

Republic of Iraq  
Federal Supreme Court  
Ref. 250 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/11/2023 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 Requestor of Determining the Jurisdiction: Investigation Court of Al-Sadir which is affiliated with the Presidency of Baghdad Appeal Court/Al-Risafa.

The Subject of the Request: Resolving the conflict of jurisdiction between the Sadr City Investigation Court, affiliated to the Presidency of Rusafa Appeals, and the Sulaymaniyah Investigation Court/2, affiliated to the Presidency of the Sulaymaniyah Region Court of Appeal, based on Article (93/Eighth/Alif) of the Constitution.

### **The Claim**

This court received a letter from the Presidency of the Baghdad/Al-Rusafa Court of Appeal/Public Relations and Legal Affairs Division, No. (A/6612) dated 10/5/2023 and its attachments, the investigative papers of the complainant (Ali Odeh Obaid), to decide on the conflict of jurisdiction between the Sadr City Investigation Court affiliated to the Presidency of the Baghdad/Al-Rusafa Court of Appeal and the Sulaymaniyah Investigation Court/2 affiliated to the Presidency of the Sulaymaniyah Region Court of Appeal. After reviewing the investigative papers, it became clear that the facts of the case are summarized as follows: On 3/9/2022, the complainant (Ali Odeh Obaid Al-Awenjawi) recorded his statement with ( The Crime Elimination Investigation Court, affiliated with the Presidency of the Sulaymaniyah District Court of Appeal, stated in it: (He is a merchant and buys the food ration and sends it to Baghdad. A person named (Hussein Dakhel Jassim) agreed with him to transfer the food ration, and on 1/12/2022 it went. The

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complainant went to Sulaymaniyah bought tons of food rations and entrusted the aforementioned person with the task of transporting them from refrigerated Turkish transport vehicles to their Iraqi counterparts. Then he returned to Baghdad since he was one of its residents, however, (Hussein) informed him of the bad weather conditions in Sulaymaniyah Governorate, and that the load would arrive in Baghdad after the weather conditions improved. Then it later became clear to him that (Hussein) had sold the load with the participation of the drivers of the load vehicles, each of (Muhammad Rahim, who drives the load vehicle numbered 129930/Sulaymaniyah). ) The second driver (Ali Mohsen, who drives the load vehicle numbered 555096 Sulaymaniyah), the third driver (Ahmad Alam Al-Dar, who drives the load vehicle numbered 67049 Erbil), and the fourth driver (Mahmoud Ahmed, who drives the load vehicle numbered 6057/Salah al-Din), which was seized in Kirkuk Governorate and the driver The fifth (Yadkar Rizkar Muhammad) requested a complaint against these drivers and against the so-called (Hussein Dakhel Jassim) and against (Ammar Abli), the owner of three of the above-mentioned vehicles, and that the site of the accident was in the unified garage in Tangro in Sulaymaniyah Governorate, and on 4/19/2022 a court recorded Al-Sulaimaniyah Investigation/2 is an appendix to the complainant's statements, which included that he "continues to complain against (Hussein Dakhel Jassim) and that he pardoned the rest of the accused"), after a series of investigative procedures, the Sulaymaniyah/2 Investigation Court decided on 6/20/2023 to refer the investigative papers related to the complainant (Ali Odeh Obaid) and the accused (Ali Mohsen Hussein and his group) to the Sadr City Investigation Court to complete the investigation according to spatial jurisdiction, as the food supplies It was sold in Baghdad Governorate, according to the complainant's claim, and an investigation court of Sadr City decided on 9/24/2023, refused to refer and present the investigative papers to the Federal Supreme Court for the purpose of determining the spatially competent court to conduct the investigation based on the provisions of Article (93/Eighth/Alif) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/Eighth/Alif) of Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, and when the investigative papers and decisions issued therein were subject to scrutiny and deliberation, the Federal Supreme Court reached the following decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that on 6/20/2023, the Sulaymaniyah Investigation Court/2 decided to refer the investigative papers related to the complainant (Ali Odeh Obaid) and the accused (Ali Mohsen Hussein and his group) to the Sadr City Investigation Court to complete the investigation according to jurisdiction, This is because the foodstuffs were sold in Baghdad Governorate, according to the complainant's claim, so the Sadr City Investigation Court decided on 9/24/2023 to reject the referral and present the investigative papers to the Federal Supreme Court to determine the court with spatial jurisdiction to conduct the investigation based on the provisions of Article (93/Eighth/Alif) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/Eighth/Alif) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, according to the aforementioned details, since the complainant initially purchased food supplies and agreed with The person who complained of being transferred from the industrial zone in Tangro in Sulaymaniyah Governorate to Baghdad, and the Sulaymaniyah Investigation Court/2 carried out the investigative measures and came a long way in it, this court finds that the complainant purchased the materials from the city of Sulaymaniyah, and there was also an agreement between the complainant and the accused (Hussein Dakhel Jassim) to transport those materials to the city of Baghdad, and there was also an agreement between the aforementioned accused and the rest of the defendants to transport those materials in vehicles belonging to them to the city of Baghdad. Some of them were loaded into the vehicles belonging to the rest of the defendants in the city of Sulaymaniyah to be transported to the city of Baghdad, but the transportation did not take place for the reasons mentioned in the testimony of the complainant and the rest of the defendants, and the food supplies were not seized in the city of Baghdad, and based on the above, the mere Agreeing to transfer these materials to the city of Baghdad without the transfer taking place, and without those materials being seized in the city of Baghdad, does not make the Baghdad investigation courts, including the Sadr City Investigation Court, competent to investigate spatially the crime attributed to the accused, this is because the transfer did not take place in the first place, especially since the

