

Republic of Iraq  
Federal Supreme Court  
Ref. 99/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussain who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Issuing the State Order: Wisam Shaker Muhaisn  
(Mayor of Al-Qasim District).

Who Requested to Issue the State Order Against: Head of the Iraqi Council of Representatives / being in this capacity.

**Abstract of the request:**

The applicant for the issuance of the state order submitted to the Federal Supreme Court his regulation dated 26/3/2024, for which the legal fee was collected on the same date, and was registered in the number (99/Federal/2024) under which the claim is ruling on the ((unconstitutionality of Article (24) of Law No. (4) of 2023 Third Amendment Law of the Council of Representatives, Provincial Councils and Districts Elections Law No. (12) of 2018, which states: (a- In the absence of district councils for any reason, their powers shall be transferred to their provincial councils. b- In the absence of provincial councils for any reason, the governor shall assign the mayor (for their explicit and clear violation of the Iraqi constitution, harming the provisions of the decentralized system, and confiscating the will of the people)), according to the detail referred to in the lawsuit petition, it also included a demand for the issuance of an urgent state order to ((

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suspend the application of the article - the subject of the challenge - in order to avoid damage to stable legal centers, and the emergence of illegal centers, and until the lawsuit is resolved it took away the administrative and financial authority of the Judicial Council and assigned it to the provincial council, which may not contain a single member representing some districts and districts, which violates the principle of representation of regions and the theory of people's rule, in addition to the existence of a tendency among all current provincial councils to change all heads of administrative units (mayors and district managers) depending on the interpretation of the required article suspending its work and electing new ones as a result of political consensuses and electoral entitlements for provincial councils, without reference to Article (8/3<sup>rd</sup>/1) of the Law of Governorates Not Organized in a Region, which made this matter exclusive to the Judicial Council, If this is done, this will harm legally stable legal positions, as they were democratically elected as the embodiment of the decentralized system of government under a law in force, which is the same law that created the current provincial councils, and that the process of change does not represent the opinion of the people in the administrative unit because most administrative units are devoid of members of the provincial councils)), after registering the application with this court and making the scrutinies, it issued the following decision :

### **The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, due to his filing of the lawsuit, issue(99/Federal/2024) before this court, requested by virtue of its regulations dated 26/3/2024, to issue an urgent state

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order, including ((Alif-suspending the application of Article (24) of Law No. (4) of 2023, the Third Amendment Law to the Elections Law of the Council of Representatives, Governorate Councils and Districts No. 12 of 2018, which states: (a- In the absence of district councils for any reason, their powers shall be transferred to their governorate councils. Beh- In the absence of provincial councils for any reason, the governor shall assign the mayor) for their explicit and clear violation. of the Iraqi Constitution, and its damage to the provisions of the decentralized system, and its confiscation of the will of the people)), until the aforementioned case is resolved, for the reasons detailed in the regulation, and the Federal Supreme Court finds that the issuance of an urgent state order at the request of an independent or implicit in constitutional proceedings brought before it has not been addressed, it was also not addressed in the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25 of 2021, nor the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, and thus it is subject to the provisions referred to in Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and to the extent commensurate with the nature and privacy of the constitutional lawsuit, based on the provisions of Article (39) of the above-mentioned Rules of procedure of the Federal Supreme Court, which stipulates that (the court may consider requests for summary judgment and orders on petitions in accordance with the provisions stipulated in the Civil Procedure Law No. (83) of 1969, as amended, or any other law replacing it) and in accordance with Article (36) thereof, which stipulates that (the court's decisions are final and binding on all authorities and persons and appeal shall not be accepted by any means of appeal...), on the basis of the foregoing, the issuance of an urgent state order by the Federal

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Supreme Court is governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Law, due to the finality of the decisions issued by this court and not being subject to the methods of appeal, which lie in submitting a request in two copies containing facts, grounds and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, Whereas the scrutiny of the request for the issuance of the state order by this court has proven that there is no urgency in it, nor the state of necessity that requires its issuance, in addition to the above, responding to its content means entering the origin of the right and giving a prior opinion on the lawsuit filed before this court in number (99/federal/2024) under which it is claimed ((ruling on the unconstitutionality of Article (24) of Law No. (4) of 2023)), for the reasons detailed in the lawsuit petition, and that this contradicts the established judicial customs. In the constitutional districts of Arab and foreign countries, and with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this field 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 what was really said or done, and thus the decision on the request of the applicant to issue a state order must be rejected for two reasons: The first: is the absence of urgency in it, and the absence of the necessity that requires its issuance, and the second: lies in the fact that deciding on it means entering the origin of the right and giving aprior opinion on the lawsuit filed before this court No. (99/Federal/2024), according to the aforementioned detail, and for the foregoing, the Federal Supreme Court decided to reject the request to issue the state order submitted by

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Wissam Shaker Muhaisen (Mayor of Al-Qasim District). The decision has been issued unanimously, final and binding according to the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005, and Article (5/2<sup>nd</sup>), Federal Supreme Court Law No. 30 of 2005 as amended by Law No. 25 of 2021. The decision has been edited in the session dated 16/Ramadan/1445 A.H. corresponding to 27/3/2024 A.D.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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