

Republic of Iraq
Federal Supreme Court
Ref. 71 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/4/2023 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 Chamchamal which belongs to the presidency appeal of Sulaymania district court.

The Subject of the Request: to adjudge in venue jurisdiction conflict between the investigation court of Kirkuk which belongs to the presidency appeal court of Kirkuk and the Chamchamal investigation court which belongs to the presidency appeal of Sulaymania district court.

The Request

The letter of representation of the Kurdistan Regional Government of Iraq in Baghdad, No. (9642) on 16/3/2023, and its attachment is the letter of the Presidency of the Sulaymaniyah Region Court of Appeal, No. (1961) on 7/3/2023, and attached is the letter of the Chamchamal Investigation Court No. (295) on 22/2/2023 with its attachments the investigative papers of the complainant (Hussein Ali Amin) and the sponsored defendants (Sabah Mazhar Ali, Samad Muhammad Ali, Muhammad Saeed Muhammad, and Shehab Ahmed Ali) following the provisions of Article (289/298) penalties, for the

saady



purpose of appointing the competent court to conduct the investigation spatially based on the decision of the Presidency of the Kurdistan Region Court of Cassation / the expanded body with the number (219 / the expanded body/2022) on 12/12/2022.

Upon receipt of the application and investigative papers to this court, it was registered and put into scrutiny and deliberation, and the court reached the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that on 6/9/2022, the Kirkuk Investigation Court of the Presidency of the Kirkuk Court of Appeal decided to refer the investigative papers of the complainant (Hussein Ali Amin) and the sponsored defendants (Sabah Mazhar Ali, Samad Muhammad Ali, Muhammad Saeed Muhammad and Shehab Ahmed Ali) in accordance with the provisions of Article (289/298) penalties to the Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal to complete the investigation according to the venue jurisdiction, the latter decided on 15/11/2022 to reject the referral and present the investigative papers to the expanded body in the Kurdistan Region Court of Cassation to appoint the competent court spatially to complete the investigation, so the aforementioned body decided by its decision (219 / the expanded body / 2022 on 12/12/2022) to return the investigative papers to the court, requesting the appointment of the competent court to be presented to the Federal Supreme Court in order to appoint the competent court in accordance with the provisions of

saady



Article (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, since the dispute had occurred between the Kirkuk Investigation Court and the Chamchamal Investigation Court of the Judicial Council in the Kurdistan Region, and following it, the Chamchamal Investigation Court decided to submit the matter to the Federal Supreme Court to determine the competent court, upon reviewing the investigative papers, it was found that the facts of the case are summarized as follows: (On 4/3/2021, the defendants Sabah Mazhar Ali, Samad Muhammad Ali, Muhammad Saeed Muhammad and Shehab Ahmed Ali were arrested based on the reading of the Asayish Directorate of Sulaymaniyah, and a weapon type of Klock pistol No. 323 GZS, an Aveo type car, and external contracting for the sale and purchase of real estate in Chamchamal district, as well as a forged personal status card in the name of Idris Muhammad Rashid, were seized, and the case was adapted in accordance with the provisions of Article (289/298) of the Penal Code, and their statements were judicially recorded by the Asayish Sulaymaniyah Court of Inquiry, and then the investigative papers were referred to the Kirkuk Court of Inquiry to complete their investigation by them according to territorial jurisdiction and the court to which the referral papers were referred accepted the referral and completed the investigation and referred the papers and the defendants to the Kirkuk Criminal Court, the first body to conduct their trial in accordance with the referral article, and the aforementioned court issued its decision No. (786/Jim/2021) that included intervening with the referral decision, reversing it, and returning the case to its court to complete the investigative deficiencies in it, and because there were a number of seizures that were not sent with the investigative papers and the defendants at the time based on the progress of the

saady



investigation dated 26/8/2022, on 6/9/2022, the papers were referred to the Chamchamal Investigation Court to complete the investigation by them and return them to the referring court after completing the deficiencies with the seizures, but the referred court refused the referral and presented the matter to the expanded body in the Kurdistan Region Court of Cassation according to 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 thereof, any consequence thereof, 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 it was transferred to him by perpetrator or a person who is aware of it), whereas the defendants were arrested, and the seizures were seized in the Chamchamal area, which is located within the spatial jurisdiction of the Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal, and their investigative case was referred to the Kirkuk Investigation Court of the Presidency of the Kirkuk Court of Appeal, and the latter accepted the referral and made progress in the investigative procedures until the investigation reached its final stages and the investigative case was referred to the Kirkuk Criminal Court / Second Committee. Therefore, the reversal of the referral decision to complete the deficiencies of the investigation and link the criminal highlights by the Criminal Court does not require the referral of the investigative case to the Chamchamal Investigation Court, because the jurisdiction to conduct the investigation is held to the Kirkuk Investigation Court and can

saady



approach the Chamchamal Investigation Court to send the seizures to complete the investigation deficiencies, without referring the entire case to the said court, and since the Kirkuk Investigation Court has come a long way in the investigation procedures until it reached advanced stages, and therefore it is considered spatially competent. Thus, the decision of the Kirkuk Investigation Court to refer 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 the law, the same applies to the decision of the Chamchamal Investigation Court, which rejected the referral and requested the expanded body of the Kurdistan Region Court of Cassation to appoint the competent court spatially to complete the investigation, based on the provisions of Article (53/Dal) of the amended Code of Criminal Procedure and in accordance with the provisions of Articles (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, (4/8th/Alif) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and (30) of the Rules of Procedure of the Federal Court. 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 deems it competent or not competent to hear the dispute may request the court to determine the competent judicial authority to consider 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), and for the foregoing, the Federal Supreme Court decided to consider the Kirkuk Investigation Court, affiliated to the Presidency of the Kirkuk Court of Appeal, as having jurisdiction

saady

Republic of Iraq
Federal Supreme Court
Ref. 71 / federal /2023



Kurdish text

spatially to consider the investigative papers of the complainant (Hussein Ali Amin) and the sponsored defendants (Sabah Mazhar Ali, Samad Muhammad Ali, Muhammad Saeed Muhammad, and Shihab Ahmed Ali) following the provisions of Article (289/298) Penalties and referral of the aforementioned investigative papers to it and informing the presidency of the court Appeal of the Sulaymaniyah region of the Judicial Council in the Kurdistan Region, to notify the Chamchamal Investigation Court, The decision has been issued unanimously, final, and binding 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 articles (4/8th/Alif and 5/2nd) 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 27/Ramadhan/1444 Hijri coinciding with 18/April/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

saady