

Republic of Iraq
Federal Supreme Court
Ref. 266 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/12/2022 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 Interpretation: Hameed Naeem Al-Ghizi/ Secretary-General of the Cabinet.

The Requested Text to be Interpreted: item (3rd/Alif) of the article (23) of the Republic of Iraq Constitution for 2005, further to the dissolved revolutionary command council decision No. (133) for 1997.

The Request

The Federal Supreme Court received the request of the Secretary-General of the Council of Ministers, Hamid Naim Al-Ghazi, according to the letter of the General Secretariat of the Council of Ministers / Legal Department No. (S/2/2/68/44106) on 6/12/2022, addressed to the Federal Supreme Court / Office of the President of the Court, entitled (Interpretation) containing: ((Based on the powers vested in your court under clause (2nd) of Article (93) of the Constitution, and the provisions of Article (24) of the Rules of Procedure of your Court No. (1) of 2022, please interpret the text of item (3rd/Alif) of Article (23) of the Constitution which includes (The Iraqi has the right to own property anywhere in Iraq and no one else may own the immovable property,

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except as exempted by law), further to the decision of the dissolved Revolutionary Command Council No. (133) of 1997, which allowed the Palestinian permanent residence in Iraq since 1948 and his children residing with him who have completed eighteen years of age to own a residential plot of land or one dwelling house, and to indicate the extent to which the Palestinian permanent resident in Iraq can own real estate in Iraq in light of the aforementioned decision of the dissolved Revolutionary Command Council. Based on the foregoing, the request was submitted.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the request submitted by the Secretary-General of the Council of Ministers, Hamid Naim Al-Ghazi, according to the letter of the General Secretariat of the Council of Ministers / Legal Department, mentioned above, included its conclusion (a request to interpret the text of item (3rd/Alif) of Article (23) of the Constitution, which stipulated (the Iraqi has the right to own property anywhere in Iraq, and no other may own immovable, except what is excluded by law), further to the decision of the (dissolved) Revolutionary Command Council No. (133) of 1997, which authorized the permanent ownership of a Palestinian resident in Iraq since 1948 and his children residing with him who has completed the age of eighteen years of a residential plot of land or one residential house, and a statement of the extent to which a Palestinian permanent resident in Iraq can own real estate in Iraq in the light of the aforementioned decision of the Revolutionary Command Council, the Federal Supreme Court finds that its competence to interpret the provisions of the Constitution is held in accordance with what is stated

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in Article (93/2nd) of the Constitution of the Republic of Iraq of 2005, and Article (4/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021 and in accordance with Article (24) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulated that (the authorities and bodies stipulated in Article (19) of this system, submit a request to the court to interpret a constitutional text that has raised a dispute in application in accordance with the following procedures: First: The request shall be submitted in writing and sent to the court by a letter signed by the head of the authority or the head of the authority stipulated in Article (19) of this system, including the text to be interpreted, the reason for the request and the nature of the dispute raised by its application. Second: The application shall be registered with the court, and it may summon whomever it deems necessary to clarify from him or clarify this in writing. Third: The President of the Court and its members shall be provided with a copy of the application and all its attachments, and the Court shall set a date for consideration without pleading, and shall issue its decision on the same date or another date), and when referring to Article (19) of the aforementioned system, it becomes clear that it has identified the authorities and bodies that have the right to request interpretation of each of (the three federal authorities, ministries, independent bodies, the Prime Minister of the Region, entities not associated with a ministry and governors), especially since Article (47) of the aforementioned Constitution specified the powers Federalism, as it stipulates that "the federal authorities shall consist of the legislative, executive and judicial authorities, which shall exercise their competences and functions based on the principle of separation of powers." Article (66) of it defines the components of the executive authority, as it stipulates that (the federal

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executive authority consists of the President of the Republic and the Council of Ministers, exercising its powers in accordance with the Constitution and the law), and since the Secretary-General of the Council of Ministers is not one of the bodies stipulated in Article (19) of the internal regulations of the aforementioned Federal Supreme Court, and is not considered a representative of the Council of Ministers, since the Council of Ministers is represented by the Prime Minister, especially since the Council of Ministers is one of the two parts of the executive authority, which consists of the President of the Republic. The Council of Ministers is based on the provisions of Article (66) of the aforementioned Constitution, and the General Secretariat of the Council of Ministers is the executive authority for the decisions taken by the Council of Ministers and does not represent it, because the aforementioned Secretariat enjoys an independent legal personality based on the legislation in force. Therefore, the request submitted to this court to interpret item (3rd/Alif) of Article (23) of the Constitution of the Republic of Iraq for the year 2005, in addition to the decision of the dissolved Revolutionary Command Council No. (133) of 1997, was submitted by a body that is not competent to request interpretation, this matter requires the dismissal of the application in a form, and this is what this court ruled in its judgment issued by it No. (28/Federal/2022) on 28/3/2022 on the occasion of the request for interpretation of the same article of the Constitution, submitted by the same authority, and the request was previously decided, and for the foregoing, the Federal Supreme Court decided to rule to dismiss the request in the form. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93/2nd and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/2nd and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law

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No. (25) for 2021. It has been edited on the session dated 25/Jamada Al-Awla/1444 Hijri coinciding 20/December/2022 AD.

Signature of
The president
Jasem Mohammad Abbood