

Republic of Iraq  
Federal Supreme Court  
Ref. 9 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 23/7/2023 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestors of Issuing the State Order:

- 1- Qassim Ahmed Abid Idan.
- 2- Hayder Mansour Abid.
- 3- Salim Mansour Sakban.

Their agent the Barrister  
Zainab Saad Dhahir

Who Requested to Issue the State Order Against:

The Prime Minister/ being in this capacity.

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

The applicants for the issuance of the state order, to the Federal Supreme Court, through their agent, submitted their list dated 11/7/2023, for which the legal fee was collected on the same date and registered in the number (9/federal/state order/2023), the conclusion of which lies in the following: ((The person requesting the issuance of the state order against him issued a directive on 27/12/2022 to form an investigative committee against the applicants for issuing the state order, headed by the head of the National Security Agency and other members

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 9 / federal/state order /2023



Kurdish text

to investigate allegations of exposure of a group of person torture, forced confession deprivation and violation of human rights by applicants for issuing state order - who are members of the Diwani Order Committee No. (29) of 2020 - and on 15/6/2023, the committee formed against applicants for issuing the state order issued several recommendations approved by the applicant for issuing the state order against him, it referred them to retirement and prevented them from receiving any positions in the state, as well as taking legal measures against them and referring them to the courts on charges of torture and extortion, and the applicants for issuing the state order request the Federal Supreme Court to issue a state order to suspend the implementation of the recommendations of the investigative committee until their lawsuit filed before the court is resolved in the number (162/federal/2023), which they challenge based on the formation of this committee, as its procedures are contrary to the constitution and the law, the Federal Supreme Court issued its decision No. (262/Federal/2022) on 24/5/2023, according to which it ruled that the Prime Minister's directive dated 11/11/2020 to form a committee to receive complaints of those subjected to torture and human rights violations was invalid, and based on the complaints submitted to it, the directive - the subject of the request - was issued 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 requested the issuance of an urgent state order to suspend the implementation of the recommendations of the investigative committee formed according to the directive of the person requesting the issuance of the state order against him / being in this capacity on 27/12/2022 against the applicants for issuing the state order)), until the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 9 / federal/state order /2023



Kurdish text

lawsuit filed by them before this court to challenge the validity of the above two directives is resolved.

**Second: the decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicants for issuing the state order, due to their filing of the lawsuit No. (162/Federal/2023) before this court, requested, under their regulation dated 11/7/2023, to issue an urgent state order, which includes: (suspending the implementation of the recommendations of the investigative committee formed according to the directive of the person against whom the state order is requested / in addition to his job on 27/12/2022 against the applicants for issuing the state order), until the aforementioned lawsuit is resolved, for the reasons detailed in the regulation, and the Federal Supreme Court finds that issuing an urgent state order at the request of an independent or implicit in the constitutional cases filed before it that have not been addressed, It has also not been treated 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 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

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 9 / federal/state order /2023



Kurdish text

36 thereof, which stipulates that: (The court's decisions are final and binding on all authorities and persons and are not subject to appeal 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, for the finality of the decisions issued by this court and not being subject to the methods of appeal, which lies in submitting a request in two copies containing facts, evidence and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, and since the audit of the request for the issuance of the state order by this court has proven the lack of urgency in 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 of the lawsuit filed before this court in the number (162 / federal / 2023) Claims Under ((1- Ruling on the invalidity of the directive issued by the person against whom the state order is requested / in addition to his job on 11/11/2022, which includes directing the Advisor to the Prime Minister for Human Rights Affairs and the Personal Secretary of the Commander-in-Chief of the Armed Forces to receive complaints related to exposure to any form of torture or forced extraction of confession during the stages of the investigation and cancel it, and cancel all the effects that resulted from this directive, including the investigative committee formed against those requesting the issuance of the state order based on the aforementioned directive, and cancel all Recommendations for violating the provisions of Article 47 of the Constitution of the Republic of Iraq of 2005. 2. Ruling on the invalidity and cancellation of the second directive dated 27/12/2022 issued by the person against whom the state order is requested / being in this capacity, which includes the formation

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 9 / federal/state order /2023



Kurdish text

of an investigative committee against the applicants for issuing the state order based on complaints submitted to the committee formed in accordance with the first directive - which was canceled - for violating the provisions of the constitution)), and this contradicts the established judicial norms 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, there is no blame for the blame for what was really issued in words or deeds, and thus the decision on the request of applicants for the issuance of the state order, must be rejected for two reasons: First: It is the lack of urgency in it, and 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 number (162/Federal/2023), according to the aforementioned detail, and for the foregoing, 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 (5/2<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 on the session dated 4/Muhrram Al-Haram/1445 Hijri coinciding 23/July/2023 AD.

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

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