

In the name of God most gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 9/federal/2020



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 9.5.2021 headed by Judge Jasem Mohammad Abood 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 is authorized to judge in the name of the people, they made the following decision:

The Plaintiffs:

- 1- Sami Shati Obaid.
- 2- Abbas Ghazi Abdul Reda.
- 3- Saeed Yassin Musa.
- 4- Tahseen Abbas Hantoush.
- 5- Yahya Mari Jassim.
- 6- Hussein Fadel Fahd.
- 7- Ahmed Sadiq Hussein.
- 8- Nawras Adnan Arzouki.

Their agent Zuhair Ziauddin Yaqoub

The Defendant: President of the Republic/ being in his capacity his deputy,  
Head of the legal experts in the Office of the Presidency of  
The Republic, Ghazi Ibrahim Al-Janabi.

Iraqi Council of Representatives

## The Claim:

The plaintiffs, through their attorney, claimed that on date 29/11/2019 the Council of Representatives approved the Prime Minister's request to resign, the Council of Representatives approached the President of the Republic on date 2/12/2019 to assign a person to occupy the position of Prime Minister and form a cabinet and consider the date 2/12/2019 until the date of filing this lawsuit the President of the Republic did not assign a person to the prime minister and form the cabinet despite the passage of the constitutional period, so the latter would violate the following texts: A- The article (76/1<sup>st</sup>) stipulated that (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.) B- The article (81/1<sup>st</sup>) stipulated that (The President of the Republic shall take up the office of the Prime Minister in the event the post becomes vacant for any reason whatsoever.) C- The article (61/2<sup>nd</sup>/dal.) stipulated that (In case of a vote of withdrawal of confidence in the Council of Ministers as a whole, the Prime Minister and the Ministers continue in their positions to run everyday business for a period not to exceed thirty days until a new Council of Ministers is formed in accordance with the provisions of Article 76 of this Constitution.) and to provide the conditions required under Article (6) of the FSC's Bylaw No. (1) of 2005, given that the plaintiffs have a direct, immediate and influential interest in their legal and financial status as citizens and if the defendant/ being in his capacity delays assigning a Prime Minister, he will cause harm to all Iraqis, including the plaintiffs in this lawsuit, and this harm is represented by the suspension of the interests of all citizens as a result of the ministries not exercising their tasks and duties, as their work is limited to the daily affairs of the day the damage that will be caused to the plaintiffs is material and specific, not theoretical or future, and it is the result of the defendant's position/

being in his capacity. Therefore, they asked the FSC to invite the defendant/ being in his capacity to the pleading, and oblige him to assign a prime minister based on the powers of this court under Article (93) of the constitution and to charge him with judicial fees and expenses. According to the provisions of article (1/3<sup>rd</sup>) of the Bylaw of the FSC No. (1) Of 2005, the case was registered with this court under No. (9/federal/2020), after the legal fee for it was collected. In accordance with what was stated in Article (2/1<sup>st</sup>) of the bylaw, the defendant/ being in his capacity was notified of the lawsuit who responded through his legal advisor, Ghazi Ibrahim Al-Janabi, according to the draft on 29/1/2020 where he requested that the plaintiffs' lawsuit be dismissed for the following reasons: 1- The provisions of Article (67) of the Constitution include assigning the President of the Republic, the candidate of the most numerous parliamentary bloc, to form the Council of Ministers within fifteen days from the date of the election of the President of the Republic, and this is what has been done since the formation of the first government in 2006. 2- The Council of Representatives sent his letter No. (2535) on 2/10/2018 to the Presidency of the Republic on the text of the (heads of the political meeting that Recipient of recorded as the biggest bloc, and nominated one person is Mr. Adel Abdul Mahdi, to assume the post of prime minister so please asked to form the government). 3- On the date 2/10/2018 the President of the Republic assigned Mr. Adel Abdul-Mahdi to form the Council of Ministers. 4- After the formation of the government and the passage of more than a year, there were developments, including the announcement by some political forces of their withdrawal from these alliances according to official books and their declaration of opposition within the Council of Representatives, according to what was stated in the book of the Parliamentary Al-hikmah Bloc No (573) on 17/6/2019 some of them sent a letter to the Presidency of the Republic declaring that they were not committed to any political or coalition commitments that resulted from previous

political agreements. Also, many political forces announced their withdrawal in the media. According to the provisions of the articles (76) and (81) of the Constitution and the decision of the FSC No. (25/federal/2010 on 25/3/2010) and because the blocs that submitted their request in 2018 did not continue to cohesion and continue due to the changes that occurred in the Council of Representatives, so the defendant/ being in his capacity approached the Council of Representatives to clarify the final position of the parliamentary blocs.

5- The Council of Representatives sent its letter (2494) on 16/9/2018 to the Presidency of the Republic on 24/12/2019 referring to the largest parliamentary bloc in the first session of the Council of Representatives, and this letter was not received when appointing Prime Minister Adel Abdul-Mahdi, and it contradicts what was stated in the Council's letter No. (2535) on 2/10/2018. The defendant/ being in his capacity repeated the request from the Council of Representatives to indicate the name of the candidate of the largest bloc, the council nominated several names to take over this position, some of whom were objected to by political blocs, and the popular objection to the names presented took a large extent of the subject, which led the defendant to slow down in nomination, fear that the country would descend into violence.

