

Republic of Iraq  
Federal Supreme Court  
Ref. 7 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/5/2023 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 Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Issuing the State Order: Ali Fakhri Abdul Hamza.

Who Requested to Issue the State Order Against: the Prime Minister/  
being in this capacity.

### **First: Abstract of the Request**

The applicant for issuing the state order submitted to this court his list dated 23/5/2023, for which the legal fee was collected on the same date and registered in the number (7 / federal / state order / 2023), which includes his request to issue an urgent state order to suspend the implementation of the Diwani order No. (128 on 9/4/2023), which includes the termination of his assignment from his position as vice president of the Military Industrialization Authority and his return to his previous job in the Ministry of Agriculture, until the lawsuit he filed before this court is resolved in number (112/federal/2023) to challenge the validity of the order said Diwani), the reasons for his request to issue the state order are summarized as follows: 1. Terminating his assignment from his position and leaving the position vacant leads to imbalance, confusion in the work of the Commission, and harm to the public interest in the event that the position remains vacant, and violates

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the law and administrative contexts, especially since the state is in a sensitive security circumstance, as the position of the Chairman of the Commission is currently managed by the Director General of the Technical Department in addition to his job (business management) under Diwani Order No. (39) on 13/12/2023, which constitutes a defect in the management of this important institution that is concerned with The national security and economic security of the country, especially since it has the experience and competence of the work of the Commission since 1995. 2. What is stated in the Diwani order - the subject of the request - is impossible to implement as it violates Article (13) of the Federal Financial Management Law No. (6) Of 2019, and violates the circular of the Ministry of Finance No. (75555) on 27/12/2022, which obligated to stop the transfer of employee services between ministries and entities not associated with a ministry or between its affiliated formations, which makes the applicant for issuing the state order in an illegal and irreparable situation, and he cannot exercise any job tasks or duties in the Ministry of Agriculture, nor receive salary or wages, and this is confirmed by (the letter of the Ministry of Finance sent to the Military Industrialization Authority No. (21943) on 3/5/2023, and the letter of the Ministry of Finance sent to the Ministry of Agriculture No. (23455) on 8/5/2023, and the letter of Mesopotamia State Company – transferred to it – No. (4705) on 3/5/2023 sent to the Ministry of Agriculture) which includes the lack of job grade and financial allocation for the applicant for issuing the state order. 3. This procedure is inappropriate for the state administration, and inappropriate for an employee in particular, in addition to the violation of the Diwani order - the subject of the request - of the formalities in issuing executive orders and decisions, as it was signed by the Secretary-General of the Council of Ministers on 7/4/2023, which

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coincides with (Friday), which is an official holiday. In addition, issuing it with the approval of the Prime Minister following the powers vested in him based on Cabinet Resolution No. (71) of (2011), which did not include any powers for him to rely on in issuing the Diwani order - the subject of the request - and is considered arbitrary in the use of power. 4. The issuance of the Diwani order is a circumvention of the Supreme Administrative Court's decision No. (1306/2023 on 29/3/2023), which considered the ministerial order contrary to good faith, and puts the administration within the scope of abuse of power, whereas the appealed order was signed only two days after (one of which is an official holiday) the issuance of the administrative order to start it with number (441) on 5/4/2023 in implementation of the aforementioned decision of the Supreme Administrative Court, which indicates arbitrariness and abuse of power to achieve personal ends, and all these arbitrary measures against him, his family and whoever concerns him are due to his filing of the lawsuit numbered (198/Federal/2022) settled by this court. The Court placed the above application for scrutiny and deliberation and issued the following decision:

**Second: the decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, requested, according to its regulations dated 23/5/2023, to issue an urgent state order, including: (Issuing an urgent state order to suspend the implementation of the Diwani order No. (128 on 9/4/2023, which includes the termination of his assignment from his position as vice president of the Military Industrialization Authority and returning to his previous job in the Ministry of Agriculture, until the lawsuit he filed

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before this court to challenge the validity of the aforementioned Diwani order is resolved), for the reasons detailed in the request, and 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 No. 83 of 1969, as amended, to the extent commensurate with the nature and specificity of the constitutional case, based on the provisions of Article 39 of the aforementioned 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 cannot be challenged by any means of appeal...) based on 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 Civil Procedure Law No. (83) of 1969, as amended, due to the finality of the decisions issued by this court, and its non-subjection to the methods of appeal, which lie in applying two copies containing facts, evidence, and documents, and the availability of urgency, and not entering into the original right and deciding on it, and whereas the audit of the request for issuing the state order by this court has proven that Availability of urgency, nor the case of extreme necessity requiring its promulgation, in

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addition to the foregoing, responding to its content means entering the origin of the right and giving a prior opinion of the constitutional lawsuit filed before this court No. (112/Federal/2023), and that this contradicts the judicial customs established 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. Blame the blame for what was really said or done, thus, the decision on the request of the applicant to issue the state order must be rejected for two reasons: the first: the lack of urgency in it, and the second: that the decision on it means entering the origin of the right and giving a prior opinion on the aforementioned lawsuit, and for the foregoing, the Federal Supreme Court decided to reject the request. The decision has been issued with a majority, final, and binding according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. It has been edited on the session dated 8/Dhul Qaeda /1444 Hijri coinciding with 28/May/2023 AD.

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

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