

Republic of Iraq
Federal Supreme Court
Ref. 21 / 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: Abas Abdul-Tas Taaien.

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

The Request:

The applicant for the issuance of the state order submitted to this court the statement of claim dated 14/1/2024, for which the legal fee was collected on the same date, and was registered in the number (21/Federal/2024) Required to rule on the invalidity and constitutionality of((Article 196, paragraphs 1,2,4 of the Civil Procedure Law No. 83 of 1969, as amended, and Article 140/II of the Evidence Law No. 107 of 1979, as amended)), In its annex dated 17/1/2024, it requested the issuance of an urgent state order that includes: (Notifying the Enforcement Directorate in Al-Aziziyah to link the implementation files of Resolutions 90/B/2021 on 5/4/2021, 117/B/2021 on 9/5/2021 and delaying the implementation of the two aforementioned decisions) until the aforementioned lawsuit is resolved, for the reasons detailed in the lawsuit petition, the conclusion of which is as follows:

Zainab

Republic of Iraq
Federal Supreme Court
Ref. 21 / federal/state order /2024



Kurdish text

((First: On 17/8/2023, the Wasit Court of Appeal, in its original capacity, the second body, issued its decision No. (37/S/2023) confirming the decision of the Court of First Instance of Taj Al-Din No. (124/B/Retrial/2023) on 18/5/2023, which included the rejection of his request for a retrial of the judgment decision (90/B/2021) on 5/4/2021 issued by the same Court of First Instance, which includes obliging him to lift the override on the numbered property (16 District 11 Kfifan North) and that his request for a retrial was based on paragraphs (1, 2, 4) of Article (196) of the Civil Procedure Law No. (83) of 1969, The courts of first instance and appeal relied on the dismissal of his claim on the lack of legal basis, and that the aforementioned legal provisions are contrary to the Constitution of the Republic of Iraq of 2005 in articles (2/1st/Alif, Jim, 46 and 27/1st). Second: On 25/9/2023, the Court of First Instance of Taj El-Din issued its decision No. (77/Beh/2023) containing the dismissal of his lawsuit against the defendants, the Minister of Justice and the Minister of Agriculture, in addition to their jobs, in which he requested a ruling obliging the real estate registration note in Taj Al-Din and the Directorate of Agriculture in Wasit to correct the locations of the map of the district (11 Kfifan Al-Shamali) and match it with the original cadastro map deposited with the Public Authority for Survey and prepared a copy of it on 19/12/2022, The coordinates of the boundary between plot (16) and plot plaintiff (12/74) are marked and the Court of First Instance based on in its decision to dismiss his lawsuit on several legal articles, including Article (140/Second) of the Evidence Law No. (107) of 1979, which was applied in the lawsuit (77/Beh/2023), which is contrary to the same constitutional provisions mentioned in paragraph I)), and after the court reviewed what was stated in the request in conducting the scrutinies, it issued the following decision:

Zainab

Republic of Iraq
Federal Supreme Court
Ref. 21 / federal/state order /2024



Kurdish text

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. (21/Federal/2024) before this court, requested, by virtue of its annex to the regulation dated 17/1/2024, to issue an urgent state order, including: (Notifying the Directorate of Implementation in Al-Aziziyah of linking the two implementation files related to the two decisions (90/B/2021 on 5/4/2021, 117/B/2021 on 9/5/2021) and delaying the implementation of the two aforementioned decisions, until the aforementioned lawsuit is resolved), 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 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, 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 stipulated that (the decisions of the court are final and binding on all authorities and persons and are not subject to appeal by any means of appeal...), On the basis of the foregoing, the issuance of an

Zainab

Republic of Iraq
Federal Supreme Court
Ref. 21 / federal/state order /2024



Kurdish text

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 not being subject to the methods of appeal, which are to submit an application in two copies containing facts, grounds and documents, and the availability of urgency, and not to enter into the original right and decide on it, whereas the scrutiny of the application for the issuance of the State Order by this Court has established that it is neither urgent nor in the state of necessity that it be issued, In addition to the foregoing, responding to its content means entering into the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court in number (21/federal/2024) under which it is claimed to rule on the validity and constitutionality (paragraphs (1, 2, 4) of Article (196) and Article (140/II) of the Evidence Law No. (107) of 1979, as amended), for the reasons detailed in its petition, This is contrary to the established judicial norms in the constitutional districts of Arab and foreign States and to what has been settled by the Iraqi judiciary, both constitutional and ordinary, and the well-established judicial applications in this area in accordance with 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 inclinations, whims, arbitrariness and flattery, Thus, the decision on the request of the applicant to issue a state order must be rejected for two reasons: First: the lack of urgency and the state of necessity that requires its issuance, the second is that deciding on it means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court in the number (21/Federal/2024), according to the aforementioned detail, in view of the above , the Federal Supreme Court decided to reject the application submitted by Abbas Abdul Tus Ta'in. The decision was

Zainab

Republic of Iraq
Federal Supreme Court
Ref. 21 / federal/state order /2024



Kurdish text

issued by agreement in accordance with the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005, Article (5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been made clear on 9/Rajab/1445 Hijri corresponding to 21/1/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

Zainab