

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 24/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 2.5.2021 headed by the Judge Jasem Mohammad Abbood 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 whom are 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. (7859) on 5/4/2021 appointing the competent court to hear the case in question for the accused fugitives (Muhammad Jawad Kazem and Hassanein Allawi Aoun) in accordance with the provisions of Article (5) of the Combating Human Trafficking Law No. (28) of 2012 (amended), the subject of it (trade human organs) based on the provisions of Article (93/8th/alif) of the Constitution of Republic of Iraq for 2005. The case 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 11/10/2020 and based on the report provided by the Division of Combating Human Organs the judge of Investigative court of al-

Mosul/Left decided to refer investigative papers for the accused fugitives (Muhammad Jawad Kazem and Hassanein Allawi Aoun) to the Erbil Investigation Court to complete its investigation according to venue jurisdiction based on the provisions of Article (53/alif) of the Criminal Procedures Law No. (23) of 1971 (amended). On date 11/1/2021 the judge of the Erbil Investigation Court decided, and because the case was registered with the Investigative court of al-Mosul/Left on 16/6/2019 and that the investigation into it has reached an advanced stage, returning the investigative papers to the Investigation Court of Mosul/ Left. On the date 30/3/2021 the judge of the last court decided to submit the subject of the case to the FSC to determine the court with jurisdiction over its consideration based on the provisions of Article (93/8th/alif) of the Constitution of the Republic of Iraq for the year 2005 and consider the decision of the Erbil Investigation Court to return it as a refusal of referral. The FSC found that on the date 16/6/2019 the statements of the complainant Haider Waheed Haider were written down and he stated that he knows the accused, Yasser Sheikho, because he lives in the same area in the city of Mosul. When ISIS gangs took control of the city of Mosul, the latter traveled to Zakho, and after the liberation of the city of Mosul, he was contacted via social media and the mentioned accused asked the above-mentioned complainant to go to the city of Erbil, where there is work in a carpet factory. He actually went to the city of Erbil. After that, the accused, Yasser Sheikho, asked the complainant to sell his kidney. He was transferred to Dohuk Governorate and admitted to a hospital and underwent a kidney removal operation. The plaintiff's personal statement, Nagham Dahham Idris, said that the complainant Haidar Wahid, her son, had left Mosul for Erbil in contact with the accused Yasser Shekho and had a nephrectomy at (Zain International Private Hospital) a civil status identity was provided to her son named (Mohammed Jawad Kazem) and the wife of the accused (Hassanein Allawi Aoun) signed the hospital papers as the wife of her son Haidar

Wahid based on the course of the investigation, an arrest warrant was issued against the accused, Muhammad Jawad Kazem, and the wife of the accused, Hassanein Allawi Aoun, in accordance with the provisions of the Combating Human Trafficking Law No. (28) of 2012 (amended). Whereas, the venue jurisdiction and based on the provisions of Article (53/alif) of the Criminal Procedure Law, which stipulates that: (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), and because the Investigation Court of Mosul/ Left began investigating the case under discussion on 16/6/2019 and that the agreement to commit the criminal acts that are the subject of the investigation papers took place in the city of Mosul, so the Investigation Court of Mosul/ Left is competent to conduct the investigation. 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 obligation of the last court to observe the provisions of Article the provisions (93/8th/alif) of the Constitution and if it appears to it that it is not competent to investigate into the case referred to it by the Investigation Court of Mosul/ Left it had to decide to refuse the referral, to submit the matter to this court to determine the competent court, not to decide to return the investigative papers, the decision was issued decisively and obligated ruling 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 the articles (4) and (5/3rd) of FAC's Law No. (30) of 2005 (amended) with unanimously on 2/May/2021 coinciding with 20/Ramadan/1442.