

Republic of Iraq  
Federal Supreme Court  
Ref. 50 / federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/2/2024 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: Sadiq Ali Asghar Nooraldeen/Managing Director of Madinat Al-Sadiq General Trading Company Ltd. / being in this capacity - his agent, the barrister Abdul Karim Arab Asaad.

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

### **The Request:**

The applicant for the issuance of the state order submitted to the Federal Supreme Court, through the mediation of his agent, his draft dated 30/1/2024 for which the legal fee was collected on 1/2/2024, and was registered in the number (50/federal/2024) under which the claim is ((Ruling on the constitutionality of Articles (1, 2, 9, 12 and 26) of the Law Ratifying the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. 193 of 1980 in force, and the constitutionality of the law of accession of the Republic of Iraq the TIR Convention 1975 (TIR Transit Traffic) No. 6 of 2020 in

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force, and ruling on the constitutionality of Article 85 of the Customs Law No. 23 of 1984 in force, and the invalidity of any customs regulation amending its application, or prohibits or restricts goods passing in accordance with the transit status in application of the provisions of Article (87) thereof, due to the lack of the correct constitutional basis, and the ruling that the transport controls in transit system are invalid for violating the provisions of Articles (9, 12 and 26) of the Law Ratifying the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. (193) of 1980 in force, And the Law of Accession of the Republic of Iraq to the Convention on International Road Transport in 1975 (Transit Traffic System for International Road Transport) No. (6) of 2020 in force)), in accordance with the detail referred to in the lawsuit petition, and also included a demand for the issuance of an urgent state order ((not to subject the goods of the company requesting the issuance of the state order passing in accordance with Status of transit from the Ibrahim Al-Khalil border crossing for prevention and restriction in application of the provisions of Articles (1 and 2) of the Law No. 193 of 1980 on the ratification of the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey in force, the Law of Accession of the Republic of Iraq to the TIR Convention of 1975 (TIR Transit Traffic System) No. 6 of 2020 in force, and Article 87 of the Customs Law No. 23 of 1984 in force, until the aforementioned case is resolved)) for the reasons detailed in the draft, The above-mentioned Convention ratification law allows for the facilitation of the transport of passengers and goods by road and transit through the territory of the Republic of Iraq and the Republic of Turkey, and His company had submitted an application to the General Authority of Customs requesting its approval to transport its goods (of Turkish

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origin) in accordance with the transit situation from the Ibrahim Al-Khalil border crossing (entry) and to the Syrian Arab Republic from the Al-Qaim border crossing (exit). After obtaining the necessary approvals, Including the approval of the government carrier (General Company for Land Transport / Operation Department) to transport its goods by government trucks and the availability of the condition of urgency and necessity because the foodstuffs parked at the border crossing, the period of expiry of validity is limited and vulnerable to damage, For the foregoing and in accordance with the provisions of Articles 151 and 152, of the Code of Procedure No. 83 of 1969, as amended, and Article 39 of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 Submit the request to issue an urgent state order in accordance with the aforementioned detail,after reviewing the contents of the application and conducting the scrutinies, the Court issued the following decision:

### **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. (50/Federal/2024) before this court, requested, according to his draft dated 30/1/2024, to issue an urgent state order, including the ruling ((not subjecting the goods of the applicant's company to issuing the state order passing according to the transit situation from the Ibrahim Al-Khalil border crossing point to prevention and restriction in application of the provisions of Articles (1 and 2) of the Law Ratifying the TIR Transport Agreement between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. (193) for the year 1980 in force, and the Law of

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Accession of the Republic of Iraq the TIR Convention of 1975 (TIR Transit Traffic Regulation) No. 6 of 2020 in force, and Article 87 of the Customs Law No. 23 of 1984 in force)), Until the aforementioned lawsuit is resolved, for the reasons detailed in the draft, 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, It was also not addressed in the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, nor in the Internal Regulations 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, 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 stipulated that (the decisions of the court are final and binding on all authorities and persons appeal shall not be accepted 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 the decisions issued by this court are conclusive and not subject to the methods of appeal, which consists in submitting an application in two copies, including facts, grounds and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, and whereas the examination of the request for the issuance of the state order by this court has proved that it does not have the urgency of it, nor the state of necessity that requires its issuance, in addition to the foregoing, responding to its content means entering the origin of the right and giving a prior opinion on the lawsuit filed before this court in

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the number (50/federal/2024) under which the ruling on the constitutionality of Articles (1, 2, 9, 12 and 26) of the Law Ratifying the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. (193) of 1980 in force, is claimed that the constitutionality of the Law of Accession of the Republic of Iraq to the Convention on International Road Transport in 1975 (Transit System for International Road Transport) No. 6 of 2020 in force, and the ruling on the constitutionality of Article (85) of the Customs Law No. (23) of 1984 in force, and the invalidity of any customs system that modifies its application or prevents or restricts goods passing in accordance with the transit status in application of the provisions of Article (87) thereof, due to its lack of the correct constitutional basis, Ruling that the transit transport controls are invalid for violating the provisions of Articles (9, 12 and 26) of the Law Ratifying the TIR Agreement between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. (193) of 1980 in force, and the Law of Accession of the Republic of Iraq to the TIR Convention of 1975 (TIR Transit Traffic System) No. (6) of 2020 in force)), For the reasons detailed in the petition, and that this is contrary to established judicial customs, 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 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, there is no blame for what was really issued of word or deed, and thus deciding on the request of the applicant to issue the state order, the duty to reject it for two reasons:

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the first: the lack of urgency in it, and the absence of the necessity that requires its issuance, and the second: that deciding on it means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court No. (50/Federal/2024), according to the aforementioned detail, With regard to the above, the Federal Supreme Court decided to reject the request to issue the state order submitted by Sadiq Ali Asghar Nur Al-Din, Managing Director of Al-Sadiq City General Trading Company Ltd., being in this capacity. 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 the year 2005, and Article (5/second) 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/Shaaban/1445 AH corresponding to 20/February/2024 AD.

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

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