

Republic of Iraq
Federal Supreme Court
Ref. 240 / federal /2022



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The Federal Supreme Court (F S C) has been convened on 31/1/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: the Barrister Ahmed Raid Hayawi, the Barrister Hazim Mazin Kareem Al-Badri, and Ali Shimran Idan Al-Quraishi.

The Defendants: 1. The President of the Republic/ being in this capacity – his agents the legal counselor Ghazi Ibrahim Al-Janabi and the legal counselor Salah Lazim Shamkhi.

2. The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

3. Mohammed Shia'a Al-Sudani (who was charged to form the Government) and the post of the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiffs claimed in the lawsuit petition that the person in charge of the presidency of the Council of Ministers (Mohammed Shia Al-Sudani) stated - in a post on the official page of the Media Office of the Iraqi Prime Minister on Facebook verified with the blue mark - confirming that the agreement between all the political blocs that make up the

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coordination framework will put forward candidates for ministerial positions, and the Prime Minister-designate is not free to choose them with his full will, but it will be according to a quota mechanism that distributes ministries to political blocs according to their electoral weight, and this is contrary to the decision of the Federal Supreme Court numbered (89/Federal/2019), which explicitly stated (that goes contrary to what the constitution stipulates has created the so-called political quotas in the distribution of the aforementioned positions and the resulting negatives that affected the state's paths and the public interest), he also stated in another publication on 23/10/2022 that he formed a committee that includes advisers specialized in interviewing party candidates for ministries, and this confirms that he is deprived of the will to choose his candidates, which violates Article (76/1st and 2nd) of the Constitution, which states (First: The President of the Republic, the candidate of the most numerous parliamentary bloc, shall be tasked with forming the Council of Ministers, within fifteen days from the date of the election of the President of the Republic. Second: The Prime Minister-designate shall nominate the members of his ministry, within a maximum period of thirty days from the date of assignment), which is clear and explicit by giving absolute powers to the Prime Minister exclusively to choose his candidates, form the Council of Ministers and name his ministry without the need to return to the political blocs, and since the Prime Minister requires what is required in the President of the Republic according to the text of Article (77/1st) of the Constitution, which states (First: The Prime Minister shall be required to be the President of the Republic, and he must have a university degree or its equivalent, and he must have completed thirty-five years of age), Article 1 of the Provisions of the Presidential Nomination Law No. 8 of 2012 stipulates that: "Whoever nominates himself for the post of President of

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the Republic shall meet the following conditions: Third: He has a good reputation and political experience and is known for his integrity, integrity, justice and devotion to the nation.", it also violated Articles (14 and 16) of the Constitution, which affirmed the principles of equality and equal opportunities among Iraqis, and since the assignment decision caused direct harm to the plaintiffs and the public interest through the consensual assignment, which negatively affected living matters as a result of the deterioration of the general political situation. Therefore, they requested this court to annul the assignment of the candidate for the Prime Minister, Mohammed Shia Al-Sudani, as it violates the Constitution and the decision of the Federal Supreme Court No. (89/Federal/2019), and they also requested the issuance of an urgent state order to stop the session of the Council of Representatives to vote on the ministerial cabinet until this lawsuit is resolved. The lawsuit was registered with this court with the number (240/federal/2022) and the legal fee for it was collected based on the provisions of article (21/1st) of the court's internal system No. (1) of 2022, and it informs the defendants of its petition and documents in accordance with item (2nd) of the same article, and the agent of the first defendant replied with the reply list dated 6/11/2022, the conclusion of which is that there is no interest for the plaintiffs nor that they suffer damage in accordance with what was decided by article (20/1st) of the court's rules of procedure, and that the mere statement regarding the formation of the Council of Ministers is not considered the agreement between the political blocs to nominate their representatives to assume sovereign positions does not mean that there is a partisan quota because all the heads and members of the blocs are Iraqis. Therefore, they have the right to assume any position because Iraqis are equal in everything and any Iraqi has the right to be nominated to assume a high position, whether partisan or independent, in

