

Republic of Iraq
Federal Supreme Court
Ref 75/ 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, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

Applicant for Determining Jurisdiction: Sadr City Investigation Court affiliated to the Presidency of the Baghdad / Rusafa Court of Appeal.

Subject matter of the request: Adjudication of the conflict of jurisdiction between the Sadr City Investigation Court affiliated to the Presidency of the Baghdad / Rusafa Court of Appeal and the Akra Investigation Court affiliated to the Presidency of the Duhok Region Court of Appeal based on Article (93/8th/Alif) of the Constitution.

The Request:

The Federal Supreme Court received the letter of the Federal Court of Cassation No. (2603/Criminal Committee/2024 on 27/2/2024) and attached to its decision No. (2603/Criminal Committee/2024/sequence 1456 on 21/2/2024) with the investigative papers of the complainant (Nour Sabah Abdel Wahab) and the accused (Nawzad Muhammad Taher) in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, due to a negative conflict, in the spatial jurisdiction between the Sadr City Investigation Court affiliated to the Presidency of the Baghdad / Rusafa Court of Appeal and the Aakra Investigation Court affiliated to the Presidency of the Dohuk

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Region Court of Appeal, and after reviewing the investigative papers, it was found that the facts of the case are summarized as follows:

((On 28/6/2022, an investigative court took the statement of the complainant (Nour Sabah Abdel Wahab) and found out that a period of more than a year and six months, she delivered an amount of (50,000) fifty thousand US dollars to the so-called (Nozad Muhammad Tahir Ismail) for the purpose of investing in the work of contracting and trade, and despite the passage of a period from the date of delivery of the amount, she felt his lack of credibility in investing the amount and learned from her husband (Razzaq Mira Ahmed) that the aforementioned defendant owed several people, so she asked him to return the amount and he did not respond, so she pressured him through her husband to write the accused a cheque for her and he agreed to issuing the cheque with the number (0186952) in the amount of (30,000,000) thirty million Iraqi dinars - the drawee of Rafidain Bank – Al-andalus branch - on 30/12/2021, and for continuing to procrastinate in paying what he owed, she submitted the cheque to Rafidain Bank / Al-andalus branch drawee, and the bank informed her that there was no account number or balance with the accused, so she requested a complaint against him and added that the accused wrote the cheque in the village of Karbish, which belongs to the Dinarta district)), after the judge of the investigative court took several investigative measures, including his decision to record the testimony of witnesses and issue an arrest warrant against the accused and circulate him in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, he decided on 5/9/2023 to refer the investigative papers to the Rusafa Investigation Court to complete the investigation according to the spatial jurisdiction pursuant to the provisions of Article (53) of the amended Code of Criminal

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Procedure, as the competent court is the court in which the bank on which the cheque is drawn, and on 6/12/2023 decided Judge of the Rusafa Investigation Court Referring the investigative papers to the Sadr City Investigation Court, as Rafidain Bank / Al-Andalu branch is located in Sadr City, on 11/1/2024, the judge of the Sadr City Investigation Court decided to refer the investigative papers to the Federal Court of Cassation to appoint the competent court to consider it because the incident occurred in the governorate of Dohuk / Karbish village / Dinarta district, so the last court issued its decision No. (2603 / Criminal Committee / 2024 / sequence 1456 on 21/2/2024) containing the decision on the subject of the dispute in this case functionally to the Federal Supreme Court and outside the jurisdiction of the Federal Court of Cassation, it decided to refer the case to it to decide on the subject of the aforementioned dispute, and after registering the application and scrutinized 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 5/9/2023 the Akra Investigation Court decided to refer the special investigative papers of the complainant (Nour Sabah Abdel Wahab) and the accused (Nawzad Mohamed Taher) in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, to the Rusafa Investigation Court to complete its investigation according to the spatial jurisdiction pursuant to the provisions of Article (53) of the amended Code of Criminal Procedure, as the spatially competent court is the court in which the bank on which the cheque is drawee is located, and on 6/12/2023, the judge of the Rusafa

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Investigation Court decided to refer the investigative papers to the Sadr City Investigation Court, as Al-Rafidain Bank / Al-Andalus Branch is located in Sadr City, and on 11/1/2024, the judge of the Sadr City Investigation Court decided to refer the investigative papers to the Federal Court of Cassation to appoint the competent court to consider that the incident occurred in (Dohuk Governorate / Karbish village / Dinara district), the last court issued its decision No. (2603 / Criminal Committee / 2024 / Serial 1456 on 21/2/2024), which includes (the decision on the subject of the dispute in this case shall be held functionally before the Federal Supreme Court and shall fall outside the jurisdiction of the Federal Court of Cassation), accordingly, it was decided to refer the case to this court to decide on the subject of negative conflict of territorial jurisdiction based on the provisions of article (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, and since 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 all or part of the crime was committed or any act complementary to it or any consequence resulting therefrom or an act that is part of a composite, continuous or sequential crime or a crime of habit as specified in the place in which the victim was found or in which the money in respect of which the crime was committed was found after it was transferred to him by the perpetrator or a person who knew about it), whereas the crime attributed to the defendant on the assumption of the validity of its proof occurred in (Dohuk Governorate / Karbish village / Dinartah district) within the territorial jurisdiction of the Akra Investigation Court, and that the said court recorded the complainant's statements, began to conduct the investigation and issued an arrest warrant against the accused in accordance with the provisions of Article (459) of the Penal Code No.

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(111) of 1969, as amended, and in application of the provisions of Article (53/Alif) of the Code of Criminal Procedure, so the Court of Inquiry of Akra shall be spatially competent to conduct the investigation, and thus the decision of the judge Investigative Court on 5/9/2023, which includes referring the investigative papers to the Rusafa Investigation Court to complete the investigation according to the spatial jurisdiction is incorrect and contrary to the provisions of the law, as well as the decision of the judge of the Sadr City Investigative Court on 11/1/2024 which includes referring the investigative papers to the Federal Court of Cassation for the appointment of the competent court spatially to hear it, based on the provisions of Articles (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005 and (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 stipulated that (first – if a conflict occurs in the 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, 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 Aakra Court of the Presidency of the Duhok Region Court of Appeal as spatially competent to consider the investigative papers of the complainant (Nour Sabah Abdel Wahab) and the accused (Nawzad Muhammad Taher) in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, and to refer the investigative papers to it and consider its decision issued on 5/9/2023 which includes the referral of the

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investigative papers to the Rusafa Investigation Court to complete the investigation according to the spatial jurisdiction as incorrect and contrary to the provisions of the law, the same applies to the decision of the judge of the Sadr City Investigative Court on 11/1/2024 including the referral of investigative papers to the Federal Court of Cassation to appoint the competent court spatially to hear it and inform the Presidency of the Court of Appeal of the Duhok Region to notify the Court of Investigation and inform the Presidency of the Baghdad / Rusafa Court of Appeal to notify the Investigation Court of Sadr City the need to take into account the correct application of 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 as amended by Law No. (25) of 2021, and Article (30) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and to note this in the future. The decision has been issued unanimously, final and binding on all authorities based on 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 decree No. (30) of 2005 as amended by Law No. (25) of 2021, and the decision has been made clear 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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