

Republic of Iraq  
Federal Supreme Court  
Ref. 129 / federal/custodian order /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/6/2022 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, Ayooob 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 Custodian Order: Ammar jabr Khaleel/ his agent Barrister Saif Mahir Ibrahim.

Whom requested to issue the custodian order against: the Speaker of the Iraqi Council of Representatives/ being in this capacity

### **The Request**

The applicant for the issuance of the custodian order, through his agent, submitted his draft of 16 May 2022, for which the legal fee had been met on the same date, and requested from this court ((Issuing an urgent state order to stop the parliamentary decision issued by the requested custodian order against him by the Speaker of the Council of Representatives/ being in this post No. (11) for 2022 issued under the letter in the issue (1/9/Dal.Kha/Sin 10/11) On 19 May 2022, 19 May 2022, at the 8th session of the Council of Representatives, which included the dismissal of the custodian order applicant Ammar Jabr Khalil at the suggestion of the Prime Minister, and supported by the letter of the General Secretariat of the Council of Ministers in the issue (Qaf/2/5/42/2216) on 24 May 2022, addressed to Salah Al-Din province/governor's office, regarding the

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above-mentioned parliamentary decision issued at the suggestion of the Prime Minister)). This is until the case before this court is resolved in the number (129/Federal/2022) to challenge the constitutionality of the aforementioned parliamentary order, and its request for the issuance of the custodian order is based on several reasons whose conclusion lies as follows: (The above-mentioned decision) Led to the interference of politicians in the affairs of the province (Salaheddine) and then the appointment of a new governor (Ismail Khader Haloub), and this represents the exploitation of power by the prime minister despite restricting his powers by the decision of the Federal Supreme Court in the number (121/federal/2022) And the continued commission of constitutional violations by all those who are required to issue the custodian order against him and the Prime Minister, including the appointment of the new Governor before issuing a republican decree to end the mandate of the applicant to issue the custodian order legally and judicially, and did not issue a republican decree commissioning the new governor, this matter is violating the Constitution which determined the appointments in such posts with a republican decree, the intention of this matter is to share the power in the governorate and causing damage to its security, and social tissue)). Therefore, the request has been presented according to the detail above-mentioned to maintain the governorate's rights, and until the issuance of the legal challenge results.

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the custodian order, through his agent, requested, in his draft of 16 May 2022, that the Court issue an urgent

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custodian order to stop the parliamentary decision of the requested custodian order against him/ being in this capacity, No. (11) of 2022, under letter No. (1/9/Dal.Kha/Sin 10/11) on 19 May 2022, adopted at the numbered session of the Council of Representatives (8) on 19 May 2022, including ((to relieve Ammar Jabr Khalil from office (Governor of Salaheddine) at the suggestion of the Council of Ministers)) until the issuance of a decision from the Federal Supreme Court about the challenge of the constitutionality of the Parliamentary order aforementioned, according to the case initiated before it in the number (129/federal/2022). The Federal Supreme Court finds that issuing an urgent custodian order on an independent request or inclusive in the constitutional cases initiated before it had not been mentioned, as well, it had not been treated in the Federal Supreme Court Law No. (30) for 2005 amended, not even in the Bylaw of the work process in the Federal Supreme Court No. (1) for 2005. Therefore, it submits to the provisions referred on articles (151 and 152) of the Civil Procedures Law No. (83) for 1969 (amended), as much as it corresponds to the nature of the constitutional case and its privacy according to the provisions of article (19) of the work process in the Bylaw of the FSC aforementioned which stipulated (The provisions of the Civil Procedures Law No. (83) of 1969 and the evidence Law No. (107) of 1979 shall be applied, while no special provision is contained in the Federal Supreme Court Law and in this Bylaw) within the meaning of article (17) of it, which stipulates (the judgments and decisions issued by the court are final and does not accept any of the methods of appeal...). Based on the foregoing, the issuance of a custodian order by the Federal Supreme Court is governed only by the controls and conditions to be met for its issuance referred to in the Civil Procedures Law, for the

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adjudication of decisions issued by this Court and its non-submission to the appeal methods, which lie in the application of two copies containing facts, grounds, and documents, the availability of urgency, failure to enter into and decide the origin of the right, and since the scrutiny of the application for the issuance of the custodian order by this Court has proved that there is no urgency in it or a case of urgency. The absolute necessity of issuing 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 constitutionality of the parliamentary decision issued by the requested state order against him / being in this capacity No. (11) for the year 2022 mentioned above, based on the case filed to challenge his constitutionality in the number (129/federal/2022), this is contrary to the established judicial norms in the constitutional districts of Arab and foreign states and to what the Iraqi judiciary has settled in its constitutional and ordinary aspects and the established judicial applications in this area 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 blamer in the statement or action that has been issued, and thus the decision to request the issuance of the custodian order shall be rejected for two reasons: first: it should not be urgent, second: taking any decision about it means going into the origin of the right and giving a pre-opinion about the ICR's decision Constitutionality according to the case initiated before this Court to challenge its constitutionality according to the detail referred above-mentioned. Accordingly, the Federal Supreme Court decided to reject the request of issuing the custodian order to Ammar Jabr Khalil. The decision has been issued unanimously, according to the provisions of

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article (94) of the Constitution of the Republic of Iraq for 2005 and the 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 in the session dated 1/Dhul Qaeda/1443 Hijri coinciding 1/June/2022 AD.

**Signature of  
The president  
Jasem Mohammad Abbood**