

Republic of Iraq
Federal Supreme Court
Ref 71/ 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 of the request: Adjudication of the conflict of 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. 7508 on 25/2/2024) and its annexes the letter of the presidency of the Sulaymaniyah Region Court of Appeal / Directorate of Administration No. (1706 on 15/2/2024) and the letter of the Chamchamal Investigation Court No. (306 on 21/1/2024) and the investigative papers of the accused (Salma Juma Muhammad Khalil - Syrian nationality) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, For the occurrence of conflict between the Daquq Investigation Court of the Presidency of the Kirkuk Court of

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Appeal and the Chamchemal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal, and 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 defendant (Salma Juma Mohammed/Syrian nationality) were recorded before the Daquq Investigation Court and stated: About a year ago from the date of writing this statement, she was living in Anbar Governorate and was informed on 9/9/2023 of the need to leave the governorate by the security authorities then she boarded a car to Sulaymaniyah province and when she arrived to the Al- Raml checkpoint she was arrested by the Iraqi army and handed over to the Rashad police station, and reported that her papers are fundamental and have been verified in all controls in the Anbar Police Command, Samarra and Tikrit, and that her entry into Iraqi territory is fundamental, 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/c) of the fundamental, since the defendant 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 she left Sulaymaniyah Governorate, she violated the residency procedures in Sulaymaniyah Governorate, On 7/12/2023, the judge of the Chamchmal Investigation Court decided (to reject the referral) and to submit the investigative papers to the Federal Supreme Court to resolve the dispute between the Daquq Investigation Court and the Chamchmal 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 due to the court's lack of jurisdiction spatially to consider the investigative

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papers, because the asylum seeker's document is not an alternative to obtaining a work permit or residence in Iraq, and that the Daquq Investigation Court has come a long way in the investigative procedures. At the end of the investigation, after registering the application with this court and making its scrutinies, it 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 defendant (Salma Juma Mohammed Khalil - Syrian nationality) to the Chamchmal Court of Inquiry to complete the investigation according to the territorial jurisdiction pursuant to the provisions of Article (53/c) of the fundamentals since the defendant is 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 Governorate, Therefore, it violated the residency procedures, and on 7/12/2023, the judge of the Chamçmal Investigation Court decided (to reject the referral),the court has no jurisdiction to conduct the investigation, as the asylum seeker's document is not a substitute for obtaining a work permit or residence permit in Iraq, 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 in completing the investigation to obtain negative conflict of jurisdiction based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, Article (4/8th/Alif) of the Federal Court Law No.

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30 of 2005 as amended by Law No. 25 of 2021 in order to determine the competent court, in accordance with the above-mentioned detail, whereas Article 53/Alif of the Code of Criminal Procedure No. 23 of 1971, as amended, it 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 the money in respect of which the crime was committed was found after it was transferred to him by the perpetrator or a person aware of it). Since the crime attributed to the defendant on the assumption of the validity of its proof occurred in the province of Sulaymaniyah because the accused left the aforementioned province, and thus violated the residency procedures, and in application of the provisions of Article (53/Alif) of the Code of Criminal Procedure, therefore, the Chamchamal investigation shall be 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 of 2005, (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 stipulates (First: If there is a conflict of jurisdiction between the federal judiciary and the judiciary in the regions, the judicial authority that it deems to be 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), therefore, the Federal Supreme Court decided to consider the

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Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal as having jurisdiction to consider the investigative papers of the defendant (Salma Juma Muhammad Khalil - Syrian nationality) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, and to refer the investigative papers to it and inform presidency of the Kirkuk Court of Appeal to notify the Daquq Court of Inquiry thereof. 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 Law Federal Supreme Court No. (30) of 2005 as amended by Law No.(25) of 2021 and done in the session dated 14/Ramadan/1445 A.H. corresponding to 25/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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