

Republic of Iraq
Federal supreme court
Ref. 27/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 11.5.2021 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 Issuing of the Custodian Order: Lawyer Kazem Khudair Abbas Al-Zubaidi.

The Requester Issuing of the Custodian Order (against): the President of Republic/ being in his capacity.

First- Summary of the request:

The requester issuance of the custodian order lawyer Kazem Khudhair Abbas Al-Zubeidi in his draft submitted to the FSC and registered with it No. (27/federal/2020) on 18/2/2020 issued a custodian order as it included (because your esteemed court is responsible for the process of monitoring the constitutionality of the laws and regulations in force in accordance with the provisions of Article (93) of the Constitution. I respectfully request a custodian order to suspend the presentation of the ministerial line-up of the prime minister-designate (Mohammed Tawfiq Allawi) until the statement of the parliamentary bloc that nominated him

and the mechanism adopted by His Excellency the President of the Republic by commissioning him to lift the clothes and resolve a controversial issue that weakened the previous hovercraft and questioned and still abides by the provisions of the Constitution in all matters related to the mandate of the new Prime Minister) for the following reasons :

- 1- The article (76/3rd) from the Republic of Iraq of 2005 states that (the President of the Republic assigned a new candidate for the presidency of the Council of Ministers will be assigned within (15) days when the prime minister in charge fails to form the ministry during the period stipulated in item (2nd) of this article).
- 2- The article (76) of the Constitution, and any other article, the status of the candidate's mandate to form the Council of Ministers has not been addressed which replaces the prime minister's quitting or was dismissed in accordance with the text of paragraphs (1st & 3rd) of Article (76) of the Constitution, the President of the Republic will appoint a new candidate to form the Council of Ministers. The approved paragraph in assigning the Prime Minister in accordance with article (76) of the Constitution, the nomination must be submitted by the most numerous parliamentary bloc in an official letter addressed to His Excellency the President of the Republic.
- 3- The most numerous parliamentary bloc in the fourth legislative session is still not clear, as the Presidency of the Republic addressed the Council of Representatives under its letter No. (Without no.) on 12/15/2019 to clarify the most numerous parliamentary bloc the Council of Representatives / the Office of the President replied, according to his letter No. (mim. /1338) on 16/12/2019 that the most numerous parliamentary bloc is the one that assigned the resigned Prime Minister, Mr. Adel Abdul-Mahdi, as you were addressed to him according to the Council of Representatives letter No. (mim. ra/ 2535) on 10/2/2019 and

attached to it list of entities is (Sairoon Alliance, National Wisdom Movement, Iraqi Decision Alliance, Al-Fateh Alliance, National Contract Alliance, Democratic Approach, Anbar Our Identity, Salah Eddin Our identity, Baghdad Alliance, Nineveh Our Identity, the National Jamahiriya Party, Al-Qala National Alliance, Salah al-Din Union, The Arab Project, Bayaraq al-Khair,...) then the Council of Representatives returned by its letter No. (mim. ra/1360) on 23/12/2019 to refer to the most numerous parliamentary bloc, Al-Binaa bloc, and attached to its letter the letter No. (mim. ra /2494) of 16/9/2018 and its components above (Al-Fateh Alliance ‘ State of Law Alliance, Will Movement, Shabak Gathering, Turkmen Front, Decision, Victory, Patriotism) The Sairoon Alliance addressed the President of the Republic according to his letter No. (the.sin/181) on 3/12/2019, indicating that the Sairoon Alliance is the most numerous, which made suspicions revolve around the validity of the assignment of the resigned Prime Minister, Mr. Justice Abdul-Mahdi, and the same suspicions now revolve around the parliamentary bloc that nominated Mr. Muhammad Tawfiq Allawi to form the Council of Ministers instead of the resigned Prime Minister. So requester issuing of the custodian order request for issuing of the custodian order as noted above.

The Decision:

After scrutiny and deliberation by the FSC found that the requester issuing of the custodian order the lawyer Kazem Khudair Abbas Al-Zubaidi requested in his draft submitted to this court registered with No. (27/federal/2020) date 18/2/2020 issuing of the custodian order includes (Suspending the presentation of the cabinet line-up to Prime Minister-designate Muhammad Tawfiq Allawi until the statement of the parliamentary bloc that nominated him and the mechanism adopted by His Excellency the President of the Republic assigning him to remove

confusion and resolve a controversial issue that weakened the previous government and questioned and continues to abide by the provisions of the constitution in everything related to the assignment of the new Prime Minister) for the reasons referred to in detail in the aforementioned list. The FSC found that the its competence and authority to issue state orders on the basis of requests or claims to be brought before it, it has not been addressed or treated in FSC Law No. (30) of 2005, amended, nor the bylaw for the conduct of the FSC's procedures No. (1) of 2005, thus, the FSC's authority to issue custodian orders is subject to the provisions referred to in articles (151 & 152 only) of the Procedure Law No. (83) of 1969 (amended) and to the extent commensurate with the nature and specificity of the constitutional proceedings according to the provisions of article (19) of the bylaw of the FSC's procedures referred to above which state that (the provisions of the Civil Procedure Law No. (83) of 1969 apply and the Proof Law No. (107) of 1979 while there is no special provision in the court law and this system) within the meaning of article (17) of it which state that (the court's rulings and decisions are decisively and do not accept any appeal...), on the basis of the foregoing, the issuance of a custodian order by the FSC is governed only by the controls and conditions to be met for its issuance referred to in the Civil Procedure Law, for the final decisions that issued by this court and not to submit for the ways to appeal, which lies in submitting a request for two copies containing the facts, the documents and the availability of urgency and not to enter into the original right and decide in it, since the scrutiny of the request of the requester for the issuance of the custodian order by this court has proved that there is no urgency that must be available to issue the custodian order where the appointment of a new prime minister who nominated a new ministerial composition in accordance with the constitutional and legal contexts and that the new prime minister and his cabinet received the confidence of the Iraqi Parliament based on the provisions of Article (76/4th) of the Constitution of the Republic of Iraq in 2005 within the meaning of mentioned article, which means the

request of the requester issuing of the custodian order it has become useless and unproductive. Thus, it is obligatory to reject for two reasons, the first is that there is no urgency in it, and the second is that it has become useless and unproductive

For the above, the FSC decided to reject the request of the requester issuing of the custodian order, lawyer Kazem Khudair Abbas Al-Zubaidi, which included (issuing a custodian order to stop the agreement, presenting the cabinet line-up to the Prime Minister-designate (Mohammed Tawfiq Allawi), and the decision was issued in agreement with the final and binding for 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's Law No. (30) of 2005 (amended) on 11/May/2021 coinciding with 28/Ramadan /1442.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
**Sameer Abbas
Mohammed**

Signature of
The member
Ghaleb Amer Shnain

Signature of
The member
Haidar Jaber Abed

Signature of
The member
Haider Ali Noory

Signature of
The member
Khalaf Ahmad Rajab

Signature of
The member
Ayoub Abbas Salih

Signature of
The member
**Abdul Rahman
Suleiman Ali**

Signature of
The member
**Diyar Muhammad
Ali**