

Republic of Iraq
Federal Supreme Court
Ref. 171 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/8/2022 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, Ayooob 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:

The Request

The Federal Court of Cassation/Second Criminal Commission, by its decision No. (12165/Criminal Commission/2022 Sequence 6291) on 4/7/2022, referred to the Federal Supreme Court, the investigative papers of the defendants (Jawad Kazim Ahmed and his group), to appoint the competent court to hear it for a negative conflict in jurisdiction between the Khanaqin Investigation Court and the Klar Investigation Court, as the Kalar Investigation Court referred on 2/2/2022 the aforementioned investigative papers to the Khanaqin Investigation Court on the basis that it was competent to investigate them, and the Court decided Referred on 6/6/2022 Refused to Refer and Submit Investigative Papers to the Federal Court of Cassation to Determine the Competent Court, based on this, the investigative papers were referred to this court by the Federal Court of Cassation in order to determine the competent court based on the provisions of Article (4/8th/Alif) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, according to the aforementioned detail, the subject of which lies ((that on 16/10/2019, information was

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received from the Asayish Klar assistant about a group of people who have a Monica Shield car). They were arrested along with the vehicle by the Zarkari Control Detachment (Al-Samoud) after the investigating judge was informed of this and decided to arrest them in accordance with the provisions of Article (279 penalties) and legal proceedings were taken against them in due course. The statements of the defendants present were recorded by (Shoresh Mahmoud Ali, Mohammed Jalal Karim and Adel Saleh Abdul Qader) and certified by Mr. Kalar Investigative Judge on 15/10/2019, without an appendix to the testimony of the defendants on 7/1/2020, on 13/1/2020 The investigative papers of the fugitive accused (Abu Elaph) were prepared for the investigative papers of the defendants present based on the decision of the investigating judge on the said date, on 14/6/2020 the testimony of the accused (Jawad Kazim Ahmed Haidar) was recorded, as well as an appendix to his testimony on 6/12/2020 and it was clear through the testimonies of the defendants present the defendants that the aforementioned seized vehicle was changed and sold for the first time in the city of Khanaqin by the accused (Jawad Kazim Ahmed) to the accused (Shoresh Mahmoud Ali) under an external sales contract organized in the said city, and that the latter sold it to the rest of the defendants in the city of Kalar, and according to his testimony certified on 15/10/2019, and after a series of investigative procedures, the Kalar Investigation Court decided on 2/2/2022 to refer the investigative papers to the Khanaqin Investigation Court to complete the investigation according to the jurisdiction based on the provisions of Article (53/Alif) of the Fundamentals because the contract for the sale and purchase of the seized vehicle was made in the city of Khanaqin, and that the court referred to it, refused the referral, based on the decision of Mr. Khanaqin Investigation Judge on 6/6/2022, as the seizure of the vehicle was

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carried out in the city of Kalar and the said court I've come a long way in investigating it. Based on this, Mr. Khanaqin Investigating Judge decided to submit the investigative papers to the Federal Court of Cassation to determine the competent court for investigation, and because of the lack of jurisdiction of the Federal Court of Cassation, the latter decided to refer them to this court according to the jurisdiction referred to above, and by reviewing the investigating papers and the decisions issued by it under scrutiny and deliberation, the FSC reached the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that on 2/2/2022, the Kalar Investigation Court decided to refer the investigative papers of the defendants (Jawad Kazim Ahmed and his group) to the Khanaqin Investigation Court to complete the investigation according to the jurisdiction based on the provisions of Article (53/A) of the original because the contract for the sale and purchase of the seized vehicle was made in the city of Khanaqin, and that the court referred to it refused to refer, based on the decision of Khanaqin Investigation Judge on 6/6/2022, as the seizure of the vehicle was carried out in the city of Klar, and the court mentioned that the said person has come a long way in investigating the investigative based on basis of this Mr. Khanaqin investigative judge decided to submit the investigative papers to the Federal Court of Cassation to determine the competent court for the investigation, in view of the lack of jurisdiction of the Federal Court of Cassation, the latter decided to refer it to this Court according to the jurisdiction in accordance with the detail referred to above, and this Court finds in accordance with the statements of the accused recorded

