

Activating the roll of Public Prosecutor's Office In the Iraqi Kurdistan Region

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Preface:

Implementing a mature democratic system and realizing a healthy model of governance in any country, is impossible without sovereignty of law and all the judicial institutions. Public prosecutor, as any other specialized judicial institution, although has a different structure, duty and task, represents the societal protection and public interest, which gives it a strong position. The duty of public prosecutor in any country has a significant effect in realizing the sovereignty of law, protection of rights, liberties and implementing justice.

The experience of the countries in the world suggest that public prosecutor, in terms of structure and its relation to the other institutions, leaves an effect on the performance of the legislative, executive and judiciary authorities, as it affects the power and of its own institution, in terms of compliance with legal terms, accountable to an institution which monitors and defends the governance system and the legal institutions, protects the lives and wealth of public and security.

Thus, the idea of public prosecutor is not new. Public prosecutor was the representative of the executive power [king] in the past, punishing anyone or party which violates the laws, defending the public good. However, through time and with the creation of judiciary power as the backbone of justice, public prosecutor has become the second in importance to protect the rights of the public.

As mentioned above, public prosecutor has its presence on many different experiences. In the Kurdistan region, the public prosecutor was regulated under the executive authority, relating to the minister of Justice. However, through reading the law of the public prosecutor in Iraq and the Kurdistan region, it becomes clear that the public prosecutor is not independent in terms of administration and finance, which made it inactive in performing its duties. The best evidence to this course is the current crises in the Kurdistan region. Observing the problems closely, we have to question to the role and position of the public prosecutor in the Kurdistan region.

This paper contains four solutions, aiming at giving clarification to the members of parliament, as they are the only legislative authority in the Kurdistan region that are able to regulate the public prosecutor through issuing a special law to regulate the factors that affect the independence of the public prosecutor, as appointing the head and members of the public prosecution, their duty time, services, structure, finance of the institution in a way that guarantees more independence. To this purpose, we have relied on these laws below:

1. The law of public prosecutor, number 159 of 1979.
2. Appendix law to the law of public prosecutor, number 24 of 2007 of the Kurdistan region.
3. Amended law of public prosecutor in Iraq number 10 of 2006.



Core Issue

Public prosecutor's office cannot be active towards its inherent aim in the Kurdistan region as it belongs to the executive authority.

Targeted Group

The targeted groups of this paper are:

First/ Members of the Kurdistan parliament: This paper is a facilitation to the MPs to have a guidance in terms of the way of administrative and financial management of the public prosecutor in the world, as to benefit from this paper for issuing a law to public prosecutor, picking the most suitable option.

Second/ Public prosecutor: This paper can be guidance to the judges and members of the public prosecutor's office to benefit from it while preparing a bill to the public prosecutor.

Solutions and Alternatives

The core issue of this paper requires us to exhibit the models of public prosecutor in the world and their relation to the constitutional institutions, as to determine the positive and negative aspect of each option, to make the target group enable to pick the most suitable option while writing and approving the bill of public prosecutor, as to be a guide to a progressive law on that front.

First Solution: Public Prosecutor as an institution related to the legislative authority

It's possible to make the public prosecutor an independent institution under the supervision of parliament through issuing a special law. In order to make the public prosecutor to be able to conduct its duties which are protection of public interest and thorough monitoring the laws? That's why the public prosecutor in some countries is called the Higher Supervision, because its supervision covers all the state institution. We will exhibit some principles which should be followed while preparing the draft law:

1. Public prosecutor is only accountable in front of the parliament [people's representatives], which means while conducting its duties, it won't abide by any other institutions and instructions other than the constitutional texts and parliament.
2. In terms of finance, the public prosecutor will have an independent share of budget which is prepared by the Council of Public Prosecution and delivered to parliament to approve it.



3. The members of Public Prosecution will be given confidence by parliament, will swear the legal oath, and withdrawn confidence by parliament as well.
4. Head of the Public Prosecution will be elected by the members of Public Prosecution Council.

This way of arranging public prosecution exists in Russia, China, and Slovakia. The constitution of former Soviet Union had given the right to the public prosecutors to offer project bills to parliament directly (article 113 of 1977).

