

Republic of Iraq  
Federal Supreme Court  
Ref. 12 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/2/2023 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, Ayoob 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: Al-Khadhimiya Investigation Court – which belongs to the Presidency of Baghdad/ Al-Kharkh Appeal Court.

The Subject of the Request: Determining the Competent Court to Try the Complaint according to the provisions of the article (93/8<sup>th</sup>/Alif) of the Constitution.

### **The Request**

The Federal Court of Cassation / Second Criminal Commission, by its decision No. (25723 / Criminal Commission / 2022, sequence 12635) on 29/12/2022, referred to the Federal Supreme Court, the investigative case of the defendants (Rizwan Omar Mohamed) and (Muhammad Raouf Issa), to appoint the competent court spatially to consider a negative conflict in jurisdiction between the Kadhimiya Investigation Court affiliated to the Presidency of the Karkh Court of Appeal and the Sulaymaniyah Investigation Court affiliated to the Presidency of the Sulaymaniyah Court of Appeal in the Kurdistan Region, as the Kadhimiya Investigation Court referred on 1/12/2019, the aforementioned investigative case was submitted to the Sulaymaniyah Investigation Court to complete the investigation according to the

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territorial jurisdiction, on the basis that it is competent to investigate it, on 20/7/2022, the referred court (Sulaymaniyah Investigation Court/5) sent the investigative papers to the Presidency of the Baghdad Court of Appeal according to its decision dated 6/7/2022 for the purpose of completing the investigation according to the spatial jurisdiction, after rejecting the referral, the Kadhimiya Investigation Court decided on 21/11/2022 to present the investigative papers to the Federal Court of Cassation to determine the competent court, and on the basis of that, the investigative case was referred to this court by the Federal Court of Cassation, according to its letter No. (25723/Criminal Commission/2022) on 23/1/2023 and its attachments, in order to determine the competent court based on the provisions of Article (4/8<sup>th</sup>/Alif) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, according to the aforementioned detail, which its subject based on that the complainant (Abdul Muhaimen Kazem Issa) On 10/3/2019 came to the headquarters of the Iraqi National Security Service / Baghdad Security Department and filed the complaint against the owner of the communication page (Al-Aziz Al-Mawla) for blackmailing him electronically and threatening to publish his family's photos, and after a series of procedures, and on 13/3/2019, the complainant's wife, the complainant (Narges Hussein Yahya), attended and recorded her statements and was ratified by the judge of the Karkh Investigation Court specialized in terrorist cases. On 14/3/2019, the complainant attended, his statements were recorded and ratified by the aforementioned court, and an arrest and investigation order was issued against the defendant (Hussein Mahdi Saleh) in accordance with the provisions of Article (430) of the Penal Code, and on 19/3/2019 the aforementioned defendant (Hussein Saleh Mahdi) was arrested and arrested, and on 26/3/2019, his statements were recorded

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judicially and ratified, and on 3/4/2019, the judge of the Karkh Investigation Court, which specializes in terrorist cases, decided to refer the investigative papers to the Kadhimiya Investigation Court according to spatial jurisdiction, on 17/4/2019, the aforementioned defendant was released on bail, without an annex to the complainants' statement and judicial authentication, and based on the defendant's confession and the complainants' complaint, an arrest warrant was issued against the defendant (Bashar Ali Abdul Karim Al-Khazraji) in accordance with the provisions of Article (430) of the Penal Code, on 7/5/2019, the defendant attended on his own initiative and his statements were judicially ratified and he was arrested, the statements of the sponsored defendant (Hussein) were recorded as a witness to the defendant (Bashar Ali Abed) on 9/5/2019 and judicially ratified, and investigative papers were issued for the defendant (Bashar Ali Abed) and the case became Belonging to the confessed defendant (Hussein Saleh Mahdi), an appendix to the statements of the complainants were wrote and certified judicially on 26/9/2019 and requested the complaint against the aforementioned defendants and the defendants (Muhammad Raouf, Rizwan Omar and Karrar Sahib Juma'a) for receiving money from the complainants, after the court recorded the testimonies of the prosecution witnesses. On 28/10/2019, the investigating judge decided to issue separate investigation papers for the defendants (Muhammad Raouf and Rizwan Omar) about the incident of receiving money from the complainants in Sulaymaniyah Governorate following the provisions of Article (461) of the Penal Code and to issue investigative papers for the accused Karrar Sahib Jumaa following the provisions of Article (461) of the Penal Code about the incident of receiving money from the complainants in Baghdad Governorate, on 1/12/2019, the Kadhimiya investigative judge decided to refer the investigative papers of the

