

Republic of Iraq
Federal Supreme Court
Ref 164/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Applicant for Determining Jurisdiction: Erbil Investigation Court affiliated to the Presidency of the Erbil Region Court of Appeal based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005 according to the decision of the Presidency of the Kurdistan Region Court of Cassation / Expanded authority No. (179/Expanded authority/2023) on 30/10/2023.

The Subject matter of the request: Adjudication of the conflict of territorial jurisdiction between the Mosul Left Investigation Court of the Nineveh Court of Appeal and the Erbil Investigation Court of the Presidency of the Erbil Region Court of Appeal based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005.

The Request:

The Federal Supreme Court received the letter of the representative of the regional government in Baghdad / General Directorate of Administration and Financial Affairs No. (Mim.Ra. 20018 on 27/5/2024) and its annexes the letter of the Presidency of the Erbil Region Court of Appeal / Public Relations and Legal Affairs Department No. (2/8/3812 on 22/5/2024) and the letter of the Erbil Investigation Court No. (1476 on 7/2/2024) and the investigative papers

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of the complainant (Hassan Arkan Karim Husain) and the accused (Hamza Shabout Hassan) in accordance with the provisions of Article (433) of the Penal Code No. (111) of 1969 as amended, due to the occurrence of a negative conflict in the spatial jurisdiction between the Mosul Left Investigation Court affiliated to the Presidency of the Nineveh Court of Appeal and the Erbil Investigation Court of the Presidency of the Erbil Region Court of Appeal, and after registering the application at this court, and scrutinized the investigative papers and decisions issued therein, the Federal Supreme Court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that on 22/3/2023, the Left Mosul Investigation Court recorded the statement of the legal representative of the Nineveh Operations Command / Popular Mobilization Forces (Hassan Arkan Karim Hussein) and requested a complaint against the defendant (Hamza Shabout Hassan) for appearing on 16/3/2023 on the (One News) satellite channel and defaming and challenging the reputation of the Nineveh Operations Command for the Hashd represented by the commander of Nineveh Operations for the Hashd, and after he emptied the attached disc with the legal representative's statement and review, the court issued a recruitment order against the accused in accordance with the provisions of Article 433 of the Penal Code No. 111 of 1969, as amended, on 15/5/2023, the aforementioned investigation court decided to refer the investigative papers to the Erbil Investigation Court to complete the investigation according to the spatial jurisdiction, as the headquarters of the satellite channel (One News) is located within the work of the Erbil Investigation Court, so the judge of the Erbil

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Investigation Court decided on 6/7/2023 (rejecting the referral) and presenting the investigative papers to the presidency of the Regional Court of Cassation / the expanded authority, on 10/12/2023, the judge of the Erbil Investigation Court decided to present the investigative papers to this court following the decision of the Regional Court of Cassation / expanded authority No. (179/Expanded authority/2023) on 30/10/2023 according to jurisdiction, to determine the competent investigation court spatially, whereas 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 therefrom, or an act that is part of a composite, continuous or sequential crime, or a crime of habit, as well as the place where the victim was found whereas the crime attributed to the accused on the assumption of its validity occurred in Erbil Governorate through the (One News) satellite channel located in the same governorate, so the Erbil Investigation Court is spatially competent to investigate the investigative papers of the accused (Hamza Shabout Hassan) in accordance with the provisions of Article (433) of the Penal Code No. (111) of 1969, as amended, thus, the decision of the Erbil Investigation Court on 6/7/2023, which includes (rejection of referral) and the presentation of investigative papers to the presidency of the Regional Court of Cassation / the expanded authority for the purpose of appointing the competent court for investigation, is incorrect and contrary to the provisions of the law, and based on the provisions of Articles (93/8th/Alif and Beh) of the Constitution of the Republic of Iraq of 2005, which stipulated that the Federal Supreme Court shall have the following jurisdiction: (8th- Alif- Adjudicating the conflict of jurisdiction between the federal judiciary and the judicial authorities of

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regions and governorates that are not organized in a region, b- Adjudicating the conflict of jurisdiction among the judicial authorities of the regions or governorates that are not organized in a region), and (4/8th/Alif and Beh) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, which stipulates that the Federal Supreme Court shall have the following competences: (8th -Alif- Adjudicating the conflict of jurisdiction between the federal judiciary and the judicial authorities of regions and governorates that are not organized in a region, Beh- Adjudicating the conflict of jurisdiction between the judicial authorities of the regions, or governorates that are not organized in a region), and Article (30) of the Rules of Procedure 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 or not competent to hear the dispute may request the court to determine the competent judicial authority to hear it. 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 priorities), so the Federal Supreme Court is constitutionally competent to adjudicate the conflict of jurisdiction between the federal judiciary and the judicial authorities of regions and governorates that are not organized in a region, as well as to adjudicate the conflict of jurisdiction between the judicial authorities of regions or governorates that are not organized in a region, so the Federal Supreme Court decided to consider the Erbil Investigation Court affiliated to the Presidency of the Erbil Region Court of Appeal spatially competent Examining the investigative papers of the accused (Hamza Shabout Hassan) in accordance with the provisions of Article (433) of the Penal Code No. (111) of 1969, as amended, and referring the

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investigative papers to it and considering its decision issued on 6/7/2023, which includes (rejection of referral) and presenting the investigative papers to the presidency of the Regional Court of Cassation / the expanded authority is incorrect and contrary to the provisions of the law, and informing the presidency of the Nineveh Court of Appeal to notify the Mosul Investigation Court of the left thereof, and 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 of 2005 and Articles (4/8th/Alif and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it has been edited in the session dated 26/Dhu al-Hijjah/1445 A.H. Corresponding to 3/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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