

Republic of Iraq  
Federal Supreme Court  
Ref 72/ federal /2024



Kurdish text

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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 Hussain who are authorized in the name of the people to judge and they made the following decision:

Applicant for 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 (93/8<sup>th</sup>/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 Finance Affairs No. (Mim.Ra. 7505 on 25/2/2024) and its attachments to the letter of the Presidency of the Sulaymaniyah Region Court of Appeal / Directorate of Administration No. (1704 on 15/2/2024) and the letter of the Chamchamal Investigation Court No. (341 on 21/1/2024) and the investigative papers of the accused (Radwan Mahmoud 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

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Investigation Court of the Presidency of the Kirkuk Court of Appeal and the Chamchmal 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 defendant's statements were recorded (Radwan Mahmoud Mohamed/Syrian national) before the Daquq Investigative Court and stated: About a year ago from the date of writing this statement, he was working in Anbar province with a daily wage and was told on 9/9/2023 of the need to leave the province by the security authorities and then took a car to Sulaymaniyah province, and upon his arrival to the Al-Raml checkpoint he was arrested by the Iraqi army and handed over to Al-Rashad police station, he stated that his papers are fundamental and have been verified in all controls in the Anbar, Samarra and Tikrit police command, and that his entry into Iraqi territory on 12/9/2023, the judge of the Daquq Investigative 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) of the Code of Criminal Procedure, since 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 Chamchmal Investigation Court decided (to reject the referral) and to submit the investigative papers to the Federal Supreme Court to settle the dispute between the two courts and to determine the court spatially competent to conduct the investigation based on the provisions of Article (93/8<sup>th</sup>/Alif) of the Constitution of the Republic of Iraq, as it considers that it is not spatially competent to consider the

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investigative papers, because the asylum seeker's document is not an alternative to obtaining a work or residence permit in Iraq and the Court of Inquiry Daquq the investigation is in its final stages, after registering the application with this court and making the 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 Daquq Investigative Court decided to refer the investigative papers of the accused (Radwan Mahmoud Mohamed/Syrian nationality) to the Chamchmal Investigation Court to complete the investigation according to the spatial jurisdiction pursuant to the provisions of Article (53/Jim) of the Code of Criminal Procedure, as the accused is a Syrian national, he has a certificate of granting the status of an asylum seeker issued by the United Nations High Commissioner for Refugees / Sulaymaniyah and for leaving Sulaymaniyah province, so he violated the residence procedures there, On 7/12/2023, the judge of the Chamchmal Investigation Court decided (to reject the referral) because the court lacked the jurisdiction of the court to conduct the investigation, as the asylum seeker's document is not an alternative to obtaining a work permit or residence permit in Iraq, and the Daquq Investigation Court has come a long way in the investigative procedures until the investigation reached advanced stages, and presented 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 based on the provisions of Article (93/8<sup>th</sup>/Alif) of the Constitution the Republic of Iraq in 2005, whereas Article 53 (a) of the Code of Criminal Procedure No. 23 of 1971, as

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amended, stipulates that "the jurisdiction of the investigation shall be determined by the place where the crime was committed in whole or in part, or any complementary act thereof, 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 the money in respect of which the crime was committed. after being transmitted to him by the perpetrator or a person who is aware of it), Whereas the crime attributed to the accused on the assumption that it is proven to have been proven took place in the province of Sulaymaniyah because the accused left the aforementioned province and thus violated the residency procedures, therefore, in application of the provisions of Article 53/Alif of the Code of Criminal Procedure, the Chamchamal Court of Inquiry shall be competent to conduct the investigation in place, in accordance with the provisions of the aforementioned article, and in accordance with the provisions of Articles 93/8<sup>th</sup>/Alif of the Constitution of the Republic of Iraq of 2005, and (4/8<sup>th</sup>/Alif) of the Federal Supreme Court Law No.(30) of 2005 as amended by Law No. (25) of 2021, and Article (30) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulates 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: 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 Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal as having

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jurisdiction to consider the investigative papers of the accused (Radwan Mahmoud Mohamed/Syrian national) in accordance with the provisions of Article (240) of the Penal Code, No. (111) of 1969, as amended, and the referral of investigative papers to it and informing the Presidency of the Kirkuk Court of Appeal to notify the Daquq Investigation Court thereof. The decision has been issued unanimously, final and binding on all authorities in accordance with the provisions of Articles (93/8<sup>th</sup>/Alif) and (94) of the Constitution of the Republic of Iraq of 2005, and Articles (4/8<sup>th</sup>/Alif and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended, 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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