedings, based on to the provisions of article (19)

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of the Bylaw for the conduct of the work In the Federal Supreme Court referred to above, which stipulated (the provisions of the Civil Procedures Law No. (83) of 1969 and the Evidence Law No. (107) of 1979 apply, while no special provision is listed in the Federal Supreme Court Law and in this system) within the meaning of article (17) of it which stipulated (the judgments and the decisions issued by the Court are decisive and can't be challenged with any methods of challenge...). Accordingly, issuing a state order by the FSC is only governed by the balances and conditions which should be provided to issue what he pointed to in the Procedures Law for the decisiveness of the decisions issued by this Court and not yielded to any kind of challenge which represented by applying two photocopies based on the facts, substantiations, documents, and the availability of urgency characteristic without going into the origin of the right and taking a decision about it. Whereas scrutinizing the issuance of the state order by this Court had proved unavailability of urgency characteristic, and in addition to what aforementioned, the response to its content means going into the origin of the right and giving a pre-opinion in the challenge of how constitutional the decision of the Prime Minister is about the case initiated in this concern before this Court by the number (34/federal/2022). This is contrary to the established judicial norms in the constitutional districts of Arab and foreign countries and to what the Iraqi judiciary has settled on in its constitutional and ordinary aspects and what is listed in the established judicial applications in this area based on the provisions of the Constitution and the laws in force, based on the realization of the right and the achievement of justice and fairness away from tendencies, whims, arbitrariness, and flattery. There is no blame for the statement or action that has been issued, and therefore the decision on the request

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of the applicant for the issuance of the state order has a duty to respond for two reasons: the first is the lack of urgency in it, and the second is that the decision means entering into the origin of the right and giving a prior opinion on the constitutionality of the decision of the Prime Minister, in order to challenge his constitutionality before this court in accordance with the details mentioned above. Accordingly, the FSC decided to reject the request, and the decision has been made decisive and binding for all powers according to the provisions of the article (94) of the Republic of Iraq Constitution for 2005 and the article (5/2<sup>nd</sup>) of the FSC's Law No. (30) for 2005 which amended by the Law No. (25) for 2021. The decision has been edited in the session dated 10/Shaabab/1443 Hijri coinciding 13/March/2022 AD.

**Signature of  
The president**

**Jasem Mohammad  
Abbood**

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