7- The position of Prime Minister has not been achieved without resignation so that the President of the Republic will take over as Prime Minister because resignation is not considered empty for this position. The court was briefed on the answer draft submitted by the plaintiff's agent dated 12/2/2020, which included: 1- The lawsuit filed by the plaintiffs is based on the defendant's violation / being in his capacity of the Constitution, as the book issued by the Iraqi Council of Representatives No. (1030) of 2/12/2019 addressed to the President of the Republic, which includes the approval to accept the resignation of Prime Minister Adel Abdul Mahdi submitted to the Council of Representatives on 29/11/2019 the presidency of the Council requested, based on Article (76) of the Constitution, to appoint a candidate for the presidency of the Council of

Ministers within fifteen days. 2- The article (61/8<sup>th</sup>/dal) of the Constitution in the event of a withdrawal of confidence from the entire Council of Ministers, the Prime Minister and ministers will continue to hold their positions for not more than (30) days until the new Council of Ministers is assigned, according to Article (76) of the Constitution, he requested the verdict, according to the petition. The FSC reviewed the letter issued from the Iraqi Council of Representatives/ Office of President No. (2535) on 20/10/2018 include (based on what was announced by the political alliances listed in the attached lists in the first session of the Council of Representatives, the heads of the political blocs that were registered as the largest bloc met and nominated one person, Mr. Adel Abdul Mahdi, to take over the post of prime minister, so he is tasked with forming a government based on Article (76/1<sup>st</sup>) of the Constitution.), and inform it to the letter issued from the same side No. (1338) on 16/12/2019 and addressed to the President of the Republic under the title of the most numerous parliamentary bloc, which includes (You have already been informed of the most numerous parliamentary bloc in the Council of Representatives by letter (2535) on 2/10/2018 and based on which its candidate, the outgoing Prime Minister Adel Abdul Mahdi, was assigned to form the current government), and inform it to the letter issued from Iraqi Council of Representatives/ Office of the President No. (1303) on 2/12/2019 which include approval to accept the resignation of Prime Minister Adel Abdul Mahdi submitted to the Council above on 29/11/2019 based on the provisions of Article (76) of the Constitution and the President's request to appoint a candidate for the presidency of the Council of Ministers within fifteen days. After completing all the procedures stipulated in Article (2/1<sup>st</sup>) of the FSC's Bylaw No. (1) of 2005 and based on section (2<sup>nd</sup>) of the same article, a date has been set for the case and the parties have been informed, the plaintiffs were present and their attorney Mr. Zuhair Diauddin attended about the defendant/ being in his capacity Ghazi Ibrahim, head of legal experts in the Divan of the Presidency of the Republic and pleading

commenced in immanence and public, the agents of the parties repeated their requests and statements and where there is nothing left to say the end of pleading has been made clearly and set a date 9/5/2021 for the decision, in which the court was formed the decision had made clear public.

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiffs filed the case in question on 20/1/2020, requesting the FSC to oblige the defendant, Mr. President of the Republic/ being in his capacity to appoint a prime minister in accordance with article (76) of the Constitution of the Republic of Iraq 2005, after reviewing the pleading and requests of the parties that are crumbling under the regulations submitted by them and what was presented by them during the case, the court reached the following conclusions: 1- The case before the judiciary revolves around the existence and non-existence of the interest and the case is not valid according to article (6) of the Civil procedure Law No. (83) of 1969 (amended), which stipulated that (the case requires that the defendant be a known interest, case, possible and investigative, however, the potential interest is sufficient to be afraid of harming the persons involved and the claim may also be a deferred right to be taken into account when sentencing, in which case the plaintiff shall bear the expenses of the case), article (6), in all its paragraphs, is contained in the bylaw of FSC No. (1) of 2005, which also required the plaintiff to provide evidence that a factual damage has been done, that the damage should be direct and independent of its elements, and that the damage should not be theoretical, future or unknown, therefore, the interest in direct constitutional action should be a legal interest in the sense that the Constitution guarantees its protection because the right protected by the constitutional suit is a right guaranteed by the Constitution and approved by law, and in accordance with that, in order for the legal interest to

exist, there should be a violation of a constitutional right, the abstract theoretical interest is not sufficient to accept direct constitutional action, as is the case with the interest that paved the way for the determination of an abstract constitutional provision on a particular subject for academic purposes, in defense of ideal values to be established, as an expression of a personal point of view or for establishing a particular concept in a particular matter, the interest must be in place and available once the case has been filed and until a verdict has been issued, and after the date of the establishment of this case, the government was formed in accordance with the contexts through which the government was formed and won the confidence of parliament. Therefore, according to the above concept, the interest is no more. 2- The judicial ruling is the result of the litigation before the court, which is issued following the prescribed legal requirements and principles, and before pronouncing it, the court must invoke its reasons that have been settled and based its faith in the said judgment on those reasons and that the obligation of the defendant/ being in his capacity in the petition of the case at present makes the decision issued on it lost its legal content and not productive to raise it, and for all that has been decided by the FSC: 1- Ruling to dismiss the plaintiffs' case Sami Shati Obaid, Abbas Ghazi Abdul Reda, Saeed Yassin Musa, Tahseen Abbas Hantoush, Yahya Mari Jassim, Hussein Fadel Fahd, Ahmed Sadiq Hussein, and Nawras Adnan Arzouki. 2- Charging the plaintiffs Sami Shati Obaid, Abbas Ghazi Abdul Reda, Saeed Yassin Musa, Tahseen Abbas Hantoush, Yahya Mari Jassim, Hussein Fadel Fahd, Ahmed Sadiq Hussein, and Nawras Adnan Arzouki fees and judicial expenses and fees for the lawyer of the defendant's agent/ being in his capacity as head of legal experts in the Office of the Presidency of the Republic Mr. Ghazi Ibrahim Al-Janabi amount of one hundred thousand dinars distributed following the law. Decisively and obligating ruling of all authorities issued unanimously based on the provisions of articles (93) and (94) of Constitution of the Republic of Iraq 2005 and Articles (4) and (5) of the FSC's Law No. (30) Of 2005

amended and publicly understood on 9/May/2021, coinciding with 27/Ramadan/1442.