

Republic of Iraq
Federal Supreme Court
Ref 47/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/2/2024 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:

Applicant for Determination of Jurisdiction : Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal

The Request:

The Federal Supreme Court received the letter of the representation of the Kurdistan Regional Government in Baghdad / General Directorate of Administration and Finance Affairs No. (Mim.Ra. 3456 on 28/1/2024) and its attachments the letter of the Presidency of the Sulaymaniyah Region Court of Appeal / Directorate of Administration No. (552 on 22/1/2024) and its attachment to the letter of the Chamchamal Investigation Court No. (2451 on 10/12/2023) containing sending the investigative papers of the accused (Araz Sharif Abdul Qader) to determine the spatial competent court to consider a negative conflict in the spatial jurisdiction between the Laylan Investigation Court of the Presidency of the Kirkuk Court of Appeal and the Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal, based on Article (93/8th/Alif) of the Constitution. After reviewing the investigative papers and the decisions issued therein, the court issued the following decision:

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The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that On 7/3/2023, the judge of the Laylan Investigation Court of the Presidency of the Kirkuk Court of Appeal decided to refer the investigative papers of the informant (Bahman Mouloud Mouloud Abdullah) and the accused (Araz Sharif Abdul Qadir Ghafour) to the Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal to complete the investigation according to the territorial jurisdiction pursuant to the provisions of Article (53) of the Code of Criminal Procedure No. (23) of 1971, as amended, The judge of the Chamchamal Investigation Court decided to reject the referral and to present the investigative papers to this court to resolve the dispute between the Chamchamal Investigation Court and the Laylan Investigation Court, and to determine the competent court based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005, and Article (4/8th/Alif) of the Federal Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, upon checking the investigative papers, it became clear that ((on 6/3/2023, the Laylan Investigation Court of the Presidency of the Kirkuk Court of Appeal ratified the statements of the informant (Bahman Mouloud Mouloud Abdullah) and stated that the defendant (Araz Sharif Abdul Qadir Ghafoor) has a dual function, as he holds the position of Authorized Director of the Kirkuk Cement Company, and at the same time works as an employee on the staff of the Ministry of Finance in the state treasury in the Kurdistan region, Chamchamal district, and the court was asked to approach the Ministry of Finance in the region to verify this duplication, and requested that legal action be taken against him)), whereas Article (53/a) of the Code of Criminal Procedure No. (23) of 1971, as amended, stipulates that (the

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jurisdiction of the investigation shall be determined by the place where the crime occurred in whole or in part, or any complementary act thereto, 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 for which the crime was committed was found after transferring it to him by the perpetrator or a person who knows about it), Whereas the crime attributed to the accused is on the assumption that it is proven it is one of the ongoing crimes and its existence extends to both the cities of Laylan and Chamchamal, so both the Laylan Investigation Court, The Chamchamal Investigation Court shall be competent to investigate spatially, based on the text of the aforementioned article, and since the Laylan Investigation Court initiated the investigation procedures and recorded the informant's statements first, it had to complete the investigation, and therefore the Laylan Investigation Court of the Presidency of the Kirkuk Court of Appeal is spatially competent to conduct an investigation with the investigative papers of the informant (Bahman Mouloud Mouloud Abdullah) and the accused (Araz Sharif Abdul Qadir Ghafour). Thus, the decision of the Laylan Court of Inquiry referring the investigative papers to the Chamchamal Investigation Court to complete the investigation according to the spatial jurisdiction, is incorrect and contrary to 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 Article (30) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulated (first – If there is a conflict of jurisdiction between the federal judiciary and the judiciary in the regions, the judicial authority

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that it deems 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 determining the jurisdiction shall be sent to the court by a letter signed by the President of Court of Appeal, with all preliminary), therefore, the Federal Supreme Court decided to consider the Laylan Investigation Court of the Presidency of the Kirkuk Court of Appeal as spatially competent to consider the investigative papers of the informant (Bahman Mouloud Mouloud Abdullah) and the accused (Araz Sharif Abdul Qadir Ghafour) and to refer the investigative papers to it and to inform the Presidency of the Sulaymaniyah Court of Appeal to notify the Chamchamal Investigation Court of this. The decision has been made clear, final and binding on all authorities according to the provisions of Articles (93/8th/Alif) and (94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4/8th/Alif and 5/2nd) of law Federal Supreme Court No. (30) of 2005 as amended by Law No. (25) of 2021. The decision has been edited in the session dated 16/Shaaban/1445 A.H. corresponding to 26/2/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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