

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 5/federal/custodian order/2022



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 23. 2 .2022 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Requester for the Custodian Order issuing: Deputy Basem Khazal Khashan - his attorney, Ahmed Saeed Musa.

The Requested for the Custodian Order to issuing (agents him):

The Speaker of the Council of Representatives/being in his capacity.

The Request:

Representative Basem Khazal Khashan requested from the FSC through his agent, by his draft dated 9/02/2022, for which the legal fee was collected on the same date and recorded No. (5/federal/custodian order/2022) to issue an urgent custodian order, which includes: (Stop all the procedures resulting from Parliament Resolution No. (4) of 2022 for violating the provisions of Articles (59/2nd and 72/2nd/beh) of the Constitution of the Republic of Iraq for the year 2005, and Article (2) of the Law of Provisions for Candidacy for the Post of President of the

Republic No. (8) of 2012, Until the issue of the lawsuit filed by him before this court is resolved in No. (23/federal/ 2022), and the legal fee was collected on 9/2/2022, related to challenging the constitutionality of the aforementioned decision.

The Decision:

After scrutiny and deliberation by the FSC found that the applicant for the issuance of the custodian order, and on the occasion of his filing of the lawsuit in the number (23/federal/2022) before this court, requested, in its regulations dated 9/2/2022, the issuance of an urgent custodian order, which includes: (Stopping all procedures resulting from the decision of the Council of Representatives No. (4) for the year 2022 for violating the provisions of Articles (59/2nd and 72/2nd /beh) of the Constitution of the Republic of Iraq of 2005, and Article (2) of the Law No. (8) of 2012 on the Provisions of Candidacy for the Post of President of the Republic, until the issue of the aforementioned case regarding challenging the constitutionality of the aforementioned decision is resolved. The FSC finds that the issuance of an urgent custodian order based on an independent or implicit request in the constitutional cases brought before it was not addressed and was not addressed in the FSC Law No. (30) for the year 2005 as amended, nor the internal regulations for workflow procedures in the FSC. No. (1) of 2005 and thus is subject to the provisions referred to in Articles (151 and 152) of the amended Civil Procedure Law No. (83) of 1969, and to the extent commensurate with the nature and privacy of the constitutional case, based on the provisions of Article (19) of the aforementioned internal system above, which stipulated that (the provisions of the Civil Procedures Law No. (83) of 1969 and the Evidence Law No. 107 of 1979 shall be applied in what is not mentioned in a special text in the FSC Law and this system) and in the meaning of Article (17) thereof, which stipulates (judgments and decisions issued by the court is final and does not accept any method of appeal...), based on the foregoing, the issuance of a custodian order by the FSC is governed

only by the terms and conditions that must be met for its issuance referred to in the Civil Procedure Code because the decisions issued by this court are final and not subject to appeal methods. Which lies in submitting a request in two copies including facts, evidence, and documents, the availability of the urgency, and the failure to enter into the origin of the right and decide on it, and since the audit of the request for the issuance of the custodian order by this court has proven the lack of urgency in it, which must be available for its issuance, due to the lack of a case of extreme necessity. That requires this, especially that the nomination for the position of President of the Republic has been opened again, after the constitutional period specified for his election as stipulated in Article (72/2nd/beh) of the Constitution of the Republic of Iraq for 2005, and his failure to be elected, was based on the decision issued by the Council of Representatives No. (4) for the year 2022, Starting from Wednesday (9/2 2022) and for a period of (3) three days in accordance with the provisions of Article (2) of the Nomination Law for the Post of President of the Republic No. (8) of 2012, which stipulates that (the nomination for the position of President of the Republic shall be announced within a period of (3) Three days from the date of the election of the Speaker and his two deputies in its new Shariah session) provided that he is elected within thirty days from the date of the first session of the Council of Representatives in accordance with the provisions of Article (72/2nd/beh) of the aforementioned Constitution of the Republic of Iraq, and since the period specified for announcing the candidacy for the position of President of the Republic, according to the decision issued by the Council of Representatives No. (4) of 2022, ended before the application was decided upon, which means that there is no urgency in it. In addition to the foregoing, responding to its content means entering the origin of the right and giving a prior opinion On the constitutionality of the aforementioned Council of Representative's decision based on the lawsuit filed in this regard before this court, No. (23/federal/2022), and that this contradicts the established judicial customs in the constitutional districts of Arab and

foreign countries and with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this field based on the provisions of the Constitution and the laws in force, based on the realization of truth and the achievement of justice and fairness away from tendencies, whims, arbitrariness, and flattery There is no blame for the blameworthy for what was truly said or done. Thus, deciding on the request for the issuance of the custodian order is obligatory to respond for two reasons: the First: is the absence of the urgency in it, and the Second: is that deciding on it means entering into the origin of the right and giving a prior opinion on the constitutionality of the aforementioned Council of Representatives decision, in order to challenge its constitutionality before this court according to the detail referred to him above, and when the FSC decided to reject the request, and the decision was issued by agreement conclusive and binding on all authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq of 2005 and Article (5/2nd) of the FSC Law No. (30) of 2005 amended by law No. (25) of 2021 and issued in the session dated 21/ Rajab/ 1443 coinciding with 23/ February /2022.

Signature of

The president

Jasem Mohammad Abod