

Republic of Iraq
Federal Supreme Court
Ref. 203 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/9/2023 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:

The Applicant Determining the Jurisdiction: Investigation Court of Left Mosul which is affiliated to the Presidency Court of Appeal in Nineveh.

The Subject of the Request: Adjudication of the conflict of jurisdiction between the Mosul Left Investigation Court and the Erbil Plains Investigation Court affiliated to the Presidency of the Erbil Region Court of Appeal based on Article (93/8th/Alif) of the Constitution.

The Request

The Mosul / Al-Aysar Investigation Court of the Nineveh Court of Appeal referred by its letter No. (11934) on 10/8/2023 the investigative papers of the victim (Radwan Abdul Razzaq Bashir) and the accused (Mohsen Haider Mustafa) to this court to settle the conflict of jurisdiction between the Mosul / Left Investigation Court of the Presidency of the Nineveh Court of Appeal and the Erbil Plain Investigation Court of the Presidency of the Erbil Region Court of Appeal, the facts of the case are summarized as follows: On 17/3/2021, the personal plaintiff (Ghassan Abdul Razzaq Bashir Mustafa), brother of the victim (Radwan Abdul Razzaq Bashir Mustafa), came to the Al-Ahrar Police Station of the Mosul / Al-Aysar Investigation Court to file the complaint, and his statement certified judicially by the investigating judge stated that (on 22/2/2021, the victim was sent to CMC Hospital in Erbil and was accompanying him throughout his operation, and the duration of the operation lasted about an hour, and he was exposed to health ailments. As a result of it more than one hospital between Mosul and Erbil, the main reason for this health ailment was the presence of a major vein cut close to the kidneys and ureters that occurred when the defendant (Mohsen Al-Qassar) performed a laser lithotripsy operation at CMC Hospital in Erbil, and on

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14/3/2021, as a result of complications of the medical error, the victim (Radwan Abdul Razzaq) died and the complainant requested the complaint against the aforementioned defendant, the Investigation Court recorded and believed the testimony of the prosecution and defense witnesses and after a series of investigative procedures, it was found that the defendant's residential address was in Erbil Governorate, and on the basis of that, an order was issued Bringing the accused on 15/6/2022 and directing to the Erbil Investigation Court in order to implement it in accordance with the provisions of Article (411/2) of the Penal Code, after the defendant appeared before the Mosul Left Investigation Court, his statements were recorded and judicially ratified on 16/8/2022, on the same date, the Mosul Investigative Judge issued a decision rejecting the complaint and closing the investigation permanently, but the aforementioned decision was overturned by the decision issued by the Nineveh Criminal Court / Second Authority in its discriminatory capacity No. 503 on 13/9/2022 in which (... Taking into account the spatial jurisdiction of the scene of the accident, as the first surgery of the victim was performed in one of the hospitals in Erbil Governorate) and following the discriminatory decision, the Mosul Left Investigative Judge decided on 17/10/2022 to refer the case to the Erbil Investigation Court to complete the investigation according to the spatial jurisdiction based on the provisions of Article (53) fundamental, and the investigative papers were referred to the Erbil Plains Investigation Court according to the decision of the Erbil Investigation Court dated 14/12/2022, so the Erbil Plains Investigation Court decided to reject the referral on 2/1/2023 and presented the matter to the expanded body of the Kurdistan Region Court of Cassation in order to determine the competent court for the investigation, the expanded body of the Kurdistan Region Court of Cassation issued its decision No. (30 / Expanded Commission / 2023 on 27/2/2023) which includes (due to the difference in reference between the two courts, the consideration of the conflict of jurisdiction is outside the jurisdiction of this court and falls within the jurisdiction of the Federal Supreme Court, so it was decided to return the investigative papers to the Erbil Plains Investigation Court to return them to the Mosul Left Investigation Court for the purpose of sending them to the Federal Supreme Court to consider the conflict between the two courts according to jurisdiction...) Based on the foregoing, the Erbil Plains Investigation Court decided to return the