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defendants (Muhammad Raouf and Rizwan Omar) to the Sulaymaniyah Investigation Court to complete the investigation according to the spatial jurisdiction, since the incident of their receipt of the money took place in Sulaymaniyah Governorate based on the provisions of Article (53/c) fundamental, so the Sulaymaniyah investigative judge decided to reject the referral and return it to its court and sent it to the presidency of the Baghdad / Karkh Court of Appeal according to the letter of the Presidency of the Sulaymaniyah Region Court of Appeal No. (6971) on 1/8/2022, based on the letter of the Sulaymaniyah Investigation Court / 5 No. (636) on 20/7/2022, the Kadhimiya Investigation Court decided on 21/11/2022 to submit the investigation papers to the Federal Court of Cassation to determine the competent court to hear it, due to the lack of jurisdiction of the Federal Court of Cassation, the latter decided to refer it to this Court according to its jurisdiction in accordance with the details referred to above and when the investigative papers and decisions issued therein were subject to scrutiny and deliberation, the Federal Supreme Court reached the following decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the Kadhimiya Investigation Court referred on 1/12/2019 the single investigative case of the defendants (Rizwan Omar Mohamed) and (Muhammad Raouf Issa) in accordance with the provisions of Article (461) of the Penal Code No. (111) of 1969 as amended, for receiving sums of money from the complainants (Abdul Muhaimen Kazem Issa and his wife Narges Hussein Yahya) in Sulaymaniyah Governorate, to the Sulaymaniyah Investigation Court to complete the investigation according to the spatial jurisdiction, on the basis that it is competent to investigate them, so the referred court (Sulaymaniyah

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Investigation Court/5) rejected the referral and sent on 20/7/2022 the investigative papers to the Presidency of the Baghdad / Karkh Court of Appeal according to its decision dated 6/7/2022 for the purpose of completing the investigation according to the spatial jurisdiction, on 21/11/2022, the Kadhimiya Investigation Court decided to present the investigative papers to the Federal Court of Cassation to determine the competent court, and on the basis of that, the Federal Court of Cassation decided to refer the investigative case to this court according to its decision No. (25723 / Criminal Commission / 2022, sequence 12635) on 29/12/2022 and its annexes, in order to determine the competent court based on the provisions of Article (4 / 8<sup>th</sup> /Alif) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, according to the aforementioned details, Whereas the incident of handing over the sums of money from the complainants to the defendants was some of them in the province of Baghdad and others in the province of Sulaymaniyah, and the incident of extortion and threats took place in the province of Baghdad and that the complainants are residents of the province of Baghdad, 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 the crime was committed in whole or in part, or any act complementary to it or any result resulting therefrom. or an act that is part of a complex, continuous, or sequential crime or a crime of habit, 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 being transferred to him by the perpetrator or a person who knew about it), therefore, both the Kadhimiya Investigation Court and the Sulaymaniyah Investigation Court are both competent to investigate spatially, as the jurisdiction of the investigation is determined by the

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place where the entire crime occurred, an act that is part of it, any act complementary to it, or any result resulting from it, as well as the place where the victim was found based on the text of the aforementioned article, however, the Kadhimiya Investigation Court, affiliated to the Presidency of the Baghdad / Karkh Court of Appeal, has made great strides in the investigation procedures, until the investigation in the investigative case has reached advanced stages, and thus it is considered spatially competent to conduct the investigation in the investigative case of the defendants (Rizwan Omar Muhammad) and (Muhammad Raouf Issa), and thus the decision of the Sulaymaniyah Investigation Court to reject the referral and return the investigative papers to its court is correct and in accordance with the provisions of the law, but the decision of the Kadhimiya Investigation Court on 11/21/2022, which includes the presentation of the papers Investigative to the Federal Court of Cassation, to determine the court that is spatially competent to conduct the investigation, it is incorrect and contrary to the provisions of the law, as the Kadhimiya Investigation Court, when it deems that it is not competent, should have decided to submit the matter to the Federal Supreme Court to determine the court that is spatially competent to hear the investigative papers, Based on the provisions of Article (53/Dal) of the aforementioned amended Code of Criminal Procedure, 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 (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 a conflict occurs in Jurisdiction between the federal judiciary and the judiciary in the regions, the judicial authority that deems it competent or not competent

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to hear the dispute may request the court to determine the judicial authority competent to hear it. Second: The request to determine jurisdiction shall be sent to the court by a letter signed by the President of the Court of Appeal, with all priorities), which requires informing the Presidency of the Baghdad / Karkh Court of Appeal, to notify the Kadhimiya Investigation Court of this to correctly apply the provisions of the articles of the Constitution and the aforementioned laws and take into account their provisions in the future, in view of the foregoing, the Federal Supreme Court decided to consider the Kadhimiya Investigation Court affiliated to the Presidency of the Baghdad / Karkh Court of Appeal as spatially competent to consider the investigative papers of the defendants (Rizwan Omar Mohammed) and (Muhammad Raouf Issa), and to inform the Presidency of the Sulaymaniyah Court of Appeal in the Kurdistan Region to notify the Sulaymaniyah Investigation Court / 5 of this, and considering that the decision issued by the Kadhimiya Investigation Court to present the investigative papers to the Federal Court of Cassation to determine the court with spatial jurisdiction to conduct the investigation is incorrect and contrary to the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/8<sup>th</sup>/Alif) and (94) of the Constitution of the Republic of Iraq for 2005 and articles (4/8<sup>th</sup>/Alif and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated on 7/Shaaaban/1444 Hijri coinciding 28/February/2023 AD.

**Judge**  
**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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