



The Federal Supreme Court (F S C) has been convened on 25/5/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Tariq Juda Alwan Al-Ma'amoori/ Barrister
2. Adil Ahmed Abbas Al-Kharkhi/ Barrister

The defendants: 1. The President of the Republic/ being in this capacity/ his agent the Head of legal experts Ghazi Ibrahim Al-Janabi.
2. The Prime Minister/ being in this capacity/ his agent the legal advisor Hayder Al-Sofi.
3. The Speaker of the ICR/ being in this capacity his agents the legal advisor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

First: The Claim

The plaintiffs claimed in the petition that: (On 2 October 2018, the first defendant/ being in this capacity, charged the second defendant/ being in this capacity to form the Iraqi government and on 24 October 2018, the Council of Representatives, headed by the third defendant/ being in this capacity held a session, which gave confidence to the second defendant and his government cabinet of ministers, and since article (76/1) of the Iraqi Constitution

stipulated (the President of the Republic shall charge the nominee of the largest Council of Representatives bloc with the formation of the Council of Ministers within fifteen days from the date of the election of the President of the Republic). Since the decision of your esteemed court No. 25/Federal/2010 issued on 25 March, 2010 states that (the Federal Supreme Court found that the expression of the most numerous parliamentary bloc means that the bloc formed after the elections through a single electoral list entered the elections by a certain name and number and obtained more than one or more of the lists of electoral lists that entered the elections with different names and numbers and then it was grouped into a single bloc with one entity in the council of representatives, whichever is more numerous, and the president of the republic assigns the candidate of the parliamentary bloc in the first session of the Council of Representatives more than the other bloc or blocs to form a cabinet based on the provisions of article (76) of the Iraqi constitution). Since no more bloc was formed either in the first session or in the sessions that followed, neither by a declaration nor by a statement issued by any bloc under the dome of the Council of Representatives (in one bloc with one entity), therefore, the assignment of the first defendant/ being in this capacity for the second defendant/ being in this capacity The session of the Council of Representatives, chaired by the third defendant/ being in this capacity, is contrary to the text of the article (76/1) of the Iraqi Constitution and the frankness of the interpretive decision numbered (25/Federal/2010) issued by your esteemed court, so we ask: 1- Invite the defendants/ being in their capacities to plead after the appointment of its date and inform them of the petition of the case. 2- The judgment that the mandate of the first defendant/ being in this capacity is null and void and nullity and unconstitutionality of the decision issued by the Council of Representatives, which is headed by the third defendant/ being in this capacity, which provides for the granting of confidence to the second defendant/ being in this capacity and government cabin at the session dated 24/10/2018. 3- Based on the text of the article (151) of the Amended Civil Procedure Law No. 83 of 1969, we ask your honorable court to issue a custodian order requiring that the current Iraqi government, headed by the second defendant/ being in

this capacity be considered as a caretaker government until the case is resolved. 4- to burden the defendants/ being in their capacities all expenses and fees), and based on the provisions of article (1/3rd) of the Bylaw the Federal Supreme Court No. (1) of 2005, the petition was notified and the legal fee was fulfilled It was registered in the number 143/federal/2019, and based on the provisions of article (2/first) of the Bylaw aforementioned, the defendants/ being in their capacities were notified of the petition of the case and the first defendant's/ being in this capacity agent the scheduled date, the first defendant/ being in this capacity agent replied that the plaintiffs had no immediate and direct interest in bringing the case based on article 6/1 of the Bylaw of the FSC No. (1) of 2005, thus not meeting the conditions of its acceptance, as well as that the parliamentary bloc nominated the second defendant to form a government, its name is following article (76/first) of the Iraqi Constitution and requested a dismissal. The second defendant's agent answered in addition to his job based on an article (6) of the Civil Procedure Law and Article (6/1st) of the Bylaw of the Federal Supreme Court No. 1 of 2005 The plaintiffs' case does not meet one of the conditions for its acceptance, namely (the interest), in addition to the fact that the second defendant resigned from his post and based on an article (4) of the Civil Procedure Law became not a litigant in this case, in addition to when his nomination as Prime Minister was as the candidate of the largest bloc and according to the letter of the third defendant's office/ being in this capacity No. (Mim. Raa/1338) on 16/December/2019. Noting that there has been no objection from the parliamentary blocs about the designation... Concerning the plaintiffs' request for a state order as the government formed as a caretaker government, this is outside the jurisdiction of the Federal Supreme Court, defined by Article 93 and he requested that the case should be rejected and that the third defendant's agent/ being in this capacity, requested that the plaintiffs have no interest in bringing the case and that the second defendant was the candidate of the largest bloc and attached to the court what supported the nomination of the second defendant to be named prime minister and requested to reject the case. The plaintiff was notified of the answering draft submitted by the defendant's agent/ being in this capacity. After completing the required

