

In the name of God most gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 23/federal/2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 3.5.2021 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 Request:

The judge of Investigation Court of al-Mosul/Left request from the FSC under the letter No. (7858/2021) on 5/4/2021 appointing the competent court to hear the case in question for the accused who paid bail (Saleh Abdul Razzaq Saleh and his group) in accordance with the provisions of Article (5) of the Combating Human Trafficking Law No. (28) of 2012 (amended), the subject of it, the defendants (Saleh Abdul Razzaq Saleh and Omaima Mohamed Salem) and other defendants have agreed to trade human organs, and the investigating judge above has based on the provisions of Article (93/8<sup>th</sup>/alif) of the Constitution of the Republic of Iraq for 2005. The request under scrutiny and deliberation by the FSC and reached the following decision:

## The Decision:

After scrutiny and deliberation by the FSC found that on date 10/11/2020 the judge of Investigative court of al-Mosul/Left decided and based on the report submitted to him by the Division of Combating Human Trafficking and Human Organs to refer the case to the Erbil Investigation Court to complete its investigation, according to venue jurisdiction this is because of the incident in Erbil province based on the provisions of Article (53/alif) of the Criminal Procedures Law No. (23) Of 1971 (amended). On date 21/1/2021 the judge of the Erbil Investigation Court decided, (and because the complaint was registered with the Investigative court of al-Mosul on 30/9/2020 the court investigated it and went a long way to return the investigative papers to the Investigative court of al-Mosul/Left to complete its investigation) on the date 30/3/2021 the judge of Investigative court of al-Mosul/Left decided the matter was submitted to the FSC to determine the competent court spatially to hear the case on the basis of the provisions of Article (93/8th/alif) of the Constitution of the Republic of Iraq for 2005, considering that the decision to return the investigative papers amounts to a refusal to refer, after scrutiny found that on 30/9/2020 the Investigative court of al-Mosul/ Left wrote down the testimony of the accused, Omaima Muhammad Salem, who was arrested on the basis of news from detective Younis Abdul Razzaq Saleh and stated that the deceased Saleh Abdul Razzaq Saleh is her divorcee and approached her regarding the sale of her kidney and she agreed to do so and actually went to Erbil province with her divorcee Saleh for the purpose of the agreement and took tests and agreed on the amount of eight million Iraqi dinars and asked her to bring a family member for the purpose of signing and detained her children they have until a family member is brought in, when they returned to the home of her sister, Sabriya Muhammad Salem, she spoke to her about the issue of going with her to the Erbil governorate in order to express approval to conduct the operation for the mentioned accused, and they headed to the mentioned

governorate and upon their arrival to the control of the Martyr Sabhan, they were arrested and as it was found from the medical report issued by Al-Jumhuri Teaching Hospital in Mosul that after conducting a medical examination on the arrested accused, Omaima Muhammad Salem Hamdoun, it was found that she had the effect of an exploratory operation in the belly (upper belly) when conducting an ultrasound examination, it was found that she had healthy kidneys. As for the other accused, Saleh Abdul Razzaq Saleh, upon examination, it was found that there was a trace of a wound to the left flank, and as a result of conducting an ultrasound examination; it was found that he does not have a left kidney. After scrutiny, it was found that the agreement to sell the kidneys of the accused, Omaima Muhammad Salem, which took place in the city of Mosul, provided that the operation would be conducted for her in the city of Erbil, which did not take place because of their arrest by the security services in Mosul. Since the article (53/alif) from Criminal Procedure Law (23) of 1971(amended) it stipulates (determines the jurisdiction of the investigation where the whole crime occurred or part of it or any act complementary to it or any result resulting from it or an act that is part of a complex or continuous crime or follow-up or of the crimes of habit, as well as where the victim found the money committed after being transferred to him by the perpetrator or a person aware of it). Therefore, the FSC considered the Investigative court of al-Mosul/Left is the spatially competent venue investigate in question and to notify the Investigation Court of Erbil with the need for the last court to observe the provisions of Article (93/8<sup>th</sup>/alif), and if it appears to it that it is not competent to investigate, it must ask the FSC to specify the court with jurisdiction over the case in question, not to return the investigative papers to the Investigative court of al-Mosul/Left with noting that the law most applicable to the criminal description of the act of the accused, the subject of the case, is the Law No. (11) of 2016 on Human Organ Transplant Operations and Prevention of Trafficking in it, (amended) according to the punitive

articles contained therein, and the decision was issued in unanimously decisively and obligated ruling for all authorities, according to the provisions of articles (93/8<sup>th</sup>/alif) and (94) of the Constitution of the Republic of Iraq for 2005 and the article (5/2<sup>nd</sup>) of FAC's Law No. (30) Of 2005 (amended) the decision had made clear public with on 3/May/2021 coinciding with 21/Ramadan/1442.