

Republic of Iraq
Federal Supreme Court
Ref. 26/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/1/2024 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, 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: Saud Saadon Ali AL-Saadi-
His agent the barrister Mahdi Abdul-Ridha Jassim

Who Requested to Issue the State Order Against: 1. Prime Minister/
In addition to his job.
2. Minister of Transport/ In addition to his job.

The Request:

The applicant for issuing the state order submitted to the Federal Supreme Court, through the mediation of his agent, the statement of claim dated 18/1/2024, for which the legal fee was collected on the same date and registered in the number (26/Federal/2024) according to which the claim is (ruling on the unconstitutionality of the second part of item 1 of the Council of Ministers Resolution No. 23689 of 2023, which includes linking the Iraqi Airports Administration to the Ministry of Transport / Shipping Services Company and the invalidity of all measures taken in this regard), It also requested the issuance of an urgent state order that includes: (suspending the implementation of the aforementioned decision of the Council of Ministers until the aforementioned lawsuit is resolved) for the reasons detailed in the petition, whose conclusion lies in the following: ((The second part of

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item (1) of the contested decision included many explicit and implicit constitutional violations with regard to linking the airport management with the air navigation company, as well as its violation of many laws in force and its failure to comply with international requirements and standards, including its violation of the principle of separation of powers contained in Article (47) of the Constitution, the Civil Aviation Authority Regulated by the Civil Aviation Law No. 148 of 1974, as amended, as stipulated in Article (5) thereof however : (Civil aviation authorities are responsible for all civil aviation affairs in the State), as well as violates Article (80) of the Constitution, which sets out the competencies of the Council of Ministers, including the issuance of regulations and instructions with the aim of implementing laws exclusively, which the Council of Ministers did not abide by, which indicates the legal violation of the decision - Subject of appeal -Text of Article (47/2nd) of the Federal Budget Law No. (13) of 2023 which stated that (The Federal Council of Ministers separates the management of airports from the General Organization of Civil Aviation in accordance with international standards) and that this article authorizes the Council of Ministers to take one legal action, which is the separation of airport management for the General Establishment of Civil Aviation only, and this cannot be expanded to include two procedures at the same time (separation and merger) and the application of the aforementioned article is conditional in accordance with international standards as the international organization The merger decision also violated the Public Companies Law No. 22 of 1997, as amended in Article 31 thereof, which stipulates that two companies may be merged in case of similar activity, this assumes the existence of two existing companies to be merged, especially since the aviation authority is not a public company, the

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decision - the subject of the appeal - is contrary to the opinion and recommendations of the sectoral authorities competent in the matter, as well as the provisions of the relevant laws in accordance with the details referred to in the petition)), after reviewing the abovementioned request and completing the scrutinies, the Court 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 No. (26/Federal/2024) before this court, requested according to his regulation dated 18/1/2024 for issuing an urgent state order that includes: (suspending the implementation of the Council of Ministers Resolution No. 23689 of 2023, which includes linking the Iraqi Airports Administration to the Ministry of Transport / Shipping Services Company) until the aforementioned lawsuit is resolved, For the reasons detailed in its petition, and the Federal Supreme Court finds that the issuance of an urgent state order based on an independent request or implicit in the 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 in the Internal Regulations of the Federal Supreme Court No. (1) of 2022 published in the newspaper Iraqi Gazette No. (4679) on 13/6/2022, thus, it is subject to the provisions referred to in the two articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and to the extent commensurate with The nature and specificity of the constitutional case, based on the provisions of Article (39) of the Rules of Procedure of the Federal Supreme Court referred

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to above, 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 that replaces it) and in accordance with Article (36) thereof, which stipulates that "court decisions are final and binding on all authorities and persons and cannot be challenged by any means of appeal...) , and on the basis of the foregoing The issuance of an urgent state order by the Federal Supreme Court is governed only by the controls and conditions that must be met For its issuance referred to in the Code of Civil Procedure, for the finality of the decisions issued by this court, and its non-subjection to the methods of appeal, which lie in submitting an application 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, and whereas the scrutiny of the request for issuing a state order from this court It has been proven that there is no urgency or necessity that requires its issuance, in addition to the foregoing, responding to its content means entering the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court in the number (26/Federal/2024) according to which the ruling is claimed unconstitutional (the second part of item 1 of the Council of Ministers decision containing linking the Iraqi Airports Department to the Ministry of Transport / Shipping Services Company and the invalidity of all measures taken in this regard) for the reasons detailed in its petition, and that this contradicts with the established judicial customs in the constitutional districts of Arab and foreign countries, 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

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right and the achievement of justice and fairness away from tendencies, whims, arbitrariness and flattery, there is no blame for the blame for what was really issued in terms of words or deeds, and thus the decision on the request of a student Issuing a state order, the duty to refuse for two reasons: The first: is the absence of urgency and necessity wich requires its issuance, and the second: that deciding on it means entering into the origin of the right and giving a prior opinion in the lawsuit filed before this court No. (26/Federal/2024), according to the aforementioned detail, in view of the foregoing, the Federal Supreme Court decided to reject the application submitted by Saud Saadoun Ali Al-Saadi. The decision has been issued unanimously in accordance with the provisions of Article 94 of the Constitution of the Republic of Iraq for the year 2005, and article (5/Second) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021 and done in the session dated 9/Rajab/1445 A.H. corresponding to 21/January/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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