procedures following article (2/1) of the aforementioned Bylaw, the day (2/5/2021) set a date for the case following the provisions of article (2/2nd) of the aforementioned Bylaw, and for non-notifying, the case was postponed until 25 May 2021, when the court was formed and we called on the parties to the case, neither the plaintiffs nor their representatives appeared despite being informed and the defendants/ being in their capacities attended as their agent. The public in presence of both parties argument initiated and the court scrutinized the petition and the defendants' agents'/ being in their capacities answers, and after each of the defendants repeated their latest statements and requests, the court found the case to be updated for the reasons of the verdict and decided to conclude the case and to make the decision clear publicly at the session.

Second: The Judgment

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs requested in the petition, and based on the text of the article (151) of the Civil Procedure Law No. 83 of 1969, to issue a custodian order requiring that the current Iraqi government headed by the second defendant/ being in this capacity be considered as a caretaker government until the case is resolved, they also requested the nullity and unconstitutionality of the mandate issued by the first defendant/ being in this capacity to the second defendant/ being in this capacity and nullity and an unconstitutional decision issued by the Council of Representatives, headed by the third defendant/ being in this capacity, which provides confidence to the second defendant/ being in this capacity and government cabin at the session of 24/10/2018, this court finds about issuing the custodian orders that its power and jurisdiction in issuing custodian orders based on cases initiated before it is a subject hadn't been discussed or treated in the Federal Supreme Court Law No. (30) for 2005 (amended), not even by the Bylaw of work proceures in the Federal Supreme Court No. (1) for 2005. Therefore, the power of the Federal Supreme Court in issuing the custodian orders is submitted to the provisions mentioned in the articles (151 and 152) of the Civil Procedure Law No. (83) for 1969 (amended) with the value that corresponding to the nature of

the constitutional case and its privacy according to the provisions of the article (19) of the work procedures Bylaw of the Federal Supreme Court above-mentioned which stipulated (the provisions of the Civil Procedure Law No. (83) for 1969 and the Evidence Law No. (107) for 1979 shall be applied, while no private text has been listed in the Federal Supreme Court law and this Bylaw). Accordingly, issuing a custodian order by the Federal Supreme Court is yielded to the standards and the conditions which must be available to issue it, which are mentioned in the Civil Procedure Law. This matter is related to the decisiveness of the decisions issued by this Court which are not submitted to challenge methods, including the availability of urgency and not to go through the origin of the right and decide it. Whereas the scrutiny of the plaintiffs' request by this Court had approved the Non-requirement of urgency which should be available to issue the custodian order and the aforementioned request mentioned in the petition of the case at the date of collecting the legal fee on 12/ November/2019 and no decision has been made until the date of its trying by this Court on 2/ May/ 2021. Therefore, the passing of a long time between presenting the request and taking a decision about it is confirming the Non-requirement of this characteristic (the urgency characteristic). Moreover, it has been confirmed that there is no benefit from issuing a custodian order to respond to the request. The charged Prime Minister in 2018 is Mr. (Adil Abdul Mahdi) and his cabinet had been resigned and a new Prime Minister has been mandated which carried out the nomination of a new cabinet according to the constitutional and legal contexts. Moreover, the new Prime Minister and his new cabinet had acquired the ICR confidence according to the provisions of the article (76/4th) of the Republic of Iraq Constitution for 2005 with the meaning of paragraph (1st) of the aforementioned article, which means that the request of the plaintiff became ineffective. Therefore, it should be rejected for two reasons: First: the unavailability of urgency characteristic, Second: it became ineffective and has no reason to be tried. Accordingly, the request of issuing a custodian order as a response to the plaintiffs' request should be rejected. The Federal Supreme Court decided to reject the request of issuing the custodian order. As for the case of the plaintiffs which related to

