

Republic of Iraq
Federal Supreme Court
Ref 81/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/3/2024 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: Chamchamal Investigation Court of the Presidency of the Sulaymaniyah Region Court of Appeal.

Subject matter of the request: Adjudication of the conflict of jurisdiction between the Kirkuk 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 representative of the regional government in Baghdad / General Directorate of Administration and Financial Affairs No. (Mim.Ra. 6837) on 20/2/2024) and its attachments Letter of the Presidency of the Sulaymaniyah Region Court of Appeal / Directorate of Administration No. (1588 on 13/2/2024) and the letter of the Chamchamal Investigation Court No. (601 on 13/2/2024) with the investigative papers of the complainant (Kamran Kaka Hama Muhammad Ali) and the accused (Maarouf Omar Ahmed) in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, due to the negative conflict in the territorial jurisdiction between the Kirkuk

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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, after reviewing the investigative papers, it was found that the facts of the case it is summarized as follows: ((On 18/9/2023, the Kirkuk Investigation Court recorded the statement of the complainant (Kamran Kaka Hama Muhammad Ali) through which it became clear that (on 15/2/2023, the defendant (Maarouf Omar Ahmed) handed the complainant a cheque in the amount of (75,000,000) seventy-five million Iraqi dinars, and another cheque on 15/3/2023 for the same amount mentioned above, and it was later found that the cheques were forged and he delivered it in the Rahim aowa neighborhood in Kirkuk province in his office, so he asked for a complaint against the accused and legal action be taken against him)), on 2/11/2023, the judge of the Kirkuk Investigation Court decided to refer the investigative papers to the Chamchamal Investigation Court to complete the investigation according to jurisdiction pursuant to the provisions of Article (53) of the Code of Criminal Procedure, because the cheques - the subject of the lawsuit drawn on 24/1/2024 at Rafidain Bank, Chamchamal Branch, the judge of Chamchamal Investigation Court decided (rejecting the referral) and presenting the investigative papers to the Federal Supreme Court to settle the dispute between the Kirkuk Investigation Court and the Chamchamal Investigation Court based on the provisions of Article (93/8th/Alif) of the Constitution, since the process of drafting the cheques took place in the city of Kirkuk, and after registering the request with this court and conducting the scrutinies, it issued the following decision:

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The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that, on 2/11/2023, the judge of the Kirkuk Investigation Court decided to refer the investigative papers of the complainant (Kamran Kaka Hama Muhammad Ali) and the accused (Maarouf Omar Ahmed) in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, to the Chamchamal Investigation Court to complete the investigation according to jurisdiction pursuant to the provisions of Article (53) of the Code of Criminal Procedure, as the cheques subject of the lawsuit are drawn on Rafidain Bank, Chamchamal branch on 24/1/2024, the judge of the Chamchamal Investigation Court decided to reject the referral and to present the investigative papers to the Federal Supreme Court to resolve the dispute between the Kirkuk Investigation Court and the Chamchamal Investigation Court, the process of drafting the instruments took place in the city of Kirkuk on the basis of the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005, in accordance with the aforementioned detail, 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 the crime occurred in whole or in part, any complementary act thereof, any consequence thereof, or an act that is part of a composite, continuous or consecutive crime or from the crimes of custom as determined by 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 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 Kirkuk Governorate within the territorial jurisdiction of the Kirkuk Investigation Court, and that the said court

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recorded the complainant's statements and began to conduct the investigation in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, therefore, and in application of the provisions of Article (53/Alif) of the Code of Criminal Procedure, the Kirkuk Investigation Court shall be competent to conduct the investigation spatially, based on the text of the aforementioned article, and thus the decision of the Kirkuk Investigation Court on 2/11/2023, Referring the investigative papers of the complainant (Kamran Kaka Hama Muhammad Ali) and the accused (Marouf Omar Ahmed) in accordance with the provisions of Article (459) of the Penal Code No. (111) of 1969, as amended, to the Chamchamal Investigation Court to complete the investigation according to jurisdiction, is incorrect and contrary to the provisions of the law, based on 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 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 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 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), Therefore, the Federal Supreme Court decided to consider the Kirkuk Investigation Court affiliated to the Presidency of the Kirkuk Court of Appeal as spatially competent to consider the investigative papers of the complainant (Kamran Kaka Hama Muhammad Ali) and the accused (Maarouf Omar Ahmed) in accordance with the provisions of Article

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(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 2/11/2023, which includes the referral of the investigative papers to the Chamchamal Investigation Court, incorrect and contrary to the provisions of the law and to inform the Presidency of the Sulaymaniyah Region Court of Appeal to notify the Chamchamal 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 Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, the decision has been made clear on 17/Ramadan/1445 A.H. corresponding to 27/3/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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