

Republic of Iraq
Federal Supreme Court
Ref 70/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 25/3/2024 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 : Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal

Subject matter of the request: Adjudication of the conflict of negative jurisdiction between the Daquq 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.

The Request:

The Federal Supreme Court received the letter of the representation of the regional government in Baghdad / General Directorate of Administration and Financial Affairs No. (Mim.Ra.7503 on 25/2/2024) and its annexes the letter of the Presidency of the Sulaymaniyah Region Court of Appeal / Directorate of Administration No. (1707 on 15/2/2024), the letter of the Chamchamal Investigation Court No. (339 on 21/1/2024) and the investigative papers of the accused (Bashar Ayoub Muhammad Khalil) in accordance with the provisions of Article (240) of the Iraqi Penal Code for the occurrence of a negative conflict in the territorial jurisdiction between the Daquq Investigation Court of the Presidency of the Kirkuk Court of Appeal and the Chamchamal

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Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal, After reviewing the investigative papers, it was found that the facts of the case are summarized as follows: On 10/9/2023, the statements of the accused were recorded (Bashar Ayoub Mohammed/ Syrian national) before the Daquq Investigation Court which stated: About a year ago from the date of recording this statement, he was working in Anbar province and was told on 9/9/2023 that he had to leave the province by the security authorities, and then he took a car to Sulaymaniyah province, and when he arrived to the Al-Raml checkpoint, he was arrested by the Iraqi army and handed over to the Al-Rashad police station. he stated that his papers are original and have been verified in all controls in the Anbar , Samarra and Tikrit police command, and that his entry into Iraqi territory is duly correct. On 12/9/2023, the judge of the Daquq Investigation Court decided to refer the investigative papers to the Sulaymaniyah Investigation Court to complete the investigation according to the territorial jurisdiction pursuant to the provisions of Article (53/Jim) due to the fact that the accused is a Syrian national, and has a certificate granting the status of an asylum seeker issued by the United Nations High Commissioner for Refugees/ Sulaymaniyah and because he left Sulaymaniyah Governorate, he violated the residency procedures in Sulaymaniyah Governorate, on 7/12/2023, the judge of the Chamçamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal decided (to reject the referral) and to submit the investigative papers to the Federal Supreme Court to settle the dispute between the Daquq Investigation Court and the Chamçamal Investigation Court, and to determine the competent court to conduct the investigation based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq because it considers that it is not spatially competent

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to consider the investigative papers, because the asylum seeker's document is not an alternative to obtaining a work or residence permit in Iraq, and that the Court of Investigation of Daquq it has come along way in the investigative procedures, and that the investigation is at its late, and after registering the application with this court and conducting the scrutinies, issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that on 12/9/2023, the judge of the Investigative Court of Investigation Daquq referring the investigative papers of the accused (Bashar Ayoub Mohammed / Syrian nationality) to the Chamçmal Court of Inquiry to complete the investigation according to the territorial jurisdiction pursuant to the provisions of Article (53/Jim) of the fundamentals as the accused is a Syrian national, and has a certificate granting the status of an asylum seeker issued by the United Nations High Commissioner for Refugees/ Sulaymaniyah and for leaving Sulaymaniyah Province, therefore, he violated the residency procedures there, and on 7/12/2023, the judge of the Chamçmal Investigation Court decided (rejecting the referral) because it lacked its spatial jurisdiction to conduct the investigation, as the asylum seeker's document is not an alternative to obtaining a work permit or residence in Iraq, and the Daquq Investigation Court has come a long way in the investigative procedures until the investigation reached advanced stages, and the investigative papers were presented 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 based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of

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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 in order to determine the competent court, in accordance with the aforementioned detail, Whereas Article (53/Alif) 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 all or part of the crime occurred, any complementary act thereto, any consequence thereof, 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 in respect of which the crime was committed was found after transferring it to him by committed by the perpetrator or a person who is aware of it), and since the crime attributed to the accused assuming that it is proven to be true, it occurred in the province of Sulaymaniyah because the accused left the aforementioned governorate, and thus violated the residency procedures, and in application of the provisions of Article (53/Alif) of the fundamental, therefore, the Chamçmal Court of Inquiry is competent to conduct the investigation spatially, based on the text of the aforementioned article and 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 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 that (First: If there is a conflict of jurisdiction between the federal judiciary and the judiciary in the regions, the judicial authority 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: Send request to determine jurisdiction to the court by letter signed by the President of the Court of Appeal, with all the priorities),

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therefore the Federal Supreme Court decided to consider the Chamçmal Investigation Court under the Presidency of the Sulaymaniyah Region Court of Appeal is venue competence to consider the investigative papers of the accused (Bashar Ayoub Mohamed/Syrian nationality) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969 as amended. 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 Law No. (25) of 2021. The decision has been made clear on 14/Ramadan/1445 A.H. corresponding to 25/3/2024 A.D.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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