

Republic of Iraq
Federal Supreme Court
Ref. 268 / federal/state order /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 10/1/2023 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 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: Wael Abdul Lateef Hussein.

Who Requested to Issue the State Order Against:

- 1- The Prime Minister/ being in this capacity.
- 2- Minister of Finance/ being in this capacity.
- 3- Director-General of State Real-Estates/being in this capacity.

First: Abstract of the Request

The applicant for issuing the state order submitted to the Federal Supreme Court, the statement of claim dated 12/12/2022, for which the legal fee was collected on the same date and registered in number (268/federal/2022) according to which it is claimed, ((ruling on the unconstitutionality of Cabinet Resolution No. (300) of 2015 and the decision to extend it according to the letter of the Prime Minister's Office No. (4000/2292648) on 2/6/2022, which includes determining the rental allowances for the green zone properties belonging to the state occupied by housing by officials continuing to serve and retirees On the basis of violating the provisions of the Constitution of the Republic of Iraq of 2005, especially Articles (14, 16 and 127) thereof

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related to the principle of equality and equal opportunities and the inadmissibility of the representatives of the authorities in the State to exploit their influence in the purchase or lease of State funds, and violating the provisions of Article (7) of the Law on the Sale and Rent of State Funds No. (21) of 2013 and violating as well as the judgment issued by the Federal Supreme Court No. (48/Federal/2019 on 31/7/2019), and also demanding the issuance of an urgent state order (to stop all measures taken against whom the issuance of the state order is required (the Prime Minister, the Minister of Finance and the Director General of the State Real Estate Department / being in their capacity), related to the implementation of the decision of the Council of Ministers subject to the challenge, until the resolution of the aforementioned lawsuit) for the reasons detailed in the petition, and for the foregoing, and based on the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (39) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the request was submitted to issue an urgent state order in accordance with the aforementioned detail.

Second: the decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for issuing the state order, due to his filing of lawsuit No. (268/Federal/2022) before this court, requested, according to its regulations dated 12/12/2022, to issue an urgent state order, which includes: ((Suspension of all measures taken against whom the issuance of the state order is required (the Prime Minister, the Minister of Finance, and the Director General of the State Real Estate Department / being in their capacity) related to the implementation of the Council of

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Ministers Resolution No. (300) of 2015 and the decision to extend it according to the letter of the Prime Minister's Office No. (4000/2292648) on 2/6/2022 containing the determination of rental allowances for real estate in the Green Zone belonging to the state occupied by housing by officials continuing to serve and retirees until the resolution of the aforementioned lawsuit)) for the reasons referred to in detail in the lawsuit 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 cases filed before it did not It is addressed, as it has not 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, 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, 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 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 replacing it) and in accordance with Article (36). Which stipulated that (court decisions are final and binding on all authorities and persons and do not accept an appeal 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, because of the finality of the decisions issued by this court and not being subject to the methods of appeal, which consist in submitting an application in two

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copies containing the facts, evidence and documents, and the availability of urgency, and not to enter into the origin of the right and decide on it, and since the scrutiny of the request for issuing a state order by this court has proven that it is not urgent. If necessary issue it, in addition to the above, 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 No. (268/Federal/2022) under which (ruling on the unconstitutionality of Cabinet Resolution No. (300) of 2015 and the decision to extend it according to the letter of the Prime Minister's Office No. (4000/2292648) on 2/6/2022, which includes determining the rental allowances for the green zone properties belonging to the state occupied by housing by officials continuing to serve and retirees based on violating the provisions of the Constitution of the Republic of Iraq of 2005, especially Articles (14, 16 and 127) thereof and the laws in force and the decision of the Federal Supreme Court mentioned above) for the reasons referred to in detail in the petition, and that this contradicts with the established judicial customs in the constitutional districts of Arab and foreign countries and with what the Iraqi judiciary has settled on in both its constitutional and ordinary parts and what is included in the well-established judicial applications in this area based on the provisions of the Constitution and the laws in force that 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 what was really issued in words or deeds, and therefore deciding on the applicant's request to issue the state order must be rejected for two reasons: The first: it is the absence of urgency in it, and the second: it lies in the fact that deciding on it means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court with the number (268/federal/2022), according to the aforementioned

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detail, according to the above, the Federal Supreme Court decided to reject the request. The decision has been issued unanimously, final, and binding according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) 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 17/Jamada Al-Akhira/1444 Hijri coinciding 10/January/2023 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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