

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.109 /federal/media/2019



Kurdish text

The Federal Supreme Court has been convened on 26/9/2019, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Jaafar Nasir Hussein , Akram Taha Mohammed ,Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Request:

The minister of defense/ being in this capacity- requested from the FSC according to the letter which dated on 24/9/2019, what its text is the following:

The challenge requester:

Minister of defense/ being in this capacity- his two agents the legal officials (Abd AL-Kareem AL-Aibi) and (Ali Talib Qasim)

Challenged against:

1. the decision of the Kurdistan court of cassation, the expanded committee No.(72/the expanded committee/2012) on 19/11/2013.
- 2.the decision of the military court of cassation No.(54) on 10/3/2016 Heh.2
3. the decision of the federal court of cassation No.(1416/ the penal expanded committee/2014) on 23/7/2014
4. the decision of the federal court of cassation No.(898/ the penal expanded committee/2016) on 27/6/2016

The body of the challenge request:

An investigational commission has already been convened in the intelligence and security department of Erbil for the fact that there are local numbers on the guns which belong and received by the employee (Dal/2 Abu Bakir Rashid) and he was defaulted according to the provisions of the article (316) from the penal code No.(111) for 1969 (amended), and he was fined the value of the weapons that had been replaced and recommended to refer the accused to the competent courts as made clear lately.

1.the investigational papers had been deposited to the higher judicial council/ the presidency of the public prosecution according to the letter of the military public prosecution department No.(1/803/2886) on 6/12/2012 to deposit it to the courts according to their fields of competence and geographical jurisdiction.

2. the investigational papers were sent to the higher judicial council/ the office of the mutual coordination commission according to the letter of the higher judicial council/ the presidency of the public prosecution/ the legal section according to their letter No.(1069/Qaf/2012/5573) on 18/12/2012. The investigational papers were returned back from the presidency of the public prosecution/ the legal section according to their letter No.(1069/Qaf/2012/2427) on 27/1/2013, which included that the commission is incompetent for not being a judicial body, and it recommended that it is possible to send it to the court of Kurdistan region through the executive authority.

3. the investigational papers were deposited to courts of Kurdistan region and the papers were returned back to the ministry of defense accompanied by the decision of the court of cassation at Kurdistan region/ the expanded committee No.(72/expanded committee/2012) including that the courts of Kurdistan region are incompetent because the case is within the competence of the military courts for the reasons listed in the military decision.

4. the investigational papers were deposited to the fourth military court according to the law No(30) for 2007, the origins of the military trials which issued its decision No.(92/2015) which decided the incompetent because the accused was not a military person, he was a civilian employee. The deci-

sion of the court had been ratified by the military court of cassation according to its decision No.(54) on 6/3/2016.

5. the investigational papers were presented before the federal court of cassation and the Kurdistan court of cassation decision No.(72/ the expanded committee/2012) was challenged in order to determine the competence considering that the referring was rejected by the courts of Kurdistan region and the military courts. The federal court of cassation issued its decision No.(1416/ the expanded penal committee/2014) including the rejection of the request of determining the competence because the presidency of the court of cassation in Kurdistan region settled the subject of the competence in its decision No.(72/ the expanded committee/2012) on 19/11/2013.

6. the ministry of defense presented the subject again before the federal court of cassation/ the expanded committee in order to determine the competence and the federal court of cassation issued its decision no.(898/ the penal expanded committee/2016) on 27/6/2017 which decided the incompetent because the subject of the case is out of the court of cassation competence and it decided to return back the papers to the ministry of defense. Based on this and considering the unacceptance of the investigational papers by the court of Kurdistan region/ the military court of cassation and the federal court of cassation and for the decision that issued as we made clear above, we request from your respected court to issue you're the decision about determining the competent court to try the case in order to preserve the public fund. Please accept our respect and appreciation.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the minister of defense requested from the FSC to determine the competent court for proceeding the investigation of the case the accused in it (Dal.2/ Abu Bakir Rifat Rasheed) the complainer is the public right/ the ministry of defense- according to the article (316) from the penal code. The FSC found from the scrutiny of the papers presented to it that a judicial disputing occurred between the courts of Kurdistan region and the military courts for the trying of the case. whereas it was made clear that the accused is a civilian employee works in the department of intelligence and security of Erbil, and

the article (4/3rd) from the law the origin of military penal trials No.(22) for 2015 decided that the military courts are incompetent to try the cases the accused of it is a civilian. So the courts of investigation of Erbil are competent. So the FSC decided according to the article (93/8th/Alif) from the Constitution to consider the courts of investigation in Erbil are competent to proceed the investigation of this subject and to notify the ministry of defense about this. The decision was issued unanimously and decisive on 26/9/2019.