



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 the Mosul Left Side Investigation Court, requested the Federal Supreme Court in the letter no.(7624) on 1.4.2021 to appoint the competent court to consider the investigation lawsuit of the accused (Omer Muhammed Ali) according to the provision of article (5) of the Law of Human Organ Transplantation and the prevention of trafficking in it no.(11) of 2016 amended, it subject is (the mentioned accused in participation with others accused has sold his own kidney), the investigation judge above has based on the provisions of article (93/8th/a) of the Constitution of Iraq for 2005.

The request has been set under scrutiny and deliberation by the F.S.C. and it decided the following:

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The decision:

During scrutiny and deliberation by the F.S.C., it found that on 3.11.2020 the judge of Investigation of Mosul left side under the report submitted by the division of Combating Human and Human Organs Trafficking, has decided to refer the lawsuit to Dohuk Investigation Court to complete its investigation according to the venue jurisdiction under the provision of article (53/alif) of the Criminal Procedures Law no.(23) of 1971 amended, on 16.2.2021 the Investigation judge in Dohuk decided that (as the accused is from Nineveh governorate and did not undergo any surgery in the city of Dohuk according to the letter of Dohuk general health department no. (830) on 19.1.2021, and that the incident location is Ninawa Governorate), so he decide to refer the lawsuit to Mosul left side Investigation court to complete the investigation of it according to the provision of article (53/Jim) of the Criminal Procedures Law. On 24.3.2021 the judge of Mosul left Side Investigation Court decided to present the subject on the F.S.C. to decide the competent venue court to consider the lawsuit according to the provision of article (93/8th/a) of the Constitution, under consideration that returning the investigation document from Dohuk investigation court is an decision of refusing the referral. During scrutiny, it found that on 29.8.2021 the accused (Omer Muhammed Ali) and (Zead Khalaf Mahdy) were arrested according to article (5) of the

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amended Law of Human Organ Transplantation and the prevention of trafficking in it no. (11) of 2016 under the report submitted by the division of Combating Human and Human Organs Trafficking, the mentioned report included that on the above date, a detachment of the Popular Crowd Authority - Security Directorate Nineveh axis brought the mentioned two accused under its letter no.(189) on 29.8.2020 after arresting them on 25.8.2020 because an info stated that they work in human organs trafficking. On 31.8.2020 their statements was noted by the judge of Mosul left side Investigation court. The accused Omer Muhammed Ali stated that on ninth month of 2019 he had sold his kidney, the operation was conducted in Azady public hospital in Dohuk governorate, as for the second accused Zead Khalaf Mahdy he stated that he is not related to the subject and he work as car driver. For the result of the investigation, he was released for lack of evidence according to the provision of article (130/beh) of the criminal procedures law. The letter of Ninewah Health Department, Department of Forensic Medicine no.(11586) on 17.9.2020 included (conducting a forensic medical examination on the accused Omar Muhammad Ali, and it was found that there was a wound in the left side of the kidney lift operation, according to the radiological and sonar report), also, the letter of General Directorate of Health in Dohuk Governorate, legal affairs section, personnel division no.(830) on 19.1.2021 which

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included (that no kidney donation operation was performed by Omar Muhammad Ali in public and private hospitals in Dohuk governorate, because the committee concerned with donating kidneys is present in all hospitals). Accordingly, for the aforementioned, as the accused (Omer Mohammad Ali) has admitted before the investigation judge that he sold his kidney in month nine of 2019, and that the surgical operation was conducted in Azady hospital in Dohuk governorate, and the letter issued by Ninewah Health Department confirmed that, but the letter issued from Dohuk general health department no. (830) on 19.1.2021 denies that the mentioned operation was done in the mentioned hospitals of Dohuk governorate, as the venue jurisdiction is set according to the provision of article (53/alif) of the Criminal Procedures Law no.(23) of 1971, (amended), which stated that (the jurisdiction of the investigation is determined by the place where the whole crime or part of it occurred or any act complementing it or any consequence resulting from it or an act that is part of a complex, continuous or consecutive crime or a habit crime, and it is also determined by the place in which the victim was found or where the money was found which the crime was committed about it after it was transferred to it by the perpetrator or a person knowing about it). Since the procedures of investigating judges are complementary to each other, whether they are issued by the same court or issued by judges working within

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investigation courts subordinate to different courts of appeal or workers within the investigation courts of the same court of appeal based on the provisions of article (87) of the Constitution which stated that (the judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law), on the other hand, the investigative judge's procedures and decisions are not invalid due to their issuance contrary to the provisions of the paragraph (alif) of article (53) of the law of Criminal Procedure in accordance with what is included in the paragraph (Jim) of the same article, and since the investigation court of Ninawa began to conduct the investigation with the accused Omer Muhammed Ali on the date 29.8.2020 and that the investigation has passed for a long period and in an advanced stage, therefore, the aforementioned court is the one competent in venue to hear the case under consideration. Accordingly, the F.S.C. decided to consider the Mosul left Side Investigation Court is the competent court to investigate in venue in the lawsuit subject of decision, and to notify the judge of Dohuk investigation court about it, and the obligation to refuse the referral if he sees that he is not competent, and to presents the subject on this court to decide the in venue competent court. This decision has been issued unanimously, final, and binding on all authorities according to the provisions of articles (93/8th/a) and (94) of the Constitution

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Republic of Iraq
Federal Supreme Court
Ref. 8 / federal / 2021



Kurdish text

of Iraq of 2005, and articles (4/8th/alif) and (5/2nd) of the Federal Supreme Court's law no.(30) of 2005 (amended), on 25.4.2021.

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