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accordance with the principle of equal opportunities, and the court's decision No. (89 / federal / 2019) dated 28/10/2019 canceled the text of paragraph (6) of Legislative Resolution No. (44) of 2008, which stipulated (the implementation of the agreed demands of lists and political blocs according to their entitlement in state agencies for the positions of undersecretaries of ministries and heads of bodies, institutions, and special degrees. The Council of Representatives should expedite the approval of special grades, what applies to the aforementioned functions and positions does not apply to ministers because ministers are politicians and it is necessary to agree between the parties that make up the government and the person in charge of forming the government to choose them according to special requirements agreed upon by the Prime Minister with the heads of those blocs, in addition, the political blocs gave the taxpayer to the presidency of the Council of Ministers the opportunity to choose candidates from among the nominated names, and thus the goal of nominating the person whom the taxpayer deems to have been achieved in that all the specifications of efficiency, integrity and professionalism have been achieved in the nomination, which is what society aspires to in the performance of service to citizens from a person who has the specifications required to perform that service, so the nomination and selection of ministers were made according to special criteria, and the Council of Representatives approved this choice by an absolute majority in its session numbered (7) held on 27/10/2022 and Presidential Decree No. (36) of 2022 was issued to form the Council of Ministers, thus the plaintiffs' lawsuit became irrelevant, therefore, he asked for her refund and charged them fees, expenses, and attorney's fees. The two agents of the second defendant replied in the reply list dated 13/11/2022, it concludes that the nomination of the taxpayer for the Prime Minister shall be in accordance

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with the provisions of Article (76/1st) of the Constitution by the President of the Republic, and therefore the litigation is not directed towards their client and they requested the dismissal of the lawsuit and the plaintiffs to charge judicial fees, expenses, and advocacy fees. The third defendant's agent replied in the reply list dated 12/12/2022, it concludes that the plaintiffs' request is outside the jurisdiction of the court and does not meet the condition of interest to file it before it, and that the Prime Minister's Office issued a statement in which it confirmed the continuation of interviews with candidates for ministerial positions in the government and that these interviews are through a specialized committee that includes a group of advisers and is chaired by the Prime Minister-designate and has the freedom to choose candidates to assume responsibility following jurisdiction and public interest after ensuring the safety of the candidates from Legal aspect, article (23/1st) of the Political Parties Law No. (36) of 2015 stipulates that (the party has the right to use the media to express its point of view...) and therefore the views published by the political blocs in the media represent the point of view of the party or political bloc, in addition to that the statement issued by the Media Office of the Prime Minister-designate included the principle of political pluralism and the principle of peaceful rotation of power and assuming responsibility or participation in it based on the provisions of Article (24/2nd) of the Parties Law, the Iraqi Council of Representatives agreed to grant confidence to the government of the Prime Minister after voting on it by an absolute majority based on the provisions of Article (76/4th) of the Constitution as an option for the Council of Representatives to approve the choices of the Prime Minister-designate for the members of his government, and that the formation of the government was under the supervision of the representative of the Secretary-General of the United Nations and

