

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 4/federal/custodian order/2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 26. 12 .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 Requester for the Custodian Order issuing: Ala Tahsin Habib Ali Talabani/ her attorneys are Muhammad Majeed Al-Saadi and Ahmad Mazen Makiya.

The Requested for the Custodian Order to issuing (agents him):  
Head of the Independent High Electoral Commission/ being in his capacity

First - The Summary of the Request:

The requester asked to issue the custodian order, (Ala Tahsin Habib Ali al-Talabani), through her two attorneys, Muhammad Majeed al-Saadi and Ahmed Mazen Makiya, with her list submitted to the FSC and registered in No. (4/federal/custodian order/2021) dated 12/12/2021 for which the legal fee was paid on the same date, a custodian order was issued to suspend the approval of the membership of the candidate (Dylan Ghafour Saleh) before ratifying the results of the general elections until the case is resolved, on the basis that there are violations in the electoral mechanism used in the electoral centers in the first electoral district No.

(50) for Kirkuk Governorate, in addition to the presence of defects and irregularities in the process of announcing the results and determining the winners and losers for the reasons indicated in detail in the regulation, the summary of which lies in the following (**First:** The defendant/ being in his capacity had previously announced the victory of the candidate (Dylan Ghafour Saleh) in the first electoral district No. (50) of Kirkuk governorate, who declared herself as an (independent) candidate and that requires securing (500) signatures proven for the purpose of accepting the nomination, and this is what It was not done as the High Commission did not take these procedures in accordance with the regulations in force for the purpose of accepting the nomination, the aforementioned candidate, when conducting the electoral campaign, announced that she was a candidate for the Patriotic Union of Kurdistan and the Kurdistan Alliance, and as it is clear through her pictures and electoral posters in the streets of Kirkuk, and in light of that, the party in Kirkuk issued an official letter to its cadres to support the candidates of the Union, in which the name of the mentioned candidate was mentioned instead of the name (requester to issue the custodian order) This is in violation of the provisions of the Commission's procedures. **Second:** The Kirkuk Governorate Elections Office had previously filed several complaints against the candidate (Dylan Ghafour) for giving names to the commission for registration and nomination as an independent without the knowledge of the persons themselves, and this is confirmed by the book No. (562) dated 22/1/2021 issued by the Provincial Elections Office Kirkuk, whose subject was (complaints) addressed to the Candidates Affairs Division, which included the violations and violations committed by the aforementioned candidate, where she added the names of (Nabz Abdul Rahman Abdul Majid and Dero Ramadan Khurshid) to the lists without their consent, which proves the existence of fraud by including their names without their knowledge within the lists. The list of (500) signatures to accept the nomination is supported by letter (573) from the aforementioned office and to the same entity, attached to the presence of the names of people

whose signatures have been forged and what proves the existence of forgery. **Third:** The system in force in these elections is the system of distributing the governorate into multiple electoral districts according to the latest amendment to the election law, and since the district in which she was nominated (requesting the issuance of the custodian order) was limited to five seats, the proportion of women in it is supposed to be no less than (25%) as the mentioned law gave each department the right to enjoy this percentage note that the five seats for this constituency were won by four men and one woman, according to the number of votes they obtained in competition. Thus, the aforementioned percentage was not achieved, and in order to achieve this percentage, the seats must be three for men and two for women, since the winning candidate, Mrs. (Dylan Ghafour), had obtained a number of votes that qualifies her to win an original seat without resorting to the women's quota system, as the quota share of seats is not considered a precautionary case for compensation, but rather a conditional constitutional case, and that Mrs. (Dylan) obtaining a seat from The seats of the constituency in the usual way of competition outside the scope of the quota share requires division in line with the laws and constitutional texts, as follows: (Four seats for the contestants with the number of votes, which are each of (Shakhwan Al-Sayed Abdullah, Amid Muhammad, Dylan Ghafour, Sabah Habib) and one seat for the quota share, which is supposed to be the plaintiff's entitlement within the framework of the constitutionally stipulated quota system) as she received the highest number of votes from women After Ms. Dylan Ghafour, who won the number of votes, not the number of votes related to the quota share and that the law does not prevent the presence of two or more women in one district, and this was confirmed by the FSC Decision No. (8/federal/2019), which stipulated (the presence of a woman who won the votes in her favor in that list does not preclude the presence of another woman by securing The share of women on its side (the quota)), and the percentage of women in the aforementioned district is (20%), contrary to the constitution, which stipulated that the percentage

of women be at least 25%. Thus, the constitutional text is achieved by granting the seat (the requester to issue the custodian order) an entitlement within the framework of the conditional constitutional ratio for women, as well as in the framework of conditional entitlement within the scope of the quota system). Saleh) before approving the final results of the general elections for membership of the Council of Representatives until the case is resolved.