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investigative papers to the Mosul Left Investigation Court, the court decided on 1/8/2023 to present the investigative papers to the Federal Supreme Court to determine the competent court for investigation, 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, and when placing the investigative papers and the decisions issued therein for scrutiny and deliberation, the Federal Supreme Court reached the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that on 17/10/2022, the Mosul Left Investigative Judge decided to refer the investigative papers of the personal plaintiff (Ghassan Abdul Razzaq Bashir Mustafa) and the accused (Mohsen Haider Mustafa) to the Erbil Investigation Court to complete the investigation according to spatial jurisdiction based on the provisions of Article (53) fundamental, so the Erbil Investigation Court decided on 14/12/2022 to refer the investigative papers to the Erbil Plains Investigation Court, which decided to reject the referral on 2/1/2023. The matter was presented to the expanded body of the Kurdistan Region Court of Cassation to determine the competent court for the investigation spatially based on the provisions of Article (53/Dal) fundamental, so the expanded body of the Kurdistan Region Court of Cassation issued its decision No. (30/Expanded Commission/2023) on 27/2/2023 containing (Due to the difference in reference between the two courts, the consideration of the conflict of jurisdiction is outside the jurisdiction of this court and falls within the jurisdiction of the Federal Supreme Court. It was decided to return the investigative papers to the Erbil Plains Investigation Court to return them to the Mosul Left Investigation Court to send it to the Federal Supreme Court to consider the dispute between the two courts according to jurisdiction...) on the basis of the foregoing, the Erbil Plains Investigation Court decided to return the investigative papers to the Left Mosul Investigation Court, so the Left Mosul Investigation Court decided on 1/8/2023 to present the investigative papers to the Federal Supreme Court for the purpose of determining the competent court spatially for the investigation, based on the provisions of Article (4/8th/Alif) of the Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and whereas the plaintiff's statement of

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personal right judicially certified on 18/3/2021 through which it became clear that the victim (Radwan Abdul Razzaq) had An operation was performed on him in Erbil by the defendant and he was transferred to Mosul and his health condition worsened and he was transferred to the emergency hospital in Mosul, but he died in the ambulance despite performing cardiac resuscitation in it, whereas Article (53/a) of the Code of Criminal Procedure No. (23) of 1971, as amended, stipulates that: (The jurisdiction of the investigation shall be determined by the place where all or part of the crime occurred, or any complementary act thereof, or any consequence resulting therefrom, 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 in respect of which the crime was committed was found after being transferred to him by Since the victim underwent surgery in the city of Erbil and died in the city of Mosul, therefore, both the Erbil Plains Investigation Court and the Mosul Left Investigation Court are spatial competent to conduct an investigation into the victim's death incident, as the jurisdiction of the investigation is determined by the place where the crime occurred in whole or in part or any complementary act or any result resulting from it, as well as the place where the victim was found based on the text of the aforementioned article, however, the Left Mosul Investigation Court has come a long way in the investigation until it reached advanced stages, which requires it to be considered spatially competent in the investigation, and thus the decision of the Left Mosul Investigation Court on 17/10/2022, referring the investigative papers to the Erbil Investigation Court to complete the investigation according to spatial jurisdiction, is incorrect and contrary to the provisions of the law, as well as the decision of the Erbil Plains Investigation Court on 2/1/2023 to reject the referral and submit the matter to the expanded panel in the Kurdistan Region Court of Cassation, based on the provisions of Article (53/d) of the aforementioned amended Code of Criminal Procedure and following the provisions of Articles (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005 and (4/8th/Alif) of the Court Law. Federal Supreme Court No. (30) of 2005 as amended by Law No. (25) of 2021, article (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

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judicial authority that it deems competent or not competent to consider the dispute may request the court to determine the competent judicial authority to consider 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 priori), this requires taking this into account in the future, and in view of the above, the Federal Supreme Court decided to consider the Mosul Left Investigation Court of the Nineveh Court of Appeal as spatially competent to consider the investigative papers of the personal plaintiff (Mustafa Radwan Abdul Razzaq) and the accused (Mohsen Haider Mustafa) related to the death of the victim (Radwan Abdul Razzaq Bashir) and to refer the aforementioned investigative papers to it, and to consider the decision of the Left Mosul Investigation Court on 17/10/2022 and the decision of the Erbil Plains Investigation Court on 2/1/2023 incorrect and contrary to the provisions of the law, and inform the Presidency of the Nineveh Court of Appeal of this and inform the Presidency of the Erbil Region Court of Appeal in the Kurdistan Region to notify the Erbil Plain's Investigation Court of this and the need to apply the provisions of Article (53/Dal) of the amended Code of Criminal Procedure, and in accordance with the provisions of Articles (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005 and (4/8th/Alif) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and Article (30) of the Internal Regulations of the Federal Supreme Court No. (1) of the year 2022 Correct application and taking into account that in the future. 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 25/Safar/1445 Hijri coinciding with 11/September/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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