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by the Kalar Investigation Court and its annex and based on the seizure record attached with the investigative addendum and the readings submitted therein by the investigator to Mr. Judge of Kalar that the vehicle in question was sold for the first time in the city of Khanaqin after its registration plates were changed and forged in the said city by The accused (Jawad Kazim Ahmed) who lives in the city of Khanaqin and that the accused who bought it is (Shoresh Mahmoud Ali) who lives in the city of Kalar, thus, the last accused sold it for the second time in the city of Klar and seized it with some of the defendants in the said city, and since article (53/a) of the Code of Criminal Procedure No. (23) of 1971, as amended, stipulates that "the competence of the investigation shall be determined by the place where the crime took place in whole or in part, or any act complementary to it or any consequence thereof, or an act that is part of a complex, continuous or sequential crime or of the crimes of custom as It shall be determined by the place where the victim was found or found the money in respect of which the offense was committed after it was transferred to him by the perpetrator or a person who knew about it) and since the sale of the vehicle and the forgery of its registration plates took place in the city of Khanaqin and then it was sold in the city of Kalar and seized in the said city. Therefore, both the Khanaqin Investigation Court and the Kalar Investigation Court are both competent to investigate spatially, since the jurisdiction of the investigation is determined by the place where the whole offence took place, an act that is part of it, any complementary act thereof or any consequence thereof, as well as the place where the money in respect of which the offence was committed was found on the basis of the text of the above-mentioned article, but the Kalar Investigation Court has made great strides in the investigation proceedings, reaching advanced stages, thus It is considered to be

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spatially competent to conduct the investigation, and therefore the decision of the Kalar Investigation Court on 2/2/2022, which includes the referral of the investigative papers of the defendants (Jawad Kazim Ahmed and his group) to the Khanaqin Investigation Court to complete the investigation is incorrect and contrary to the law, as well as the decision of the Khanaqin Investigation Court dated 6/6/2022, which included the refusal to refer and present the investigative papers to the Federal Court of Cassation, to determine the court spatially competent to conduct the investigation, is also incorrect and contrary to the provisions of the law, as the Khanaqin Investigation Court had to when it deems it incompetent, it may decide to reject the referral decision and submit the matter to the Federal Supreme Court to determine the court spatially competent to hear the investigative papers, based on the provisions of Article (53/Dal) of the aforementioned amended Code of Criminal Procedure and in the sense of the provisions of Articles (93/8th /Alif) of the Constitution of the Republic of Iraq of 2005 and (4/8th/Alif) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and (30) of the Bylaw of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulates 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 consider it. Second: The request for the determination of jurisdiction shall be sent to the Court by a letter signed by the President of the Court of Appeal, with all the priorities), which requires the notification of the Presidency of the Federal Court of Appeal of Diyala to notify the Court of Inquiry of this in order to properly apply the provisions of the articles of the Constitution and the laws referred to above and to take into

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account their provisions in the future, and for the foregoing the Federal Supreme Court decided to consider both the decision of the Court of Inquiry of Kalar on 2/2/2022 which regarding the referral of the investigative papers of the defendants (Jawad Kazim Ahmed and his group) to the Khanaqin Investigation Court, and the decision of the Khanaqin Investigation Court on 6/6/2022, which included the refusal of referral and the presentation of the investigative papers to the Federal Court of Cassation to determine the court spatially competent to conduct the investigation, are incorrect and contrary to the law, and that the Kalar Investigation Court is spatially competent to conduct the investigation of the investigative papers of the defendants (Jawad Kazim Ahmed and his group), and to notify Khanaqin Court of Inquiry of this, since the Khanaqin Investigation Court, when it was found that it was not competent to conduct the investigation, had to decide to reject the referral decision and submit the matter to the Federal Supreme Court to determine which court is spatially competent to hear the investigative papers. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93/8th/Alif) and (94) of the Constitution of the Republic of Iraq for 2005 and articles (4/8th/Alif 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 edited in the session dated 22/Muharram/1444 Hijri coinciding 21/August/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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