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submitted its semi-annual report to the Secretariat of the United Nations and was heard in the meeting of the Secretariat and was supported and blessed the formation of the government, and did not include its report to the Secretary-General of the United Nations United None of the plaintiffs' claim, as for their request to issue an urgent state order, which has no basis in the law because of the absence of its subject matter, due to the passage of the session, which resulted in granting the confidence of the Council of Representatives to the government of Prime Minister Mohamed Al-Sudani, therefore, he requested the dismissal of the lawsuit and the plaintiffs to bear the expenses and fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof and the parties were informed of it, and on the appointed day, the court was convened, and the second plaintiff attended personally, and the first defendant's agent, Salah Lazem Shamkhi, the second defendant's agent, Haitham Majed Salem, and the third defendant's agent, Haider Ali Jaber, and began to conduct the public adversarial pleading, the plaintiff repeated what was stated in the lawsuit petition and requested a ruling thereon, and presented to the court a response list that linked within the case papers, the defendants' agents answered and requested the dismissal of the lawsuit for the reasons stated in the regulations linked to the lawsuit papers, and the third defendant's agent added a request to correct the name of the third defendant and make it (Prime Minister / being in this capacity) and since this does not prejudice the direction of the litigation or not, the court decided to dismiss the request, and the plaintiff and the defendants' agents repeated their previous statements and requests, and since there was nothing left to say, the of the argument has been made clear; and the court issued the following judgment decision:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs filed a lawsuit before this court against the defendants in addition to their jobs to demand the annulment of the assignment of the candidate for the Prime Minister, Muhammad Shia Al-Sudani, as it violates the Constitution of the Republic of Iraq of 2005, especially Article (14) thereof, which affirmed the principle of equality, Article (16) thereof, which affirmed the principle of equal opportunities among Iraqis, Articles (76/1st and 2nd) and (77/1st) thereof, and Article (1) of the Law on the Provisions of Candidacy for the Office of the President of the Republic. No. (8) of 2012, which stipulated that (whoever nominates himself for the post of President of the Republic must meet the following conditions: Third: He has a good reputation and political experience and is known for his integrity, integrity, justice, and devotion to the homeland), as the assignment decision caused direct harm to the plaintiffs and the public interest by proceeding with the consensual assignment, which negatively affected living matters as a result of the deterioration of the general political situation, and it is also contrary to the decision of the Federal Supreme Court No. (89/Federal/2019) they requested the issuance of an urgent state order to suspend the Council of Representatives session to vote on the ministerial cabinet until this lawsuit is resolved for the reasons detailed in the lawsuit draft. The Federal Supreme Court noted that under its decision No. (240 / Federal / State Order / 2022) issued on 30/10/2022, it decided to reject the request regarding the issuance of the state order for the reasons stated in the aforementioned decision, as for the plaintiffs' lawsuit requesting a ruling to annul the decision to assign the

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candidate for prime minister, Muhammad Shia Al-Sudani, as it violates the Constitution of the Republic of Iraq of 2005, the Law on the Provisions of Candidacy for the Office of the President of the Republic No. (8) of 2012, and the Federal Supreme Court's decision No. (89/Federal/2019), it is also should be rejected because there is nothing that prejudices the validity of the decision to assign the candidate for prime minister, Mohammed Shia Al-Sudani because Article (76) of the Constitution of the Republic of Iraq of 2005 stipulates that (First: The President of the Republic, the candidate of the most numerous parliamentary bloc, shall be tasked with forming the Council of Ministers within fifteen days from the date of the election of the President of the Republic. Second: The Prime Minister-designate shall nominate the members of his ministry, within a maximum period of thirty days from the date of assignment), and the decision to assign the Prime Minister in question was issued by the President of the Republic to the candidate of the most numerous parliamentary bloc, and that the aforementioned candidate chose his ministerial cabinet during Duration specified in paragraph (2nd) of Article (76) of the Constitution, After the assignment and selection of the ministerial cabinet, the Iraqi Council of Representatives approved the selection of the ministerial cabinet submitted by Prime Minister Muhammad Shia Al-Sudani by an absolute majority in its session numbered (7) held on 10/27/2022, and Presidential Decree No. (36) of 2022 was issued to form the Council of Ministers, and thus the decision to assign the candidate for prime minister, Muhammad Shia Al-Sudani, issued by the President of the Republic, was based on the provisions of the constitution and within the period specified thereunder for the availability of the conditions for candidacy in it, and the aforementioned decision did not include any constitutional violation, the aforementioned candidate also adhered to

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the constitutionally prescribed periods for the formation of his ministerial cabinet and presented it to the Council of Representatives, which received his approval by an absolute majority, thus, there is nothing to prejudice the validity of the assignment decision in question, and for the foregoing, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiffs (lawyer Ahmed Raed Hayawi, lawyer Hazem Mazen Karim Al-Badri and Ali Shamran Eidan), under which the ruling is required to annul the decision to assign the candidate for prime minister, Muhammad Shia Al-Sudani, issued by the President of the Republic, for lack of prejudice to its authenticity, and to burden the plaintiffs with the expenses , fees, and advocacy fees, the defendants' agents/ being in their capacity were charged with the chief legal expert, Ghazi Ibrahim al-Janabi, the legal counselor Salah Lazem Shamkhi, the legal counselor Haitham Majid Salem, the official jurist Saman Mohsen Ibrahim, and the legal counselor Haidar Ali Jaber, an amount of one hundred thousand dinars, to be distributed in accordance with the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 8/Rajab/1444 Hijri coinciding 31/January/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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