

Republic of Iraq
Federal Supreme Court
Ref. 1 / federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17/1/2024 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: - Basim Nimr Hasan- His agent the barrister Ahmed Mazin Makeah.

Who Requested to Issue the State Order Against: Chairman of the Basra Court of Appeal in its discriminatory capacity / being in this capacity.

The Request:

The applicant for the issuance of the state order submitted to this court, through the mediation of his agent, his list dated 8/12/2023, for which the legal fee was collected on the same date, and was registered in the number (1 / federal / state order / 2024), due to his filing the lawsuit before this court in the number (1 / federal / 2024) under which the judgment is claimed ((the invalidity of the decision issued by the person against whom the state order is requested / being in this capacity in the number (176 / Teh/ execution / 2023) issued by the person against whom the state order is requested/ being in this capacity)) until the aforementioned lawsuit is resolved, for the reasons detailed in the regulation, the conclusion of which lies in the following: ((The person required to issue the state order against him / being in this capacity has already issued a decision No. (176 / Teh / Execution / 2023) regarding the executive file numbered (604/2019) in the Basra

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Execution Directorate, which included the ratification of the decision of the judge of the Court of First Instance in Basra, who ordered the release of the debtor (Ahmed Zaki Abboud) Completion of the period of executive detention stipulated in Article (43) of the amended Execution Law No. (45) of 1980, and since the aforementioned decision did not take into account the provisions of Article No. (32/III) of the Sixth Amendment No. (13) of 2019 to the Execution Law, taking into account the provisions of Article No. (32/3rd) of the Sixth Amendment No. (13) of 2019 to the Implementation Law Which confirmed the permissibility of imprisoning the debtor until the submission of a guarantor guarantor, which makes the aforementioned decision incorrect, and resulted in an issue that arose from the application of the implementation law, and that the release of the debtor with his refusal to pay what he owed means about him a case that arose from the application of the implementation law, and that the release of the debtor with his refusal to pay what he paid means Sacrificing the interests of the creditor, which leads to the failure to achieve the balance for which the implementation law was legislated, and also makes the decisions of the courts represented in the expression of the pronouncement of the right and put it in the legal quorum without delivering it to its owner, and thus the inability to maintain private property required by the Constitution in Article (23 / First) thereof, And that what was stated in Article (32 / second and third) of the Execution Law came with the same purpose contained in Article (42) thereof, which confirmed the permissibility of imprisoning the debtor if he was able to pay, and did not show an appropriate settlement, or if he stopped paying By the settlement offered to him by the executor of justice, and therefore the debtor may be imprisoned under Articles (32 and 42), but the debtor's imprisonment under Article

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(42) is limited to four months in accordance with Article (43) of the Execution Law, While his imprisonment in accordance with Article (32) continues until a guarantor is presented, as the legislator's purpose in legislating this text is to force the procrastinating debtor despite his financial ability to implement and not leave the way for him to prolong the payment period or smuggle his money, so this article is an effective way to preserve the creditor's right, especially since the Federal Supreme Court confirmed in Resolution No. (41/Federal/2021) that what is mentioned in the aforementioned article is an expansion of the phenomenon of Financial guarantee against the creditor's debt, and the required to issue the state order against him / in addition to his job was to abide by the point of view of the Federal Supreme Court, because its decisions are final and binding on all authorities)).After reviewing the aforementioned request and completing the checks, 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. (1/Federal/2024) before this court, requested, according to his regulation dated 28/12/2023, to issue an urgent state order, including: ((Suspending the application of the decision of judgment No. (176 / T / Execution / 2023) issued by the person against whom the state order is required / in addition to his job)), until the aforementioned lawsuit is resolved, for the reasons detailed in the regulation, 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

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been addressed 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 privacy of the constitutional lawsuit, 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 that replaces it), In terms of Article (36) thereof, which stipulates that (the court's decisions are final and binding on all authorities and persons and do not accept appeal by any means of appeal), and on the basis of the foregoing, the issuance of an urgent order from the Federal Court is governed only by the controls and conditions that must be met for the issuance referred to In the law of Civil Procedure, 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 for two copies including 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 audit of the request for the issuance of the state order by this court has proven the lack of urgency in it and the necessity that requires its issuance, in addition to the above, responding to its content means entering the origin of the right and giving a prior opinion of the lawsuit filed before this court No. (1/Federal/2024) The claimant according to which the judgment ((the invalidity of the decision issued by the person against whom the state order is requested in being in this capacity in the number (176 / T

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/ Execution / 2023) and obliging him to apply the law and the decisions of the Federal Supreme Court)) for the reasons referred to in detail in the lawsuit petition, and that this contradicts the judicial customs established in the constitutional districts of Arab and foreign countries, and with what was settled by the Iraqi judiciary in both its constitutional and ordinary parts and what was included in the 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 and whims and arbitrariness and flattery, there is no blame for the fit in what was really issued of the word or deed, and thus the decision to request the issuance of the state order, the duty of rejection for two reasons:

The first: is the lack of urgency in it, and the second lies in the fact that deciding on it means entering the original right and giving a prior opinion of the lawsuit filed before this court in the number (1 / federal / 2024), according to the detail referred to above, and for the foregoing, the Federal Supreme Court decided to reject the request to issue the state order submitted by (in the name of Nimr Hassan), The decision was issued by agreement based on 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, final and binding and done in the session dated 5/Rajab/1445 A.H. corresponding to 17/January/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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