

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 18/federal/2022



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 3. 2 .2022 headed by Judge Jasem Mohammad Abod and the membership of the judges Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Adel Abdul-Razzaq Abbas, Khaled Taha Ahmed, and Munther Ibrahim Hussein Ali who are authorized to judge in the name of the people, they made the following decision:

Sub./Interpretation of a constitutional text

The Request:

The Deputy Speaker of the Council of Representatives (Shakwan Abdullah Ahmed) requested, under the book issued by his office in the issue (M.N./45) on 2/2/2022, the text of the article (72/2nd/beh) of the Constitution of the Republic of Iraq 2005, which included the following:

(The President of the Republic shall continue to exercise his duties until after the end of the election and the meeting of the new Council of Representatives, provided that a new President of the Republic is elected within thirty days from the date of its first convening for the Council of Representatives based on the provisions of Article (72/2nd/beh) of the Constitution, which did not give the parliament a choice in this regard and did not stop this obligation on a condition or condition, as it obligated the Council to elect the President of the Republic with the phrase (provided that a new President of the Republic be elected within thirty days of The

date of the first meeting of the Council) This is a clear obligation that does not leave the parliament with a path to take except for one path at a predetermined time, which is to elect the president of the republic within a month from the date of the first session of the Council of Representatives. Republic on 7/2/2022. Although the quorum for the session of the Council of Representatives is determined according to Article (59/1st) of the constitution, which stipulates that (the quorum for the sessions of the Council of Representatives is achieved by the presence of the absolute majority of its members), there is an opinion raised in some legal and political circles that the session to elect a president The republic must be convened by a two-thirds majority of the members of the Council of Representatives, or the election of the president should not proceed without two-thirds of the members of the Council present in the Council on the basis that Article (70/1st) states that (the Council of Representatives elects from among the candidates a president by a two-thirds majority of the number of its members) despite This majority is (the majority of voters) and not (the majority of the quorum for the session of the Council), otherwise the constitution would have stipulated a special quorum for the holding of the session to elect the President of the Republic, as an exception to the rule established in Article (59/1st) of it or the constitution would have required the election of the president of the republic by a two-thirds majority only, without giving the parliament another option, as it did in other citizens of the constitution when it stipulated a two-thirds majority and no other with regard to deciding on the validity of the membership of the council members under Article (52/1st) and regarding the enactment of a law regulating the ratification of the law. International treaties and agreements according to Article (61/4th) and with regard to the approval of declaring a state of war and a state of emergency under Article (61/9th/alif) and for the enactment of the law of the Federation Council under Article (65) and for the enactment of the FSC law under Article (92/2nd) and other issues that cannot be decided upon without the presence of a two-thirds majority of the members of the Council of Representatives

in the session. As for the election of the President of the Republic, the Constitution has set an option for the Council of Representatives when he is elected and did not adhere to the two-thirds majority stipulated in Article (70/1st) thereof, as it stipulated in item (2nd) of Article (70) itself that (if none of the Candidates with the required majority, the competition will take place among the candidates with the highest number of votes, the one who obtains the majority of votes in the second ballot shall be declared president (so that if one of the candidates for the position of President of the Republic does not obtain a two-thirds majority in the vote, whoever obtains the votes of the majority of those present shall be declared President of the Republic, and if the constitution wanted to adhere to a two-thirds majority, it would not allow the majority of those present in the parliament session to elect the President of the Republic, even though their number may not exceed a simple majority of the number of Council members. Accordingly, in order to remedy any prejudice to the constitutional timing specified for electing the President of the Republic in the Parliament session on 7/2/2022, which will lead to a violation of the Constitution. In order to resolve any controversy regarding the legal quorum for holding the presidential election session, we kindly ask the esteemed FSC to explain the text of Article (72/2nd/beh) of the Constitution, which provides for the election of the President of the Republic within thirty days from the date of the first session of the Council of Representatives, whether it requires that The session is held with a quorum of two-thirds of the members of the Council of Representatives, or that the election of the President of the Republic is not presented to the session unless two-thirds of the members of the Council of Representatives are present, or the quorum for convening is the absolute majority of the number of members of the Council of Representatives as stipulated in Article (59/1st) of the Constitution, and in the event that the court tends to adopt the first possibility and stipulates that the session not convene without a majority of two-thirds of the council members, or that the issue of electing the president of the republic

is not raised in the session, unless two-thirds of the council members are present in it, what will be the fate of the constitutional obligation to elect the council the president of the republic during the thirty-day period that It was stipulated in Article (72/2nd/beh) of the constitution and how the Council will reconcile its commitment to complete the election of the President of the Republic and its commitment to ensuring the presence of a two-thirds majority of the Council's members to conduct the election of the President, especially since guaranteeing this may not be available for an open, indefinite period).

The Decision:

The above request was subject to scrutiny and deliberation by the FSC and came to the following conclusions:-

First: - The request for interpretation of Article (72/2nd/beh) of the Constitution of the Republic of Iraq for the year 2005 included an explanation of the same article by the applicant and the practical possibilities for it in light of that interpretation and its relationship to Article (59/1st) of the Constitution. It also included an explanation of the provisions of Articles (70/1st), (61/4th), (61/9th/alif), (65), and (92/2nd) of the Constitution, and since the interpretation of constitutional texts is the competence of the FSC based on the provisions of Article (93/2nd) of the Constitution and Article (4/2nd) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021, so the requirement was that the request should not include all of that, otherwise there is no justification for approaching this court.

Second: - The jurisdiction of the FSC regarding the interpretation of the provisions of the Constitution in accordance with Article (93/2nd) of the Constitution takes place upon submitting a request from one of the federal authorities stipulated in Article (47) of the Constitution, as well as upon submitting the request from the official authorities that enjoy with the

independent legal personality in the regions or governorates that are not organized in a region when the constitutional text required to be interpreted indicates an actual disagreement in the application and it appeared in the form of different points of view, and that the request was not on the occasion of a dispute before the judiciary, because this is considered a disqualification from the judge who is looking into the dispute and preventing the litigants from defending his point Their consideration if their absence is explained since such a request must be submitted by the court examining the case, and since the request for interpretation under scrutiny is submitted by the Office of the Deputy Speaker of the Council of Representatives, this does not represent the Iraqi Council of Representatives, which requires its response in form. When the foregoing, the FSC decided to reject the request in form, and the decision was issued by a majority and binding on all authorities, based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and issued in the session dated 1/Rajab/1443 coinciding with 3/February/2022.

Signature of
The president

**Jasem Mohammad
Abod**

Signature of
The member

Haidar Jaber Abed

Signature of
The member

Haider Ali Noory

Signature of
The member

Khalaf Ahmad Rajab

Signature of
The member

Ayoub Abbas Salih

Signature of
The member

**Abdul Rahman
Suleiman Ali**

Signature of
The member

**Adel Abdul-Razzaq
Abbas**

Signature of
The member

Khaled Taha Ahmed

Signature of
The member

**Munther Ibrahim
Husein**