

Republic of Iraq
Federal Supreme Court
Ref 84/ 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 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 Finance Affairs No. (Mim.Ra. 7830) on 26/2/2024 and its attachments letter of the presidency of the Sulaymaniyah Region Court of Appeal / Directorate of Administration No. (1708 on 15/2/2024) and the letter of the Chamchmal Investigation Court No. (348 on 21/1/2024) and the investigative papers of the accused (Marwan Mahmoud Mohamed Khalil) in accordance with the provisions of article (240) of the penal code No. (111) of 1969, as amended, to settle the conflict of negative territorial jurisdiction between the Daquq Investigation Court of the Presidency of the Kirkuk

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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 are summarized as follows: ((On 10/9/2023, the statements of the defendant (Marwan Mahmoud Mohamed/Syrian nationality) were recorded before the Daquq Investigation Court, and he stated: that about a year ago from the date of recording this statement, he was working in Anbar Governorate and was informed on 9/9/2023, of the need to leave the governorate by the security authorities, and then he boarded a car to Sulaymaniyah Governorate, and upon his arrival to the Al- Raml checkpoint, he was arrested by the Iraqi army and handed over to Al-Rashad Police Station, 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 was 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/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 because he left Sulaymaniyah Governorate, he violated the residency procedures in Sulaymaniyah Governorate, on 7/12/2023, the judge of the Chamchmal Investigative Court decided (Refusal of referral) and submission of investigative papers to the Federal Supreme Court to settle the dispute between the Daquq Investigation Court and the Chamchamal Investigation Court and 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, the

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(Chamchamal Investigation Court is not spatially competent to consider the investigative papers, and that the asylum seeker's document is not an alternative to obtaining a work permit or residence permit in Iraq, and that the Daquq Investigation Court has come a long way in the investigative procedures until the investigation reached its final stages), and after registering the application with this court and conducting 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 Investigation Court decided to refer the investigative papers of the accused (Marwan Mahmoud Muhammad Khalil) in accordance with the provisions of Article (240) of the Penal Code No. (111) of 1969, as amended, 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, the fact that 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 in Sulaymaniyah and because he left Sulaymaniyah Governorate, thus violating the residency procedures in Sulaymaniyah Governorate, and on 7/12/2023, the judge of the Chamchamal Investigation Court decided (to reject the referral) and to submit the investigative papers to the Federal Supreme Court to resolve the negative conflict in the spatial jurisdiction between the Daquq Investigation Court and the Chamchamal Investigation Court and determine the competent court spatially to conduct the investigation, the asylum seeker's document is not an alternative to obtaining a work permit or residence permit in Iraq, and the Daquq Investigation Court

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has come a long way in the investigative procedures until the investigation reached advanced stages, Based on the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq of 2005, whereas Article 53 (a) 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 the crime occurred 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 determined by 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 who knew about it), whereas the crime attributed to the accused on the assumption of its validity occurred in the province of Sulaymaniyah, because the accused left the aforementioned governorate, and thus violated the residency procedures, therefore, and in application of the provisions of Article (53/Alif) of the Code of Criminal Procedure, the Chamchamal Investigation Court shall be competent to conduct the investigation spatially, and 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, 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 it deems to be competent or not competent to consider 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).

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Therefore, the Federal Supreme Court decided to consider the Chamchemical Investigation Court, which is affiliated to the Presidency of the Sulaymaniyah Region Court of Appeal, as having jurisdiction to consider the investigative papers of the accused (Marwan Mahmoud 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 the presidency of the Kirkuk Court of Appeal to notify the Daquq Investigation Court of this. 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 16/Ramadan/1445 A.H. corresponding to 27/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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