

Republic of Iraq  
Federal Supreme Court  
Ref. 160 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 25/7/2023 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, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Interpretation: Minister of Justice – Khalid Shawani/ being in this capacity.

The Subject of the Request: interpreting item (3<sup>rd</sup>/Alif) of article (23) of the Republic of Iraq Constitution for 2005.

### **The Request**

The Federal Supreme Court received a request (Minister of Justice - Khaled Shwani / in addition to his job.) according to the letter of the Ministry of Justice / Minister's Office No. (14685) on 21/6/2023, entitled (Palestinian residing in Iraq permanently), which includes: ((The letter of the General Secretariat of the Council of Ministers / Legal Department No. (Qaf/2/2/21/15497) was previously received on 3/4/2023 (a copy of which is attached hereto), the Real Estate Registration Department (one of the formations of this ministry) requested by its letter No. (5/3/1/4898/Alif) on 7/6/2023 the possibility of interpreting Article (23/3<sup>rd</sup>/Alif) of the Constitution To indicate the extent to which a Palestinian permanently resident in Iraq can own property therein), and attached to it is the letter of the General Secretariat of the Council of Ministers mentioned above addressed to the Ministry of Justice on the subject of (Palestinian residing in Iraq permanently), which includes Article (23/3<sup>rd</sup>/ Alif) of the Constitution stipulates that (the Iraqi has the right to own property anywhere in Iraq and no one else may own the immovable, except what is excluded by law), as well as the text of the Revolutionary Command Council Resolution (dissolved) No. (133) of 1997 on the

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permissibility of the Palestinian residing in Iraq permanent residence since 1948 and his children residing with him who have completed eighteen years of age in a residential plot or one residential house), Based on the provisions of Article (24) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, we kindly request you to approach the Federal Supreme Court to request an interpretation of the text of Article (23/3<sup>rd</sup>/Alif) of the Constitution to indicate the extent to which a Palestinian - a permanent resident in Iraq - can own a property in Iraq in light of the decision of the dissolved Revolutionary Command Council (mentioned above) based on the powers vested in the Court under item (2<sup>nd</sup>) of Article (93) of the Constitution.

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the request submitted by (Minister of Justice - Khaled Shwani / being in this capacity), according to the letter of the Ministry of Justice / Minister's Office No. (14685) on 21/6/2023, included a request to interpret the text of item (3<sup>rd</sup>/Alif) of Article (23) of the Constitution, which stipulates that: (The Iraqi has the right to own property anywhere in Iraq, and no one else may own the immovable, except what is excluded by law), in addition to the decision of the dissolved Revolutionary Command Council No. (133) of 1997, which allowed the Palestinian residing in Iraq to own a permanent residence since 1948 and his children residing with him who have completed eighteen years of age a piece of residential land or one dwelling, and to indicate the extent to which a Palestinian permanently resident in Iraq can own a property in Iraq in the light of the aforementioned dissolved Revolutionary Command Council decision, the Federal Supreme Court finds that its jurisdiction to interpret the provisions of the Constitution is held in accordance with Article (93/2<sup>nd</sup>) of the Constitution of the Republic of Iraq of 2005, Article (4/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and Article (24) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, which stipulates that: (The authorities and bodies provided for in Article (19) of these Statutes - the Court's Rules of Procedure - may submit a request to the Court to interpret a constitutional text that has caused a dispute in application, in accordance with the

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following procedures: ...) The bodies that have the right to submit a request to interpret a constitutional text under Article (19) of the aforementioned system are embodied in any of the three federal authorities stipulated in Article (47) of the Constitution, ministries, and independent bodies, the Prime Minister of the Region, non-ministry entities and governors, when the constitutional text required to be interpreted raises an actual disagreement in the application, and divergent views have emerged regarding it, and that the request is not on the occasion of a dispute before the judiciary, and this is what the judgment of this court settled on by the decision issued by it No. (18/Federal/2022) on 3/2/2022, and since the applicant (Minister of Justice / being in this capacity) is considered a representative of the Ministry of Justice, and it is one of the bodies that have the right to request the interpretation of a constitutional text following the conditions referred to in Article (24) of the Rules of Procedure of the Federal Supreme Court, however, the request must be rejected in form of the previous interpretation of the Federal Supreme Court of the text of item (3<sup>rd</sup>/Alif) of Article (23) of the Constitution of the Republic of Iraq for the year 2005 by its previous interpretative decision No. (79/Federal/2016) on 27/9/2016, through which it is clear that Article (23/3<sup>rd</sup>/Aif) of the Constitution when allowed the right of the Iraqi to own anywhere in Iraq, but it did not allow non-Iraqi to own immovable property except as an exception to the aforementioned text, and through a law issued by the legislative authority, and the court reached a conclusion that (the Palestinian may not own immovable property in Iraq), and since the judgments and decisions issued by the Federal Supreme Court are final and binding on all authorities based on Provisions of Articles (94) of the Constitution, (5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and (36) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and for the foregoing, the Federal Supreme Court decided to dismiss the request for interpretation in the form of a previous adjudication on its subject. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/2<sup>nd</sup> and 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. The decision has been edited in the session dated 6/Muharram Al-Haram/1445 Hijri coinciding with 25/July/2023 AD.

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**Judge**  
**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**