

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 5/federal/custodian order/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 6. 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: Haitham Abdul-Jabbar Muhammad Fahd Al-Zarkani/ his attorney, Alaa Hadi Faraj.

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

Rafiq Hashem Shanawa Al-Salihi

First - The Summary of the Request:

The requester asked the issuance of the custodian order (Haitham Abdul-Jabbar Muhammad Fahd Al-Zarkani), through his attorney, Alaa Hadi Faraj, with his list submitted to the FSC and registered with it in the No. (5/federal/custodian order/2021) dated 2/12/2021, which was completed The legal fee for it on the same date is the issuance of a custodian order to suspend the validation of the candidate's result (Rafiq Hashem Shanawah Al-Salihi) until the case filed by him before this court is resolved, No. (176/federal/2021).

Second - The Decision:

After scrutiny and deliberation by the FSC, it was found that the requester to issue the custodian order, (Haitham Abdul-Jabbar Muhammad Fahd Al-Zarkani), in his list submitted to this court, requested the issuance of a custodian order to suspend the approval of the result of the candidate (Rafiq Hashem Shanawa Al-Salihi) until the settlement of the lawsuit filed by him before this court with the number (176/federal/2021), and the court finds The FSC, 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 FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 nor the bylaw of procedures Workflow in the FSC No. (1) of 2005. Thus, the authority of the FSC to issue state orders is subject to the provisions referred to in Articles (151 and 152) of the amended Civil Procedures 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 system. The procedure for the conduct of work in the FSC referred to above, which stipulated (the provisions of the Civil Procedures Law No. 83 of 1969 and Evidence Law No. 107 of 1979 shall apply to what is not mentioned in a special text in the FSC Law and in this system) and in the meaning of Article (17) of which stipulated (the judgments and decisions issued by the court are irrevocable and do 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 controls 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, and the availability of the character 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 state order, especially that the election results sent

by the Independent High Electoral Commission to the FSC for the purpose of approval will be checks place, based on the jurisdiction of this court in approving the final results of the membership of the Council of Representatives, stipulated in Article (93/7th) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/7th) of the FSC Law No. (30) of 2005 as amended by Law No. (25) For the year 2021, and the issuance of 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 promulgation of the custodian order filed before this court, the case for the number (176/federal/2021), for which the legal fee was collected on 2/12/2021, to demand the ruling not to ratify the final results of the general elections for membership of the Council of Representatives until the grave mistake that the applicant for the issuance of the custodian order was exposed to is corrected, it is considered as giving an opinion prematurely in the lawsuit filed before this aforementioned court, 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 valid laws. Based on the realization of the right and the achievement of justice and fairness away from inclinations, whims, arbitrariness, and flattery, there is no blame for the words or actions that have been issued, so the decision to apply must respond for two reasons: The First: is the lack of urgency in it, and The Second: is that the decision on it means entering into the origin of the right and giving a prior opinion in the case brought by the applicant for the issuance of the state order before this court No. (176/federal/2021) in accordance with the detail mentioned above. For all of the above, the FSC decided to reject the requests of the applicant for the state order, and the decision was issued by agreement in full and binding to all authorities based on the provisions of article (94) of the Constitution of the Republic of Iraq 2005 and article (5/2nd) of the FSC Law No. (30) of 2005 amended

by Law No. (25) for 2021 on 1/Jumada al-Ula/1443 coinciding with
6/December/2021.

Signature of
The president
**Jasem Mohammad
Abod**