

Republic of Iraq  
Federal Supreme Court  
Ref. 264 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/11/2023 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 Requestor of Issuing the State Order: Safwat Salih Sabir Binaa/  
candidate of Kirkuk governorate council elections-his  
agent the barrister Mahmood Akram Taha.

Who Requested to Issue the State Order Against: Head of the  
Independent High Electoral Commission/ being in this  
capacity.

### **The Abstract of the Request**

The applicant for the issuance of the state order, through his representative, submitted to the Federal Supreme Court his list dated 11/21/2023, for which the legal fee was collected on the same date, to request the issuance of an urgent state order that includes the ruling ((to postpone the provincial council elections in Kirkuk Governorate),) Until the lawsuit filed by him before this court, number (264/federal/2023), under which he is requested, is resolved, the ruling (obliging the person against whom the state order is requested/in addition to his job to audit the voter register and postpone the provincial council elections in Kirkuk Governorate for not auditing the voter register in accordance with what is required by Article) 13) of Law No. (4) of 2023, the Third Amendment to the Law on Elections for the Council of Representatives, Governorate Councils, and Districts No. (12) of 2018), Its summary lies

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in the following: ((Law No. (4) of 2023 has previously been issued, amending the third amendment to the Law on Elections for the Council of Representatives, Governorate Councils, and Districts No. (12) of 2018 included in Article (13) thereof. ((Article (35) of the law and its amendments shall be repealed in Law No. (14) of 2019, to be read as follows: First: The Independent High Electoral Commission, in coordination with the relevant ministries (Interior, Health, Justice, Trade, Planning) and a representative of each component of the Kirkuk Social Governorate from members of the Council of Representatives for the governorate, will audit the records. Voters in the governorate are based on the following principles: Alif - Citizens registered in the 1957 census, with the exception of citizens of Al-Zab district and Sarkaran district, who are included in the Kirkuk Governorate election registry approved for elections to the Council of Representatives or provincial councils. Beh - Returning deportees who passed the fact-finding committee for Article (140) of the Constitution or who will bypass its procedures in accordance with the applicable legal conditions and controls. Jim - Citizens of Kirkuk whose residence is proven through the ration card before 2003)), whereas it is requested to issue the state order against him and the aforementioned ministerial committees did not complete the work entrusted to them by auditing the voter register in accordance with what Article (13/First) required - that is, before the date of holding the provincial council elections in Kirkuk, and conducting them without auditing the voter register constitutes a major violation of the work of the Commission. The Independent High Commission for Elections is considered a legal violation of the text of the aforementioned article, as the law obliges the committees to carry out the aforementioned procedures, and failure to complete them challenges the validity of the election results and weakens the voter's confidence in

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electoral participation, which will open the door to tampering with the voters' votes and falsifying their will. The principle of the peaceful transfer of power constitutes a guarantee of human rights. It is an impenetrable barrier to protect the political process, which brings about security and stability in society. This principle cannot be achieved unless its guarantees, represented by broad electoral participation and the involvement of the people in choosing their rulers or representatives through the integrity of the process, are achieved. Electoral elections and their integrity, as Article 6 of the Iraqi Constitution stipulates: "Power shall be transferred peacefully, through the democratic means stipulated in this Constitution." Therefore, holding provincial council elections in Kirkuk without checking voter records constitutes a legal and constitutional violation, in addition to holding any elections in Kirkuk. Relying on the current record without correction is a dedication to demographic change that affects societal peace and does not represent the will of the indigenous people of Kirkuk, especially since the date of the provincial council elections will be held in the city of Kirkuk on December 18, 2023), 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 internal regulations of the Federal Supreme Court No. (1) of 2022. The request was submitted to issue an urgent state order in accordance with the details mentioned above.

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the person requesting the issuance of the state order, due to his filing of the case No. (264/Federal/2023) before this court, requested, according to his regulations dated 11/21/2023, the issuance of

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an urgent state order, which includes: The ruling (to postpone the council elections governorates in Kirkuk Governorate), until the aforementioned lawsuit is resolved, for reasons referred to in detail in the regulations, and the Federal Supreme Court finds that issuing an urgent state order based on an independent request or implicitly in the constitutional lawsuits brought before it has not been addressed, nor has it been addressed in Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, nor are the Bylaw of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette, Issue (4679) on 6/13/2022, 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. And to the extent that is commensurate with the nature and specificity of the constitutional lawsuit, based on the provisions of Article (39) of the aforementioned Federal Supreme Court's bylaws, 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) and in light of Article (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...), on the basis of the above, 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 Code, due to the finality of the decisions issued by this court and not being subject to methods of appeal, which consist of submitting a request in two copies containing the facts, evidence, and documents. It has the characteristic of urgency, and does not enter into the origin of the right and decide on it, whereas the scrutiny of the request to issue the state order from this court has proven that it does not have the quality of

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urgency nor the state of necessity that requires its issuance, in addition to the above, responding to its content means entering into the origin of the right and giving a prior opinion on the case brought before this court, No. (264/Federal/2023). (What is requested is the ruling ((obliging the person against whom the state order is requested to be issued/in addition to his job) to audit the voter register and postpone the provincial council elections in Kirkuk Governorate for not auditing the voter register in accordance with what is required by Article (13) of Law No. (4) of 2023, the Third Amendment to the House of Representatives Elections Law. And the Governorate and District Councils No. (12) of 2018) for the reasons referred to in detail in its petition, and that this conflicts with established judicial customs in the constitutional judiciaries of Arab and foreign countries, and with what the Iraqi judiciary, both its constitutional and ordinary parts, has settled on, and what is included in the established judicial applications in this field based on the provisions of the Constitution and the laws in force, which are based on the realization of rights and the achievement of justice and fairness, far from inclinations, whims, arbitrariness and flattery, the blamer cannot be blamed for what was truly said or done, and thus Deciding on the request to issue a state order must be rejected for two reasons: the first: the lack of urgency in it and the state of necessity that requires its issuance, and the second: the fact that deciding on it means entering into the origin of the right and giving a prior opinion on the case brought before this court, No. (264/Federal/2023). The aforementioned Federal Supreme Court decided to reject the request to issue the state order submitted by Safwat Saleh Saber/ candidate for the Kirkuk Provincial Council elections. 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

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(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 12/Jamada Al-Akhira/1445 Hijri coinciding with 27/November/2023 AD.

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

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