judging by the nullity and unconstitutionality of the charge issued by the first defendant/ being in this capacity, nullity, and unconstitutionality of the decision issued by the ICR headed by the third defendant/ being in this capacity which granted confidence for the second defendant/ being in this capacity and his cabinet in the session dated 24/ October/2018, it should be rejected as well because the characteristic of interest and aggrieve which must be available in the case of the two plaintiffs and considered as a condition to accept the constitutional case. The Court has the right to make an investigation about their existence, their content and significance lie in the article (6) of the rules of procedure for the conduct of work in the Federal Supreme Court No. (1) of 2005, as paragraph (first) stipulates that (the plaintiff in the subject matter of the case shall have a direct and influential interest in the legal, financial or social status). Paragraph (2nd) stipulates that (the plaintiff shall provide evidence that actual harm has been done as a result of the legislation to be repealed), but paragraph (3rd) stipulates that (the damage should be direct and independent of its elements and can be removed if the legislation to be repealed is ruled illegal), while paragraph (4th) stipulates that (the damage should not be theoretical, future or unknown). The resignation of the prime minister in charge in 2018 and his cabinet after the case was initiated and a new prime minister was appointed to nominate a new cabinet following the constitutional and legal contexts, which gained the confidence of the Iraqi Parliament based on the provisions of article (76/4th) of the Constitution of the Republic of Iraq in 2005 and the allowance of paragraph (1st) of the article mentioned, made the plaintiffs' case in no interest in addition to the lack of damage and its lack of availability for both, the interest and harm in the constitutional proceedings must be available when the constitutional proceedings are filed and until the end of the decision and this is not available in the plaintiffs' case. Accordingly, the Federal Supreme Court decided the following: First- to dismiss the plaintiffs' case, Tarek Joudeh Al-Maamouri 2- Adel Abbas Al-Karkhi. Second: The plaintiffs shall burden fees, expenses, and advocacy fees to the agents of each of the defendants/ being in their capacities, each of the agents of the President of the Republic/ being in this capacity the Head of legal

experts Ghazi Ibraheem Al-Janabi, and the agent of the Prime Minister/ being in this capacity the legal counselor Hyder Al-Sofi and the agent of the Speaker of the ICR/ being in this capacity the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount of one-hundred thousand Iraqi dinars which should be divided according to the legal proportions. The decision has been made unanimously according to the provisions of article (94) of the Republic of Iraq Constitution for 2005 and the article (5/2nd) of the Federal Supreme Court No. (30) for 2005 (amended), and the decision has been made clear on 12/Shawal/1442 Hijri coinciding with 25/May/2021.

Signature of
the President
Jassim Mohammed Abood

Signature of
the Member
Ghalib Amir Shunayen

Signature of
the Member
Hayder Jabir Abid

Signature of
the Member
Hayder Ali Noori

Signature of
the Member
Khalaf Ahmed Rajab

Signature of
the Member
Ayoob Abbas Salah

Signature of
the Member
Abdul-Rahman Suleiman Ali

Signature of
the Member
Dyar Mohammed Ali

Signature of
the Member
Munthir Ibrahim Hussein