

Republic of Iraq
Federal Supreme Court
Ref. 290 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/12/2023 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, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

Applicant for Jurisdiction: Al-Sheikhan Investigation Court affiliated with the Presidency of the Nineveh Court of Appeal.

Subject of the request: Adjudication of the conflict of jurisdiction between the Sheikhan Investigation Court of the Presidency of the Nineveh Court of Appeal and the Dohuk Investigation Court of the Presidency of the Duhok Region Court of Appeal based on Article (93/II/A) of the Constitution.

The Request:

The Sheikhan Investigation Court sent to this court, according to its letter No. (1697/T/2023) on 7/11/2023, the investigative papers of the complainant (public right) and the accused (Harbi Khalaf Rasho) in accordance with the provisions of Article (240) of the Iraqi Penal Code to decide on the negative conflict of spatial jurisdiction between it and the Dohuk Investigation Court of the Presidency of the Dohuk Region Court of Appeal in the Kurdistan Region - Iraq based on the provisions of Article (53/d) of the Code of Criminal Procedure. When the investigative papers and the decisions issued therein were subject to

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scrutiny and deliberation, the Federal Supreme Court reached the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, and upon reviewing the investigative papers of the complainant (public right) and the accused (Harbi Khalaf Rasho) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, it became clear that the facts of the case are summarized as follows: :(On 23/8/2022, the Ministry of Defense / General Directorate of Intelligence and Security / Directorate of Intelligence and Security of Dohuk Governorate formed according to its letter No. (588) the investigative committee against the accused (Harbi Khalaf Rasho) Attributed to them as a civil servant for his absence without a legitimate excuse and for not handing over the identity of the employees of the Ministry of Defense numbered (64120084) and the bag of carrying weapons with the number (64120084), and it became clear from the committee's investigations that on 11/1/2022, the aforementioned defendant was absent from the official working hours without a legitimate excuse and kept the identity of the Ministry of Defense and the identity of carrying weapons and was considered resigned from service based on the provisions of Article (37/3) of the Civil Service Law No. (24) of 1960, the Committee recommended by its decision dated 27/8/2023 the negligence of the aforementioned defendant in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, and fined him an amount of (five hundred thousand dinars) at the rate of (two hundred and fifty thousand dinars) for each of the two identities, and the Committee also

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recommended that he be tried in absentia based on the provisions of Article (135) of the Code of Criminal Procedure No. (23) of 1971, as amended, and on the basis of the foregoing, the Ministry of Defense / Legal Department / Directorate of Military Public Prosecution referred by its letter No. (16016) on 18/6/2023 the investigative papers of the aforementioned defendant to the Presidency of the Duhok Region Court of Appeal / Duhok Investigation Court, so the court decided on 24/7/2023 to issue a recruitment order against the accused. According to the referral article and on 3/9/2023, I decided to record the statements of the legal representative of the Directorate of Intelligence and Security of Dohuk Governorate, and on 9/10/2023, I decided to refer the investigative papers to the Sheikhan Investigation Court to complete the investigation according to jurisdiction and affiliation pursuant to the provisions of Article (53) of the Code of Criminal Courts No. (23) For the year 1971, as amended, the defendant is a resident of the Sheikhan district and that the civil status card is issued by the Civil Status Department in the Sheikhan district according to the reading submitted by the investigator at the Malta police station to the investigating judge on the aforementioned date, so the Sheikhan Investigation Court decided on 1/11/2023 to reject the referral and submit the matter to this court to determine the court spatially competent to hear the case of the aforementioned defendant. The crime was not within its territorial jurisdiction and that the assignment was based on the fact that the residence of the interested person in the district of Al-Sheikhan and that his civil status card was issued by the Civil Status Department in Al-Sheikhan. Based on the provisions of Article (53/d) of the Code of Criminal Procedure, the Federal Supreme Court finds that the crime attributed to the accused on the assumption of the validity of its proof occurred in the city of Duhok, and did not

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result in any other result in the city of Sheikhan, and since Article (53/Alif) of the Code of Criminal Procedure No. (23) of 1971 as amended stipulated (The jurisdiction of the investigation shall be determined by the place where the crime occurred in whole or in part, or any complementary act thereof, or any consequence resulting from it, or an act that is part of a compound, continuous or sequential crime, or a crime of habit, as well as the place where the victim was found or where the money for which the crime was committed was found after it was transferred to him by the perpetrator or a person aware of it), Which means that there is no lesson in the place of residence of the accused or the place from which his civil status card was issued, as the jurisdiction of the investigation is determined according to the pictures and cases stipulated in the aforementioned article, and since the crime attributed to the accused occurred in the province of Dohuk in the aforementioned article, and since the crime attributed to the accused occurred in the province of Dohuk The Duhok Investigation Court began investigating the investigative papers and took important decisions until the investigation reached advanced stages, so it had to complete the investigation and follow up the implementation of its decisions instead of referring them to another courtIt is not competent, and therefore the Duhok Investigation Court is spatially competent to conduct an investigation with the investigative papers of the complainant (public right) and the accused (Harbi Khalaf Rasho) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, and that its decision dated 9/10/2023 includes referring the investigative papers to the Sheikhan Investigation Court to complete the investigation according to spatial jurisdiction, Incorrect and contrary to the provisions of the law based on the provisions of Article (53/Alif) of the Code of Criminal

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Procedure mentioned above, and for the foregoing, the Federal Supreme Court decided to consider the Dohuk Investigation Court affiliated to the Presidency of the Court of Appeal of the Dohuk region in the Kurdistan Region - Iraq spatially competent to consider the investigative papers of the complainant (Public right) and the accused (Harbi Khalaf Rasha) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, and referred to it based on the provisions of Articles (93/VIII/a) of the Constitution of the Republic of Iraq for the year 2005 and (4/VIII/a) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, And inform the Presidency of the Nineveh Court of Appeal to notify the Sheikhan Investigation Court of this and the need to apply the provisions of Article (30) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulated that (First: If there is a conflict of jurisdiction between the federal judiciary and the judiciary in the regions, the judicial authority that deems it competent, Second- The request to determine the jurisdiction shall be sent to the court by a letter signed by the President of the Court of Appeal, with all the prior documents). The decision has been issued unanimously, final and binding on all authorities based on the provisions of Articles (93/8th/Alif) and (94) of the Constitution of the Republic of Iraq for the year 2005 and done in the session dated 27/Jumada Al-Oula/ 1445 AH corresponding to 12/December/2023 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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