

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 9/federal/2021



Kurdish text

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. (7625/2021) on 1/4/2021 appointing the competent court to hear the investigative case of the accused paid bail, (Sabah Muhammad Hashem and his group) in accordance with the provisions of Article (5) of the Human Organ Transplantation and Prevention of Trafficking Law No. (11) of 2016 as (amended), Its topic is focused on (The defendant Sabah Muhammad Hashem sold her kidney in association with the defendants Mayada Muhammad Malak, Ghafran Essam Ahmed and Mustafa Essam Ahmed, Kailan Abdul-Jabbar Muhammad and Ghassan Idris Shaheen and Aintizar Abdul Jabbar Muhammad) The above investigative judge relied on the provisions of Article (93/8th/alif) of the Constitution of the Republic of Iraq of 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 based on the provisions of Article (53/alif) of the Criminal Procedures Law No. (23) of 1971 (amended). On date 11/1/2021 the judge of the Erbil Investigation Court referring the investigation papers to the Mosul Investigation Court to complete the investigation, as the case was registered with the last court on 1/20/2021 and it conducted an investigation and went a long way. On date 24/3/2021 the Mosul Investigation Court decided presenting the matter to the FSC to determine the spatially competent court based on the provisions of Article (93/8th/alif) of the Constitution, considering that returning the investigative papers from the Erbil Investigation Court is considered as a reject of the referral. After scrutiny found that on the date 19/1/2020 the informant Zaid Saad Gharbi came to the Abi Tammam Division for Combating Crime in Mosul and wrote down his statements and reported that the accused Mustafa Essam Ahmed called him and requested a meeting with him and when that meeting took place, he told him that he and his mother Mayada Muhammad Malak worked in selling kidneys and in agreement with a group of defendants who trade in Organs Humanity is in the city of Erbil, and on the same date, the other informant, Ammar Nazir Muhammad Mahmoud, attended and wrote down his statements and repeated what was stated by informant Zaid Saad, and when they appeared before the judge of the Investigation Court of Mosul/ Left, they confirmed the same statements mentioned above. On date 1/10/2020 the mentioned judge decided to issue an arrest warrant against the accused Mustafa Essam Ahmed in accordance with article (5) of the Combating Human Trafficking Law No. (28) of 2012, and after his arrest and the recording of his statements, he decided on

21/1/2020 to issue an arrest warrant against the accused, Mayada Muhammad Malak, Ghufan Essam Ahmed and Sabah Muhammad Hashem, according to article of accusation and on 25/1/2020 the defendants Mayada Muhammad Malak and Sabah Muhammad Hashem were arrested and arrested according to the same article and their statements were recorded. The statements of the accused Sabah Muhammad Hashem came that she agreed with her cousin, the deceased, Ghufan Essam Ahmed, to sell her kidneys in the presence of her aunt, the accused Mayada Muhammad Malak, and the agreement was obtained in the latter's house, which is located in Al-Ariyah district in Mosul, in September of 2019, they went to the city of Erbil to implement this, with the accused Mustafa Essam Ahmed, and through one of the brokers working in the trade in human organs, the accused Ghufan Essam Ahmed sold her kidney to a person and the operation was carried out in Bar Private Hospital in the governorate of Erbil and she at that time, she did not perform the operation to sell her kidney where she went, after a month, to Dohuk governorate to agree on that and in cooperation with the rest of the defendants, and in fact it was agreed upon, and the surgery was performed in the same hospital. In the above, this court finds that the legal description of the crime committed and the most applicable is in accordance with the punitive articles contained in the Human Organ Transplantation Operations and Prevention of Trafficking Law No. (11) of 2016 (amended). Therefore the article (53/alif) of Criminal Procedure Law (23) of 1971 (amended) state 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. The crime was committed against him after it was transferred to him by the perpetrator or a person familiar with it) Therefore, the Erbil Investigation Court is the spatially competent court

to conduct the investigation, and its decision on 11/1/2021 to return the investigative papers to the Investigation Court of Mosul/Left is incorrect and contrary to the law where the court, when it considers it not competent, had to decide to reject the referral decision and to present the subject to the FSC to determine the spatially competent court to consider the case 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 (93/8th/alif) and (94) of the Constitution of the Republic of Iraq for the year 2005 and the articles (4/8th/alif and 5/2nd) of FAC's Law No. (30) of 2005 (amended) the decision was issued by unanimously on 25/4/2021.