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jurisdiction of the spatial investigation court is determined based on Article (53/Alif) of the Code of Criminal Procedure No. (23) of 1971 as amended, which stipulates (the jurisdiction of the investigation is determined by the place where the crime occurred in whole or in part or Any act complementary to it or any result resulting from it or an act that is part of a complex, continuing or successive crime or a crime of habit, as determined by the place where the victim found or found the money in respect of which the crime was committed after it was transferred to him by the perpetrator or a person with knowledge of it. Since the crime attributed to the accused occurred in the city of Sulaymaniyah and did not result in any other consequences in any other city, nor was it proven that the food materials subject of the complaint were transported to the city of Baghdad or elsewhere, therefore the Sulaymaniyah Investigation Court/2 is considered spatially competent to investigate the crime. The aforementioned, because the jurisdiction of the investigation is determined based on the text of the aforementioned article, and the location and residence of the complainant and the accused do not matter, on the basis that the residence of the complainant and some of the accused are in Baghdad Governorate, this does not make the Baghdad Investigation Courts spatially competent to look into investigative papers, especially since the Sulaymaniyah Investigation Court/2 has come a long way in the investigation until it has reached advanced stages, which requires it to be considered spatially competent to investigate, and thus the decision of the Sulaymaniyah Investigation Court/2 On 6/20/2023, referring the investigative papers to the Sadr City Investigation Court to complete the investigation according to spatial jurisdiction, is incorrect and in violation of the provisions of the law, based on the provisions of Article (53/Dal) of the amended Code of Criminal Procedure, and in reference to the provisions of Articles (93/Eighth/ Alf) From the Constitution of the Republic of Iraq of 2005 and (4/eighth/Alif) from Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, according to the above-mentioned details, the complainant initially purchased food supplies and agreed with the complainant to transport them from the industrial zone in Tangro in the Sulaymaniyah Governorate to Baghdad. The Sulaymaniyah Investigation Court/2 carried out the investigative procedures and went a long way in it, and this court finds that the complainant did By purchasing materials from the city of Sulaymaniyah, there was

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also an agreement between the complainant and the accused (Hussein Dakhel Jassim) to transport those materials to the city of Baghdad, and it was also agreed between the aforementioned accused and the rest of the defendants to transport those materials in vehicles belonging to them to the city of Baghdad, some of them were loaded into the vehicles belonging to the rest of the defendants in the city of Sulaymaniyah in order to be transported to the city of Baghdad, but the transportation did not take place for the reasons mentioned in the testimony of the complainant and the rest of the defendants, and the food supplies were not seized in the city of Baghdad, and on the basis of the above, the mere agreement Transferring those materials to the city of Baghdad without the transfer actually taking place, and without those materials being seized in the city of Baghdad, does not make the Baghdad investigation courts, including the Sadr City Investigation Court, competent to investigate in place the crime attributed to the accused, because the transfer was not completed. Basically, especially since the jurisdiction of the spatial investigation court is determined based on Article (53/Alif) of the Criminal Procedure Code No. (23) of 1971 as amended, which stipulates (the jurisdiction of the investigation is determined by the place where the whole or part of the crime occurred or any act complementary to it or Any consequence or act that is part of a complex or continuing crime or consecutive or habitual crimes, as determined by the place where the victim was found or the money in respect of which the crime was committed was found after it was transferred to him by the perpetrator or a person who knew about it), since the crime attributed to the accused occurred in the city of Sulaymaniyah and did not result in any other consequences in any other city, nor was it proven that the food materials subject of the complaint were transported to the city of Baghdad or elsewhere, therefore the Sulaymaniyah Investigation Court/2 is considered spatially competent to conduct the investigation into the aforementioned crime. This is because the jurisdiction of the investigation is determined based on the text of the aforementioned article, and the location and residence of the complainant and the accused do not matter, on the basis that the residence of the complainant and some of the accused is in Baghdad Governorate, as this does not make the Baghdad investigation courts spatially competent to consider the investigative papers, especially since the Sulaymaniyah Investigation Court/2 has come a long way in the investigation until it has reached

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advanced stages, which requires it to be considered spatially competent to investigate. Thus, the decision of the Sulaymaniyah Investigation Court/2 dated 6/20/2023 to refer the investigative papers to the Sadr City Investigation Court to complete the investigation according to jurisdiction. The location is incorrect and violates the provisions of the law, based on the provisions of Article (53/d) of the amended Code of Criminal Procedure, in light of the provisions of Articles (93/Eighth/Alif) of the Constitution of the Republic of Iraq for the year 2005 and (4/Eighth/Alif) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, and based on the above, the Federal Supreme Court decided The Sulaymaniyah Investigation Court/2, which is affiliated with the Presidency of the Sulaymaniyah District Court of Appeal in the Kurdistan Region, is considered spatially competent to consider the investigative papers related to the complainant (Ali Odeh Obaid) and the accused (Hussein Dakhel Jassim and his group), in which legal measures are taken against the accused in accordance with the provisions of Article (456) of the Penal Code. No. (111) of 1969 as amended, and referring the aforementioned investigative papers to it, and considering its decision dated 6/20/2023 to be incorrect and in violation of the provisions of the law, and informing the Presidency of the Sulaymaniyah District Court of Appeal in the Kurdistan Region of this and informing the Presidency of the Baghdad/Al-Rusafa Court of Appeal to notify the Sadr City Investigation Court with that. The decision has been issued unanimously, final and binding for all authorities according to the provisions of Article (93/8<sup>th</sup>/Alif) of the Constitution of the Republic of Iraq for 2005 and Articles (4/8<sup>th</sup>/Alif and 5/2<sup>nd</sup>) 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 23/Rabea Al-Akhir/1445 Hijri coinciding with 8/November/2023 AD.

**Judge**

**Jassim Mohammed Abboud**

**President of the Federal Supreme Court**

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