

Republic of Iraq
Federal Supreme Court
Ref 61/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/3/2024 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, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

Applicant for Determination of Jurisdiction : The Judicial Investigation Office in Nasiriyah affiliated to the Presidency of the Dhi Qar Court of Appeal.

Subject of the request: Adjudicating the conflict of negative spatial jurisdiction between the Judicial Investigation Office in Nasiriyah affiliated to the Presidency of the Dhi Qar Court of Appeal, and the Erbil Investigation Court affiliated to the Presidency of the Erbil Region Court of Appeal in the Kurdistan Region based on Article (93/ 8th / Alif) of the Constitution.

The Request:

The Federal Supreme Court received the letter of the Presidency of the Dhi Qar Court of Appeal / Administrative Affairs Department No. (870) on 5/2/2024 and attached is a copy of the letter of the Judicial Investigation Office in Nasiriyah No. (2369 on 1/2/2024) and the investigative papers of the complainant (Krekar Ahmed Awla) and the accused (Muhannad Essam Amin) in accordance with the provisions of Articles (295 and 298) of the Penal Code, Decree No. 111 of 1969, as amended, In order to determine the competent court spatially to consider the investigative papers, and after reviewing the investigative

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papers, it was found that the facts of the case are summarized as follows: ((On 28/11/2022, the statements of the complainant (Krekar Ahmed Oula) were recorded, before the Investigation Court of Qalaat Sukkar and stated: About two months before the date of recording this statement, the defendant (Muhannad Essam Amin) by issuing the instrument numbered (9485617) in the amount of (50,000) fifty thousand US dollars against the price of a Land Cruiser, Where the deed was drawn in the province of Erbil drawn on the Rasheed Bank Dhi Qar / 013 Commercial Credit Branch 506, it was found that the accused wrote the deed knowing that he did not have sufficient and existing payment consideration to dispose of it, knowing that the accused is a resident of Baghdad/Karkh governorate, and that his current residence is in Erbil/ Ein Kawa governorate near the court. The judge of the Qal'at Sukkar Investigation Court took several investigative measures, including his decision to issue an arrest warrant against the accused in accordance with the provisions of Articles (295 and 298) and his decision to refer the investigative papers to the Nasiriyah Investigation Court, On 13/2/2023, as the bank falls within the administrative boundaries of the Nasiriyah district, in accordance with the provisions of Article (53/c) of the Code of Criminal Procedure, on 10/4/2023, the judge of the Judicial Investigation Office in Nasiriyah decided to refer the investigative papers to the Erbil Investigation Court to complete the investigation according to the spatial jurisdiction based on the provisions of Article (53) due to the fact that the crime of forgery represented in the editing and use of the instrument occurred in Erbil Governorate, and on 11/6/2023, the judge of the Erbil Investigation Court decided to present the investigative papers to the Presidency of the Kurdistan Region Court of Cassation / the expanded body to determine the competent court to conduct the

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investigation, the last court issued its decision No. (146 / Expanded Commission/ 2023 on 21/9/2023) which includes returning the investigative papers to the Erbil Investigation Court in order to return them to the Sukkar Castle Investigation Court for the purpose of presenting them to the Federal Supreme Court to consider the dispute according to jurisdiction, and based on the decision of the expanded body in the region, the judge of the Judicial Investigation Office in Nasiriyah decided on 1/2/2024 to send the investigative papers to the Federal Supreme Court for the purpose of determining the competent court spatially in completing the investigation)) After registering the application and scrutiny the investigative case and the decisions issued therein, the Federal Supreme Court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that on 10/4/2023, the judge of the Judicial Investigation Office decided in Nasiriyah, the investigative papers of the complainant (Krekar Ahmed Ola) and the accused (Muhannad Essam Amin) in accordance with the provisions of Articles (295 and 298) of the Penal Code No. (111) of 1969, as amended, were referred to the Erbil Investigation Court to complete the investigation, according to the territorial jurisdiction in accordance with the provisions of Article (53) of the Code of Criminal Procedure No. (23) of 1971, as amended, since the crime of forgery represented by the drafting and use of the instrument occurred in Erbil Governorate. On 11/6/2023, the judge of the Erbil Investigation Court decided to present the investigative papers to the Presidency of the Kurdistan Region Court of Cassation / the expanded body to determine the competent court to conduct the investigation, and the last court issued its decision No. (146/Expanded

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Commission/2023 on 21/9/2023) which includes returning the investigation papers to the Erbil Investigation Court in order to return them to the Sukkar Castle Investigation Court for the purpose of presenting them to the Federal Supreme Court to consider the dispute according to jurisdiction, and based on the decision of the expanded body in the region by the judge of the Judicial Investigation Office decided in Nasiriyah On 1/2/2024, sending the investigative papers to the Federal Supreme Court for the purpose of determining the competent court spatially to complete the investigation due to a negative conflict of jurisdiction in accordance with the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, 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 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 composite, 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 Perpetrator or someone who knows about it), whereas the crime attributed to the accused on the assumption that it is proven took place in the entire governorate of Erbil, it turned out that the accused is not a customer of Al-Rasheed Bank in Nasiriyah, and that the instrument - the subject of the lawsuit - is not mentioned within the rule of current accounts in it, which means that the instrument is forged and according to what is established in the investigative papers that the forged instrument was edited the signing and handing over of the complainant took place in Erbil Governorate, and in application of the provisions of Article (53/Alif) of the Code of Criminal Procedure, therefore, the

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Erbil Investigation Court is competent to investigate spatially, Based on the text of the aforementioned article, thus, the decision of the Erbil Investigation Court on 11/6/2023 to present the investigative papers to the Presidency of the Kurdistan Region Court of Cassation / the expanded body to determine the competent court to conduct the investigation spatially, is incorrect and contrary to the provisions of the law, based on 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, Article (30) of the Rules of Procedure of the Federal Supreme Court No. (1) for the year 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 region, the judicial authority which it deems competent or not competent to hear the dispute, may request the court to determine the judicial authority competent to hear 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 priorities), so the Federal Supreme Court decided to consider the Erbil Investigation Court of the Presidency of the Erbil Region Court of Appeal as spatially competent to consider the investigative papers of the complainant (Krekar Ahmed Awla) and the accused (Muhannad Essam Amin) in accordance with the provisions of the two articles (295 and 298) of the penal code No. 111 of 1969, as amended, and referring the investigative papers to it and considering its decision issued on 11/6/2023 that includes presenting the investigative papers to the presidency of the Kurdistan Region Court of Cassation / the expanded body to determine the competent court to conduct the investigation spatially, which is incorrect and contrary to the provisions of the law, and to inform the Presidency of the Dhi Qar Court of Appeal to notify

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the Judicial Investigation Office in Nasiriyah of this, and to inform the Presidency of the Erbil Region Court of Appeal accordingly, in order to notify the Erbil Investigation Court of the validity of the future application of the provisions of Article (30) of the Court's Rules of Procedure. The decision has been issued unanimously, final and binding on all authorities in accordance with 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 the Federal Supreme Court Law No. (30) of 2005, as amended by the Law No.(25) of 2021. The decision has been edited in the session dated 2/Ramadan/1445 A.H. corresponding to 13/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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