### The Decision:

After scrutiny and deliberation by the FSC it was found that the requester to issue the custodian order, (Ala Tahsin Habib Ali Al-Talabani), requested the issuance of a custodian order to stop the approval of the membership of the candidate (Dylan Ghafoor Saleh) before ratifying the results of the general elections until the settlement of the lawsuit filed by her, on the basis of irregularities in the electoral mechanism The procedures followed in the electoral centers in the first electoral district No. (50) of Kirkuk governorate, and defects and violations in the process of announcing the results and determining the winners and losers for the reasons mentioned in the appeal list, The FSC finds that its competence and authority to issue custodian orders based on requests submitted to it or cases brought before it, has not been addressed and has not been addressed in the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 nor the system The procedure for the conduct of work in the FSC No. (1) of 2005, and thus the authority of the FSC to issue custodian orders is subject to the provisions referred to in Articles (151 and 152) of the Civil Procedures Law No. (83) of 1969 as amended, to the extent that is commensurate with the nature and specificity of the constitutional case, based on the provisions of Article (19) of the internal system of workflow procedures in the FSC referred to above, which stipulated that (the provisions of the Civil Procedures Law No. (83) of 1969 and the Evidence Law No. (107) shall be applied) for the year 1979

in what is not mentioned in a special text in the FSC Law and this system) and in the context of Article (17) thereof, which stipulates (the judgments and decisions issued by the court are final and not accept any method of appeal...) On the basis of 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 Procedures Law, because the decisions issued by this court are final and not subject to the methods of appeal, which lies in submitting an application in two copies including, facts, evidence and documents, The availability of urgency, and not entering into the origin of the right and deciding on it, and since the examination of the request by this court has proven the absence of the urgency that must be available to issue the custodian order, especially that the election results sent by the Independent High Electoral Commission to the FSC for the purpose of ratification will be subject its audits, based on the jurisdiction of this court in ratification, stipulated in Article (93/7<sup>th</sup>) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/7<sup>th</sup>) of the FSC Law No. (30) for the year 2005 as amended by Law No. (25) for the year 2021, which stipulate: That the FSC is competent with the following: (ratifying the final results of the general elections for membership in the Council of Representatives), and issuing a custodian order in response to the request means entering into the origin of the right and deciding on it. Especially since the applicant for the issuance of the custodian order, filed a lawsuit before this court No. (174/federal/2021) for which the legal fee was collected on 2/12/2021, to demand a ruling to stop the procedures for ratifying the acceptance of the membership of the candidate (Dylan Ghafour Saleh). Before ratifying the final results of the general elections for membership of the Council of Representatives, and obligating the person to issue the custodian order against him to grant the application for the custodian order a parliamentary seat instead of the candidate (Dylan Ghafour Saleh). The stable judicial customs in the constitutional jurisdictions 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 justice and fairness away from tendencies, whims, arbitrariness, and flattery, there is no blame for the blame In what was said or done. Thus, the decision on the request is obligatory to respond for two reasons, the first is the absence of the character of urgency in it, and the second is that deciding on it means entering into the origin of the right and giving a prior opinion in the case filed by the applicant for the issuance of the custodian order before this court No. (174/federal/2021). In accordance with the above-mentioned detail, and for the foregoing, the FSC decided to reject the request of the applicant for the issuance of the custodian order, 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 for the year 2005 and Article (5/2<sup>nd</sup>) of the FSC Law No. (30) for the year 2005, as amended by Law No. (25) of 2021 on 1/Jumada Al-Ula /1443 coinciding with 6/December/2021.

Signature of  
The president

**Jasem Mohammad**  
**Abod**