



The Federal Supreme Court (F.S.C.) has been convened on 14.6.2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Request for Suspension of the Court: The lawyer Ali Kamel Rasul al-Taie

First- Summary of the Request:

On 10/5/2020, Mr. Ali Kamel Rasul Al-Tai, as a lawyer, submitted a request to this court, summarizing that in view of the issuance of the permanent constitution of the Republic of Iraq, which became effective in 2005, the Law of State Administration for the Transitional Period has become null and has no legal effect in accordance with the provisions of Article (143) of the Constitution and Articles (2-3-26) From the Law of the Administration of the State, all laws enacted according to the provisions of this law are not excluded by Article (61) of it. Likewise, with the exception of what is stated in Paragraph (alif) of Article (53 and 58) of the provisions of the Permanent Constitution of 2005 and that FSC's Law No. (30) of 2005 is not exempt from the repeal contained in (143) of the Constitution under Paragraph (alif) of Article (53) and Article (58) thereof, as the FSC is not exempted from revocation The

Iraqi Supreme Criminal Court was also excluded because the laws issued according to an earlier law are governed by the perpetuation or demise of the law that established them. Also, what was stated in Article (26) of the repealed State Administration Law regarding the effect of previous laws and legislation is conditional on their promulgation before the thirtieth of June 2004, as paragraph (alif) of it stipulates that (the laws in force in Iraq on June 30, 2004 remain valid unless this law stipulates that: Otherwise, and until the Iraqi Transitional Government cancels or amends it in accordance with this law) and since the law of the FSC No. (30) of 2005 was specifically issued after that, it cannot be covered by the enforcement stipulated in the above article, especially when referring to the provisions of Article (130) of the Constitution and that Article (92/2nd) of the Constitution stipulates (The FSC consists of a number of judges, experts in Islamic jurisprudence and legal scholars whose number is determined and the procedure for their selection and the work of the court is regulated by a law enacted by a two-thirds majority of the members of the Council of Representatives) Therefore, the continuation of the current work of the court has been based on a nullified law that does not conform to a constitutional text revealing another conditional formation regarding a constituent and established law in which it is a constitutional breach and perhaps a violation of the legal principles applicable in the formation and establishment of the administrative facility and state institutions. Therefore, he requested to stop the work of the court until the issuance of the law establishing it by the legislative authorities in accordance with the provisions of Article (92) of the Constitution.

The Decision:

After scrutiny and deliberation found that the applicant had requested to stop the work of the court for the reasons mentioned in his request above and since the work of this court is governed by Article (93) of the current constitution of 2005, which defines the jurisdiction of the FSC the forms and procedures for submitting applications and lawsuits were regulated by the Bylaw of the Court No. (1) of 2005, as well as the provisions of the Civil Procedures Law No. (83) of 1969 based on Article (19) of this system. Since the Bylaw of the court are not allowed for ordinary people to submit a request except under a case for drawing up the rules of procedure, its conditions are in Article (1) and Article (6) thereof, paragraphs (1st, 2nd, 3rd, 4th, 5th and 6th) among them is that the plaintiff has a case interest and direct and influential in his status and that he has harm from that to the end of the provisions of this article and does not apply to the application submitted because it is not contained in the form of this case on the one hand and on the other hand this request cannot be considered by such applications to the custodian judiciary because the Civil Procedure Law in article (151) of it required two conditions for applying for the custodian judiciary the first is the existence of a provision in the law that allows the court to take the required order and this is what the application is lacking and the second is the availability of urgency and this requirement as before is not available in the application submitted this court is also obliged under the constitutional provisions of the Constitution of the Republic of Iraq in 2005 as well as its law establishing No. (30) of 2005 to perform its specific constitutional duties, especially since article (130) of the Constitution stipulates that “existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution”. Since Order (30) of 2005 was published in Iraqi Gazette No. (3996) on 17/3/2005, the Constitution of the Republic of Iraq for 2005 was implemented after the referendum on 15/October/2005 and published in the Iraqi Gazette in issue (4012 on 28/12/2005 based) on

article (144) of the Constitution of 2005, i.e. after the entry into force of Law No. (30) of 2005, the latter is, therefore, one of the legislations valid after the promulgation of the Constitution and is covered by the provisions of Article (130) of the Constitution. For all of the above, the court decided to reject the request submitted by Mr. (Ali Kamel Rasul al-Taie) and issued the unanimous decision on the basis of Article (93) of the Constitution of the Republic of Iraq for 2005, Article (6) of the Bylaw of the FSC No. (1) of 2005 and Article (151) of the Civil Procedure Law No. (83) of 1969 decisively decision on 14/ June /2021 coinciding with ٣/ Dhul Qada /1442.

Signature of
The president

**Jasem Mohammad
Abad**

Signature of
The member

**Sameer Abbas
Mohammed**

Signature of
The member

Ghaleb Amer Shnain