

Republic of Iraq
Federal Supreme Court
Ref. 27/ 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: 1. Mohsen Kazem Khreibit
2. Hossam Sabah Abdul-Zahra

Who Requested to Issue the State Order Against:

1. The Prime Minister/ being in this capacity.
2. Minister of Transport/ being in this capacity.

The Request:

The two applicants for the issuance of the state order, presented to the Federal Supreme Court, the petition of the claim dated 18/1/2024, for which the legal fee was collected on the same date and registered in the number (27/Federal/2024) Claimed to be unconstitutional (Council of Ministers Resolution No. 23689 issued on 30/11/2023) which includes separating the Iraqi Airports Administration from the Iraqi Civil Aviation Authority and linking it to the Ministry of Transport / Navigation Services Company, and the company is renamed to become the General Company for Airports and Air Navigation Management based on the provisions of Article 47/II of the Federal Budget Law for the fiscal years 2023-2024-2-25), They also demanded the issuance of an urgent state order that includes :(suspending the implementation of the decision of the Council of Ministers subject to the challenge) until the aforementioned lawsuit is resolved, for the reasons detailed in the

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lawsuit petition, the conclusion of which lies in the following:((The decision under appeal is contrary to the provisions of the Constitution and the law and to the international requirements and standards issued by the International Civil Aviation Organization (ICAO) and the IATA Air Transport Association, Because it is unfair and harmful to the interest of the General Company for Air Navigation Services and its employees, which is one of the self-financing companies, as the company acquired the legal personality based on Article (7) of the Public Companies Law No. (22) of 1997, as amended from the date of issuance of its certificate of incorporation, and thus it is subject to the provisions of the aforementioned law, which did not give the Council of Ministers the authority linking the central finance departments with public companies, and Article (31) thereof, Stipulated the possibility of merging two companies when the activity is similar, and this requires the existence of two existing public companies subject to the Public Companies Law to be merged, and with regard to international standards, the International Civil Aviation Organization (ICAO) refers in many documents to airport service providers and air navigation service providers separately, Where air navigation services differ mainly from the services provided by airports, according to the detail referred to in the lawsuit petition, and after reviewing the request and conducting audits, the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicants for the issuance of the state order, due to their filing of the lawsuit No. (27/Federal/2024) before this court, requested, according to their regulations dated 18/1/2024, to issue an urgent state order, which includes: (Suspension of the implementation of the Council of Ministers decision subject to appeal No. 23689 issued on

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30/11/2023 containing the separation of the Iraqi Airports Administration from the Iraqi Civil Aviation Authority and linking it to the Ministry of Transport / Shipping Services Company. The company is renamed the General Company for Airports and Air Navigation Management in accordance with the provisions of Article 47 / 2nd of the Federal Budget Law for the fiscal years 2023- 2024 – 2025) until the resolution of the aforementioned case, for the reasons detailed in its petition, The Federal Supreme Court finds that the issuance of an urgent state order based on an independent request or implicit in the constitutional cases filed before it has not been addressed, nor has it been addressed in the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, nor the internal regulations 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 decree No. 83 of 1969, as amended, to the extent commensurate with the nature and specificity of the constitutional lawsuit, based on the provisions of Article (39) of the rules of procedure of the Federal Supreme Court referred to above, which stipulate 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 (the court's decisions are final and binding on all authorities and persons and cannot be challenged by any means of appeal...) , 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, in order to finalize the decisions issued by this court which is not subject to the

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methods of appeal, which consist 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 audit of the application for the issuance of the state order of this court has proved that it is neither urgent nor in 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 of the constitutional lawsuit filed before this court in the number (27/Federal/2024) under which the ruling of unconstitutionality is demanded (Cabinet Resolution No. 23689 issued on 30/11/2023) for the reasons detailed in its petition, and this contradicts with the stable judicial norms in the constitutional districts of Arab and foreign countries, and with what was settled by the Iraqi judiciary, both constitutional and ordinary, and what was included 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 blame for what was really issued in words or deeds, and thus the decision on the request of the applicant for the issuance of the state order, the duty of rejection for two reasons: the first: is the absence of urgency and the state of necessity that requires its issuance, and the second: that deciding on it means entering the origin of the right and giving a prior opinion of the lawsuit filed before this court No. (27/Federal/2024) according to the detail referred to above, For the foregoing, the Federal Supreme Court decided to reject the application submitted by Mohsen Kazem Khreibit and Hossam Sabah Abdul Zahra. The decision has been issued unanimously and final according to the provisions of Article (94) of the Constitution of the Republic of Iraq for the year

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2005, and Article (5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it has been issued on the session dated 9/Rajab/1445 A.H. corresponding to 21/January/2024 A.D.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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