

# IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

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



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 26.9.2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

## **The Request**

The Minister of Defense/ being in this post requested the F.S.C. on the date 24/9/2019 the following:

(Greetings and appreciation

**The challenge requester:** the Minister of defense/ being in this post – his agents the legal officials Abd Alkareem Al-Aeby and Ali Talib Qasim.

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*Atkura*

### **To challenge against him:**

1. The decision of Kurdistan cassation court- the extended committee No.(72/extended committee/ 2012) on 19/11/2013.
2. The decision of the martial cassation court No.(54) on 10/3/2016 heh 2.
3. The decision of Federal cassation court No.(1416/extended criminal committee/2014) on 23/7/2014.
4. The decision of Federal cassation court No.(898/extended criminal committee/2016) on 27/6/2016.

### **The challenge request' party:**

An investigation committee has been formed in Erbil intelligence and security directorate on how there are local figures on the weapons of above that are received by the employee (dal/2 Abo Baker Refaat Rashid) who was defaulted according to the provision of article (316) of the Penalty law No.(111) for 1969 (the amended) an involved him the value of the weapons that have been replaced and recommendation to refer the accused to the competent courts as explained below.

1. The investigation file was submitted to Higher Judicial Council/ Public Prosecutions presidency by the letter of the martial public prosecutions directorate No.(1/803/2886) on 6/12/2012 to entrust it before the courts according to locative and qualitative jurisdiction.
2. The investigation file was submitted to Higher Judicial Council/ office of the joint judicial coordination committee under the letter of the Higher Judicial Council/ public prosecutions presidency/ the legal division by their letter No.(1069/qaf/2012/5573 on

18/12/2012), the investigation file was returned by the public prosecutions presidency/ the legal division by their letter No.(1069/qaf/2012/2427 on 27/1/2013) which include that the committee is not competent as its not judicial party, and recommended the possibility of sending it to Kurdistan court throw the executive authorities.

3. The investigation file was submitted to Kurdistan region courts and the it was returned to the defense ministry accompanied by the decision of Kurdistan cassation court- the extended committee No.(72/extended committee/ 2012) which stated that Kurdistan region courts don't have the jurisdiction as the case is part of the martial court's jurisdiction for the reasons listed in the martial decision.
4. The investigation file was submitted to the Forth Martial court according to the Military Procedure law No.(30) for 2007, and it issued the decision No.(92/2015) stating the lack of jurisdiction as the accused is not military but civil employee, the court decision was ratified by the Martial cassation court by it decision No.(54) on 6/3/2016.
5. The investigation file was presented before the Federal Cassation court and to challenge the decision of Kurdistan region court No.(72/extended committee/ 2012) to specify the jurisdiction, as Kurdistan region courts and the martial courts has refused the case, the federal cassation court has issued it decision No. (1416/ extended criminal committee/2014) which included rejecting a request of specifying the jurisdictions because the presidency of the cassation court in Kurdistan has decide the jurisdictions in the decision No.(72/extended committee/ 2012) on 19/11/2013.

6. The ministry of defense presented the subject again before the federal cassation court/ extended committee in order to specify the jurisdictions and it issued the decision No.(898/extended criminal committee/2016) on 27/6/2017 stating the lack of jurisdictions because the case subject is out of the cassation court jurisdiction and decided to return the case file to the defense ministry.

Accordingly, due to the refusal of considering the investigation file by Kurdistan region court, martial cassation court and federal cassation court and for the decision it issued as mentioned above, we request your estimated court to determine the competent court to consider the case, for the sake of public money.

Please accept all respect and appreciation.)

The request has been set under scrutiny and deliberation by the F.S.C. in the session held on 26/9/2019, and issued the following decision.

### **The Decision**

During scrutiny and deliberation by the F.S.C. the court found that the minister of defense/ being in this post requested the F.S.C. to specify the competent court to conduct the investigation in the case of the accused (Dal.2 Abo Baker Rifaat Rashied) the complainant in it " public right" the Iraqi defense ministry according to article (316) of the penalty law, the F.S.C. found by scrutinizing the presented file that there is Judicial conflict between the courts of Kurdistan region and the martial courts to consider the subject. It found that the accused in the lawsuit is civil employee work on Erbil intelligence and security directorate, article (4/3<sup>rd</sup>) of the martial

procedure law No.(22) for 2016 stipulated that the martial courts is not competent to consider the cases that the accused in it is civil, therefore Erbil investigation courts are the competent party to conduct the investigation in such lawsuits. Therefore according to article (93/8<sup>th</sup>/alif) of the constitution the F.S.C. decided to consider Erbil investigation courts the competent party to conduct the investigation in the subject, and to notify the ministry of defense about that. The decision has been issued decisively and unanimously on 26/9/2019.