

Republic of Iraq
Federal Supreme Court
Ref. 28 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/3/2023 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 Competence: Investigation Court of Makhmour which belongs to the Presidency of Nineveh Court of Appeal.

The Subject of the Request: Adjudication of the conflict of jurisdiction between the Makhmour Investigation Court of the Presidency of the Nineveh Court of Appeal and the Salah al-Din Investigation Court (Permam) of the Presidency of the Erbil Region Court of Appeal.

The Request

The (Makhmour Investigation Court of the Presidency of the Nineveh Court of Appeal) requested the Federal Supreme Court, by letter No. (252) on 12/2/2023, to determine the competent court spatially to investigate the complaint of the complainants, each of (Hendren Shaban Abdul Majeed and Wardlan Shaban Abdul Majeed) based on the provisions of Article (93/8th) of the Constitution of the Republic of Iraq of 2005, and pursuant to the provisions of Article (53/Dal) of the Code of Criminal Procedure No. (23 of 1971) as amended, in order to appoint the competent court spatially to hear it, due to a negative conflict in jurisdiction between it and the Salah al-Din Investigation Court

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(Perman) of the Presidency of the Erbil Region Court of Appeal, and when the investigative papers and decisions issued therein were put under 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 28/2/2022, the Salah al-Din Investigation Court (Birmam) affiliated to the Presidency of the Erbil Court of Appeal decided to refer the investigative case of the complainants (Hendren Shaban Abdul Majeed and Ardlan Shaban Abdul Majeed) to a drunken investigation court to complete the investigation according to spatial jurisdiction, on the basis that it is competent to investigate it, so the referred court (drunken investigation court) decided on 1/2/2023 to reject the referral and present the investigative papers to the Federal Supreme Court, to determine the competent court based on the provisions of Article (4/8th/Alif) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and through this court's review of the investigative papers, it became clear that on 24/2/2022, the complainants came to Salah Al-Din Police Station in Erbil to file a complaint against the defendants (Falah, Sabah, and Hassan) Awlad (Ali Ahmed) and against the defendant (Muhammad Falah Ahmed) for stealing the sheep belonging to the complainants, disposing of them and transporting them to Baghdad Governorate, without their consent. Contrary to the agreement that was made between them based on the defendants grazing it in the suburbs of Erbil Governorate, the statements of the complainants were ratified by the judge of the Salah al-Din Investigation Court of the Presidency of the Erbil Region Court of

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Appeal on the same date, and on 27/2/2022, the statements of the prosecution witnesses were recorded by the investigating person and ratified by the aforementioned investigative judge, and since it was established according to the complainants' complaint and their testimonies and the judicially certified testimonies of the prosecution witnesses that the agreement between the complainants and the defendants to graze sheep took place in the Salah al-Din area of the Presidency of the Erbil Region Court of Appeal for the purpose of grazing them in the suburbs of Erbil, the defendants stole it and transferred it to the province of Baghdad, and the complainants are residents of the Salah al-Din area and reviewed the Salah al-Din Investigation Court to file a complaint, and since Article (53/a) of the Code of Criminal Procedure No. (23) of 1971, as amended, stipulates (the jurisdiction of the investigation shall be determined by the place where the crime occurred in whole or in part, any act complementary to it, or any result resulting therefrom, or an act that is part of a composite, continuous or sequential crime, or of crimes 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 it was transferred to him by the perpetrator or a person who knew about it), and because the agreement between the complainants and the defendants in the Salah al-Din area of the Presidency of the Erbil Region Court of Appeal that grazing takes place in the suburbs of Erbil, and because the complainants are residents of the aforementioned area, and since the Salah al-Din Investigation Court has made great progress in the investigative procedures, so the Salah al-Din Investigation Court is spatially competent to conduct the investigation of the investigative papers of the complainants (Hendren Shaban Abdul Majeed and Ardlan Shaban Abdul Majeed) and the defendants each of (Falah, Sabah and

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Hassan) children (Ali Ahmed) and the accused (Mohammed Falah Ahmed). Thus, the decision of the Salah al-Din Investigation Court, affiliated with the Presidency of the Erbil Court of Appeal, to refer the investigative papers to a drunken investigative court to complete the investigation according to 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 following 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 stipulated that (First: If there is a conflict of jurisdiction between the judiciary Federal 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 judicial authority competent 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 priorities), and for the foregoing, the Federal Supreme Court decided to consider the Salah al-Din Investigation Court affiliated to the Presidency of the Erbil Region Court of Appeal as spatially competent to consider the investigative papers of the complainants (Hendren Shaban Abdul Majeed and Wardlan Shaban Abdul Majeed) and the defendants (Falah, Sabah, and Hassan) Awlad (Ali Ahmed) and the defendant (Muhammad Falah Ahmed) and to return the aforementioned investigative papers to the Presidency of the Erbil Region Court of Appeal to send it to the Salah al-Din Investigation Court to complete the investigation according to jurisdiction and to inform the Presidency of the Nineveh Court of Appeal to notify its drunken investigation court of this. The decision has

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been issued unanimously, final, and binding for all authorities according to the provisions 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 27/Shaaban/1444 Hijri coinciding with 20/March/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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