

Republic of Iraq
Federal Supreme Court
Ref. 81 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/5/2023 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, Ayooob Abbas Salih, Abdul Rahman Suleiman, 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 Al-Ramadi affiliated with the Presidency of Al-Anbar appeal court.

The Subject of the Request: Adjudication of the conflict of jurisdiction between the Ramadi Investigation Court affiliated with the Presidency of the Court of Appeal in Anbar and the Sulaymaniyah Investigation Court / 2 affiliated with the Presidency of the Sulaymaniyah Region Court of Appeal.

The Request

This court received a letter, from the Ramadi Investigation Court affiliated to the Presidency of the Anbar Court of Appeal, No. (1023 on 4/4/2023) and its attachments the investigative papers of the complainant (Abdullah Muwaffaq Atta) and the accused (Bassem Muhammad Miteb) against whom legal measures were taken following the provisions of Article (453) of the Penal Code No. (111) of 1969, as amended), and the Ramadi Investigation Court requested the appointment of the competent court to hear the case based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005 and Article (4/8th/Alif). Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, the complainant's complaint is subject to the following: ((On 5/12/2017, the complainant (Abdullah Mowaffaq Atta), the managing director of (Khairat Al-Zaytoun General Trading Company), registered his complaint against the defendant (Bassem Muhammad Miteb Hammadi) at the Siwan police station of Sulaymaniyah governorate, stating that the defendant is the company's sales

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manager, he sold a (Forex) tractor belonging to the company without the knowledge and acquired its value, and he is now unknown where he lives, the sale took place in the company's branch in Sulaymaniyah province, so the Sulaymaniyah Investigative Judge / 2 decided to refer the investigative papers to the Ramadi Investigation Court because the accused lives in Anbar Governorate, so the Ramadi Investigation Court judge decided to refuse the referral and present the investigative papers to the Federal Supreme Court to determine the competent court spatially to hear the case, as the place of the crime lies in the company's branch located in Sulaymaniyah Governorate, The place of residence of the accused is not reliable to determine the spatial jurisdiction of the crime, as the Sulaymaniyah Investigation Court / 2 has come a long way in investigating the case, and the territorial jurisdiction is determined by the place where the crime occurred in whole or in part or any complementary act based on the provisions of article 53 of the Code of Criminal Procedure No. 23 of 1971, as amended)). The application was registered with this court, which placed it for scrutiny and deliberation and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that on 21/8/2022, the Sulaymaniyah Investigation Court/2, within the presidency of the Sulaymaniyah Region Court of Appeal, decided to refer the investigative case of the complainant (Abdullah Muwaffaq Atta) and the accused (Bassem Muhammad Miteb), against whom legal action was taken under the provisions of Article (453) of the Penal Code No. (111) of 1969, as amended, to the Ramadi Investigation Court within the presidency of the Anbar Court of Appeal, to complete the investigation according to spatial jurisdiction, on the basis that it is competent to investigate it, the Ramadi Investigation Court decided on 13/3/2023 to reject the referral and present the investigative papers to the Federal Supreme Court, in order to determine the competent court based on the provisions of Article (4/8th/Alif) of the

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Federal Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and whereas the complainant's statement recorded by the Sulaymaniyah Investigative Judge dated (5/12/2017) through which it became clear that the crime attributed to him for the defendant assuming the validity of its proof occurred in the city of Sulaymaniyah / Khabat, it did not result in any other result in any city or region, 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 complex, continuous or sequential crime, or a crime of habit, it is also determined by the place where the victim was found or where the money in which the crime was committed was found after it was transferred to him through the mediation of the perpetrator or a person who knew about it), which means that there is no regard for the place of residence of the accused, as the jurisdiction of the investigation is determined according to the images and cases stipulated in the aforementioned article, not including the place of residence of the accused, and on the basis of the foregoing, the residence of the accused in the city of Ramadi does not mean that the jurisdiction of the Ramadi Investigation Court is held in conducting the investigation of the crime attributed to him, assuming that it occurred in the city of Sulaymaniyah / Khabat, it did not result in any result in the city of Ramadi or any other place, according to what is established through the investigation, and since the crime attributed to the accused on the assumption of the validity of its occurrence in full in the city of Sulaymaniyah / Khabat, and that the Sulaymaniyah Investigation Court/2, has come a long way in the investigative procedures, so it is considered spatially competent in conducting the investigation, as the jurisdiction of the investigation is determined by the place where the whole crime occurred, an act that is part of it, or any act complementary to it, or any consequence resulting therefrom, as determined by the place where the victim was found in accordance with the text of the aforementioned article, therefore, the Sulaymaniyah

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Investigation Court/2 is considered spatially competent to conduct an investigation of the investigative papers of the complainant (Abdullah Muwaffaq Atta) and the accused (Bassem Muhammad Miteb) against whom legal proceedings have been taken in accordance with the provisions of Article (453) of the Penal Code No. (111) of 1969, as amended, and thus the decision of the Sulaymaniyah Investigation Court/2 to refer the investigative papers to the Ramadi Investigation Court to complete the investigation according to the spatial jurisdiction, is incorrect and contrary to the provisions of the law, based on the provisions of Article (53/Dal) of the Criminal Procedure Law amended which mentioned above, in accordance with 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 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 (I. If there is a conflict of jurisdiction between the federal judiciary and the judiciary in the regions, the judicial authority that it deems competent may, or Not competent to hear the dispute, and requests the court to determine the competent judicial authority to hear 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 determine the Sulaymaniyah Investigation Court/2 of the Presidency of the Sulaymaniyah Region Court of Appeal in the Kurdistan Region, spatially competent to consider the investigative papers of the complainant (Abdullah Muwaffaq Atta) and the accused (Bassem Muhammad Miteb) against whom legal action was taken in accordance with the provisions of Article (453) of the Penal Code No. (111) of 1969 amended, refer the aforementioned investigative papers to it, and inform the Presidency of the Anbar Court of Appeal regarding the notification of the Ramadi Investigation Court thereof. The decision has been issued unanimously, final, and binding for all authorities according to the provisions

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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 4/Dhul Qaeda/1444 Hijri coinciding with 24/May/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

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