

Republic of Iraq  
Federal Supreme Court  
Ref. 23 / 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: Investigation Court of Makhmoor which belongs to the Presidency of Nineveh 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 Makhmour Investigation Court of the Presidency of the Nineveh Court of Appeal, according to its letter No. (186) on 31/1/2023, referred the investigative papers of the complainant (Khanzad Nazim Karim Khader) and the defendants (Nashwan, Kanyao, Khatoon, Zeitoun, Hussein Awlad Taher Yahya, and Asmar Ali Mohamed), against whom legal measures were taken following the provisions of Article (431) of the Penal Code No. (111) of 1969, as amended, to the Federal Supreme Court based on the provisions of Article (93/8<sup>th</sup>) of the Constitution and Article (53/Dal) Procedures, to appoint the competent court spatially to consider the occurrence of a negative conflict in jurisdiction between the Anti-Domestic Violence Investigation Court in Erbil, affiliated to the Presidency of the Erbil Court of Appeal in the Kurdistan Region, and

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the Makhmour Investigation Court, affiliated to the Presidency of the Nineveh Court of Appeal, as the Anti-Domestic Violence Investigation Court in Erbil referred the aforementioned investigative case to a Makhmour investigation court to complete the investigation according to the spatial jurisdiction, on the basis that it is competent to investigate it, so the referred court decided (a Makhmour investigation court) On 2/1/2023, the referral was rejected and the investigation papers were presented to the Federal Supreme Court, in order to determine the competent court based on the provisions of Article (93/8<sup>th</sup>/Alif) of the Constitution of the Republic of Iraq of 2005, and it became clear that the complainant's complaint, its subject lies in the fact that (on 28/7/2022, the complainant came to the Office for Combating Violence against Women and the Family in Manara in Erbil for the purpose of filing a complaint against the aforementioned defendants for beating, insulting and slandering her, and her statements were recorded and ratified by the judge of the Anti-Domestic Violence Investigation Court in Erbil on 2/8/2022, on 3/8/2022, the judge of the Anti-Domestic Violence Investigation Court in Erbil decided to refer the investigative papers to a Makhmour investigation court to complete the investigation according to the spatial jurisdiction, and on 26/12/2022, a Makhmour investigation court wrote an annex to the complainant's statement and certified judicially, and the statements of the prosecution witnesses Ibrahim Nazim Karim and Ismail Nazim Karim were also recorded, and they were judicially ratified on 2/1/2023, the appendix of the complainant's statements and the testimonies of the prosecution witnesses showed that the crime attributed to the defendants, assuming that it was proven to be true, took place in the governorate of Erbil, the locality of Bahari, and therefore a Makhmour investigative judge decided to refuse the referral and presented the investigative papers to the Federal Supreme Court to

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determine the court that is spatially competent to conduct the investigation, in accordance with the above-mentioned details, 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 on 3/8/2022, the Anti-Domestic Violence Investigation Court in Erbil decided to refer the investigative case of the complainant (Khanzad Nazim Karim Khader) and the defendants (Nashwan, Kanyao, Khatoon, Zeitoun, Hussein Awlad Taher Yahya and Asmar Ali Muhammad) to a Makhmour investigation court to complete the investigation according to the spatial jurisdiction, on the basis that it is competent to investigate it, so the referred court (Makhmour investigation court) decided on 2/1/2023 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 (4/8<sup>th</sup>/Alif) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, in order to determine the competent court based on the provisions of Article (93/8<sup>th</sup>/Alif) of the Constitution of the Republic of Iraq of 2005, whereas the appendix of the complainant's statements and the testimonies of the prosecution witnesses show that the crime attributed to the defendants on the assumption that it is true occurred in the governorate of Erbil, the locality of Bahari when the complainant was living with her husband in Erbil, and that the complainant lives in a Makhmour district at the present time after the dispute between her and her husband, and whereas

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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 from it or an act that is part of a complex, continuous or sequential crime or a crime of habit, as well as 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 Anti-Domestic Violence Investigation Court in Erbil and the Makhmour Investigation Court are competent to conduct the investigation spatially, as the jurisdiction of the investigation is determined by the place where the whole crime occurred or an act that is part of it or 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, and since the Anti-Domestic Violence Investigation Court in Erbil is affiliated to the Presidency of the Erbil Court of Appeal in The Kurdistan region has made great strides in the investigation procedures, until the investigation into the investigative case reached advanced stages, the defendants are residents of the city of Erbil, and therefore the Court of Inquiry against Domestic Violence in Erbil is considered competent to conduct the investigation of the investigative papers of the complainant (Khanzad Nazim Karim Khader) and the defendants (Nashwan, Kanyaw, Khatoun, Zeitoun, Hussein Awlad Taher Yahya and Asmar Ali Mohammed), thus, the decision of the Anti-Domestic Violence Investigation Court in Erbil to refer the investigative papers to a Makhmour investigative court to complete the investigation according to the territorial jurisdiction is incorrect and contrary to the provisions of the law, based on the provisions of Article (53/Dal) of the amended Code of Criminal Procedure and in accordance

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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 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 judiciary Federal and Judiciary in the Region, the judicial authority that deems it competent or not competent to hear the dispute may request the court to determine the judicial authority competent to hear it. Second: The request for determining jurisdiction shall be sent to the court by a letter signed by the President of the Court of Appeal, with all initial documents), in view of the above, the Federal Supreme Court decided to consider the Anti-Domestic Violence Investigation Court in Erbil, which is affiliated to the Presidency of the Erbil Court of Appeal in the Kurdistan Region, as spatially competent to consider the investigative papers of the complainant (Khanzad Nazim Karim Khader) and the defendants (Nashwan, Kanyaw, Khatun, Zaitoun, Hussein Awlad Taher Yahya and Asmar Ali Muhammad) and to inform the Presidency of the Nineveh Court of Appeal to notify the Makhmour Investigation Court of this. 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/Shaabab/1444 Hijri coinciding 28/February/2023 AD.

**Judge**

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

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