

Republic of Iraq
Federal Supreme Court
Ref. 69 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/4/2023 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 Ali, 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 Khanaqeen/ Qurtu which belongs to the presidency of Kirkuk appeal court Karmian.

The Subject of the Request: to adjudge in venue jurisdiction conflict between the investigation court of Jalawlaa which belongs to the presidency appeal court of Diyala and the Khanaqeen investigation court/ Qurtu which belongs to the presidency appeal court of Kirkuk/ Karamian.

The Request

This court received the letter of representation of the Kurdistan Regional Government No. (M. R. 10520 dated 19/3/2023) and its attachment is the letter of the Judicial Council - Kurdistan Region / Presidency of the Kirkuk Region Court of Appeal / Karamian No. (273/A/2023 dated 2/3/2023), according to which the letter of the Khanaqin / Qurtu Investigation Court No. (71) was sent on (27/2/2023) and its attachments are original copies of the investigative papers of the defendants (Omar Qais Naji and Abdullah Rashid Zaidan) in accordance with Article (456) of the Penal Code

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based on the discriminatory decision issued by the Commission Expanded Court of Cassation of the Kurdistan Region No. (180/Expanded Commission/2022) on 15/11/2022 in order to send it to the Federal Supreme Court to appoint the competent court spatially to hear the case based on Article (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, this is due to the emergence of a conflict in the territorial jurisdiction between the federal judiciary and the judiciary in the Kurdistan Region.

Upon receipt of this court, it was subject to scrutiny and deliberation, and the court reached the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that on 13/4/2022, the Jalawla Investigation Court of the Presidency of the Diyala Court of Appeal decided to refer the investigative papers of the complainant claiming the waiver of personal right (Ibrahim Hussein Abdullah) and the sponsored defendants (Omar Qais Naji and Abdullah Rashid Zaidan), to the Kalar Investigation Court of the Presidency of the Kirkuk/Karamian Region Court of Appeal, and the latter referred it to the Khanaqin / Qortu Investigation Court of the same Appeal region mentioned above, but the Khanaqin / Qortu Investigation Court refused the referral, the latter court decided to return the investigative papers to the court, requesting the appointment of the competent court (Khanaqin / Qortu Investigation Court) to be presented to the Federal Supreme Court based on the discriminatory decision issued by the expanded body of the Kurdistan Region Court of Cassation No. (180/Expanded Commission/2022) on 15/11/2022, in order to

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appoint the competent court to complete the investigation of the case in accordance with the provisions of Article (93/8th/Alif) of the Constitution of the Republic of Iraq for the year 2005, since the dispute had occurred between the Jalawla Investigation Court and the Khanaqin / Qortu Investigation Court of the Judicial Council in the Kurdistan Region, and on 26/1/2023, the Khanaqin / Qortu Investigation Court decided to refer the investigative papers to the Federal Supreme Court following the discriminatory decision and requested this court to determine the competent court spatially to consider the aforementioned case, based on the provisions of Article (93/8th/Alif) of the Constitution. Upon reviewing the investigative papers, it was found that the facts of the case are summarized as follows: ((On 21/7/2019, the complainant, the plaintiff of the personal right (Ibrahim Hussein Abdullah), moved the complaint (according to his statement and its appendix) against the defendants, each of (Omar Qais Naji and Abdullah Rashid Zaidan) for blackmailing his minor son (Abdul Rahman) and obtaining from him an amount of (eighty million dinars) as a result of threatening and blackmailing him through a conversation on the Messenger program that took place between him and one of the girls, and the lawsuit was adapted in accordance with the provisions of Article (456) of the Penal Code, and the aforementioned defendants were arrested, and their statements were recorded by a confession by the Jalawla Investigation Court, and the defendant (Omar Qais Naji) was released on bail until the outcome of the lawsuit, the case has been investigated in all its aspects, and depends only on linking the record of the sponsoring defendant's precedents, and it is stated in the complainant's statement, in the field of residential address, that he lives in Jalawla - the former Al-Jamhour neighborhood - and

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currently lives in Kalar - Saleh Agha locality)), and since Article (53/Alif) 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 all or part of the crime occurred, or any complementary act thereof, or any consequence resulting therefrom, or an act that is part of a compound, 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 it was transferred to him by the perpetrator or a person aware of it), and because the extortion incident occurred on the assumption of the validity of its proof in the locality (Saleh Agha) of the Kalar district because of the exaggerated delivery, and because the victim, and the plaintiff of the personal right, is a resident of Jalawla district - the former Jamahiriya neighborhood - and currently lives in Kalar - Saleh Agha locality, since the defendants are residents of Jalawla district / Al-Shuhada neighborhood, therefore, the Jalawla Investigation Court of the Presidency of the Diyala Court of Appeal and the Kalar Investigation Court of the Presidency of the Kirkuk / Karamian Region Court of Appeal are both competent to conduct the investigation spatially, as the jurisdiction of the investigation is determined by the place where the whole crime occurred, an act that is part of it, any complementary act to it, or any result resulting from it, as well as the place where the victim was found or the money in which the crime was committed was found. concerning it after its transfer to it by the perpetrator based on the text of the aforementioned article, since the defendants are residents of the Jalawla district / Al-Shuhada neighborhood, therefore, the Jalawla Investigation Court of the Presidency of the Diyala Court of Appeal and the Kalar Investigation Court of the

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Presidency of the Kirkuk / Karamian Region Court of Appeal are both competent to conduct the investigation spatially, as the jurisdiction of the investigation is determined by the place where the whole crime occurred, an act that is part of it, any complementary act to it, or any result resulting from it, as well as the place where the victim was found or the money in which the crime was committed was found. concerning it after its transfer to it by the perpetrator based on the text of the aforementioned article, since the Jalawla Investigation Court of the Presidency of the Diyala Court of Appeal, has made great strides in the investigation procedures, until it reached advanced stages, and therefore it is considered spatially competent to conduct an investigation with the investigative papers of the complainant claiming the waiver personal right (Ibrahim Hussein Abdullah) and the sponsored defendants (Omar Qais Naji and Abdullah Rashid Zaidan), thus, the decision of the Jalawla Investigation Court to refer the investigative papers to the Kalar Investigation Court to complete the investigation according to the territorial jurisdiction is incorrect and contrary to the provisions of the law, as well as the decision of the Khanaqin / Qorto Investigation Court, which rejected the referral and requested the expanded body in the Kurdistan Region Court of Cassation to appoint the competent court spatially to complete the investigation, based on the provisions of Article (53/d) of the amended Code of Criminal Procedure and in accordance with the provisions of Article (93/8th/Alif) of the Constitution and (4/8th/Alif) of the Federal Supreme Court Law No. (30) of 2005 as amended, 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 stipulates that (First: If there is a conflict of jurisdiction between the federal judiciary and the judiciary

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in the regions, the judicial authority that it deems competent or not competent to consider the dispute may 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), because of the above, the Federal Supreme Court decided to consider the Jalawla Investigation Court of the Presidency of the Diyala Court of Appeal, spatial competence to consider the investigative papers of the complainant claiming the waiver personal right (Ibrahim Hussein Abdullah) and the sponsored defendants (Omar Qais Naji and Abdullah Rashid Zaidan) following the provisions of Article (456) penalties and refer the investigative papers to it, and inform the Presidency of the Kirkuk / Garmian Region Court of Appeal to notify the Investigation Courts of Kalar and Khanaqin / Qurtu of this. The decision has 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/Ramadhan/1444 Hijri coinciding with 18/April/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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