

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 6/federal/2021



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 25.4.2021 headed by the Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali whom are authorized to judge in the name of the people, they made the following decision:

The Request:

The judge of Investigative court of al-Mosul/Left request from FSC under the letter No. (7630/2021) on 1/4/2021 Appointing the competent court to hear the investigative case of the accused paid bail, (Sabri Ghanem Sabri) in accordance with the provisions of Article (5) of the Human Organ Transplantation and Prevention of Trafficking Law No. (11) of 2016 as (amended), the subject of which is (accused (Sabri Ghanem Sabri Ibrahim) sold an organ of his body (kidneys)) The above investigative judge relied on the provisions of Article (93/8<sup>th</sup>/alif) of the Constitution of the Republic of Iraq for the year 2005. The request under scrutiny and deliberation by the FSC and reached the following decision:

## The Decision:

After scrutiny and deliberation by the FSC found that on date 11/10/2020 the judge of Investigative court of al-Mosul/Left decided, based on the report presented by the Division of Combating Human Trafficking and Human Organs, to refer the case to the Erbil Investigation Court to complete its investigation, according to venue jurisdiction of the incident in the governorate of Erbil based on the provisions of Article (53/alif) of the Criminal Procedures Law No. (23) of 1971 (amended) and on date 11/1/2021 the judge of the Erbil Investigation Court (because the complaint was registered with the Investigative court of al-Mosul/Left on 15/9/2019, and that it reached advanced stages of investigation.) return the papers to the Investigative court of al-Mosul/Left to complete the investigation. The judge of the Investigative court of al-Mosul/Left decided on 24/3/2021 to present the matter to the FSC to determine the spatially competent complaint hearing the case, considering that the decision to return the investigative papers is a refusal of the referral. After scrutiny found that on the date 15/9/2019 the Investigative court of al-Mosul/Left recorded the statements of the accused (Sabri Ghanem Sabri), who was arrested in accordance with the provisions of Article (444/1<sup>st</sup>) of the Penal Code regarding his theft of the house of the complainant, (Ahmad Abd al-Salam Yunus) his testimony came that two years ago, his father sold the kidney of the above accused in the governorate of Arbil for twelve million dinars, and this case was settled to him regarding that and the sales process was supported by the medical report issued by the Nineveh Health Department, Forensic Medicine Department, issue No. (4526) on 3/3/2020 this includes conducting a forensic medical examination on a person called (Sabri Ghanem Sabri) on the date of 3/3/2020 and it was found that the operation of the left kidney was surgically removed and upon scrutiny, and since the crime occurred in the governorate of Arbil and since Article (53/1<sup>st</sup>) of the Criminal Procedure Law No. (23) of 1971(amended), stipulated that (The jurisdiction of the investigation

shall be determined by the place where the whole crime or part of it occurred, any act complementary to it, or any result resulting from it or an act that is part of a complex, continuous or consecutive crime, or a habit crime. The crime was committed in his regard after it was transferred to him by the perpetrator or a person aware of it). Therefore, the decision of the Erbil Investigation Court on 1/11/2021, which includes returning the investigative papers to the Investigative court of al-Mosul/Left to complete the investigation, is incorrect and contrary to the law, as the Erbil Investigation Court judge, when it was deemed that he was not competent to investigate it, reject the referral and present the matter to this court to appoint a competent judge. The court noted that the law that most applies to the criminal description of the accused's act in the case is the Human Organ Transplantation and Prevention of Trafficking Act No. (11) of 2016, (amended) according to the punitive articles contained therein. For the above, the FSC decided to consider the Erbil Investigation Court as the competent court to spatially investigate the case in question, and to notify the Investigative court of al-Mosul/Left about this. The decision was issued by unanimously, decisively and binding on all authorities based on the provisions of Articles (93/8<sup>th</sup>/alif) and (94) of the Constitution of the Republic of Iraq for the year 2005 and the article (5/2<sup>nd</sup>) of FAC's Law No. (30) of 2005 (amended) on 25/4/2021.