- **Positive aspect of this solution:**

Not being accountable to any other institution but parliament, and the similarity between parliament and public prosecutor become a strong factor to conduct the duties of public prosecution and activate the institution.

- **Negative aspects of this solution:**

It's against the separation of powers, and contradictory to the Iraqi constitution.



Second Solution: Public Prosecutor as an institution bound to Judiciary

Kurdistan parliament embeds the public prosecutor into the judiciary authority, which means the public prosecution will be bound to the Judiciary Council in terms of administration and finance. This arrangement has been implemented in Italy and Spain. We should point out that the Iraqi constitution also makes the public prosecution a part of the federal judiciary, directly under the Higher Judicial Council (Article 89, Iraqi Constitution 2005).

Regarding the making this alternative legal, we find it suitable to follow the principles below:

1. The Public prosecutor will be bound to the Judicial Council, independent in conducting its duties.
2. Allocation of a special budget to the public prosecutor in the framework of the judiciary authority's budget.
3. The head of the Public Prosecution takes his oath in front of the president, and will be issued a presidential decree.
4. Judges of the Public Prosecution take oath in front of the Judicial Council, attended by the head of the Public Prosecutor.
5. Judicial Council candidates the head of the Public Prosecutor, and offers it to parliament to approve its assignment.

- **Positive aspects of this solution:**

Public Prosecutor is a judicial institute in nature, and through this way, it will be under the umbrella of the judiciary authority.

It embodies the separation of powers.

- **Negative aspects of this solution:**

Weakness of the judiciary related to the other powers reflects negatively on the level of performance of the public prosecutor, and the opposite could be true.



Third Solution: Public Prosecutor as a body related to the Executive Power

In some countries, the public prosecution is a part of the executive authority and directly bound to the Justice ministry, such as Syria, Poland, Japan, Germany, France and the USA. In the USA and Poland, the minister of Justice is considered as the public prosecutor of the state, all other public prosecutors working under him. However, in 1978, Independent Public Prosecutors institute was founded in the USA by congress, without being accountable to the minister of Justice. The duty of this institute was to follow the actions of the high-ranking officials of the USA. In Japan, the public prosecutor has a popular and official significance to follow and monitor affairs, while it's under the supervision of the executive and people, which is conducted through some circles in every election.

In the Kurdistan region, the Public Prosecutor is part of the executive authority in terms of administration and finance, directly linked to the minister of Justice. However, such a link restricts the duty and performance of the public prosecutor through the instructions of the minister of Justice, despite being against the principle of independent public prosecutor in theory, along with separation of powers and being against the constitution. In practice, it made the public prosecutor in the Kurdistan region ineffective compared to the countries noted, where its weakness is clearly felt.

To verify the notes above, we will point some articles and sections in the laws of 159 and the appendix of 24, which have become the source of inactivity in the public prosecutor:

1. Public prosecutor uses its authority through laws, as offering requests, opinions in issues related to the keeping peace, repeating trials, handing over criminals and legal representation, but it should consider the instructions issued by the minister of Justice (article 15).
1. Head of the Public Prosecution has a right to monitor all the members of the Public Prosecution, and bound to the ministry of Justice (article 26).
2. Handing over an annual report by the Public Prosecution to the minister of Justice and Judicial Council concerning their work and the obstacles (article 29).
3. Minister of Justice determines the position of the Public Prosecutor, after issuing a presidential decree for his/her assignment (article 42, section 1).
4. Head of the Public Prosecution takes oath in front of the president of the region, attended by the minister of Justice; members of the Public Prosecution take oath in front of the Judicial Council (article 42, section 3).



5. Transfer and mandate of the Public Prosecutor is by the decree of the minister of Justice (article 49).
6. Minister of Justice has the right to monitor and inspect all the institutions of the public prosecution (article 60).
7. Members of the Public Prosecution cannot be hold or undergo any criminal procedure without the approval of the minister of Justice [except for observed crimes] (article 68).

Fourth Solution: Public Legal Counselor

The UK is one of the countries which implements this way, which the public prosecutor has no presence but legal counselors conduct the legal counsels and recommendations.

This way is not progressive and even in the UK, they think of changing it due to these reasons:

1. The role of public prosecutor is very weak in representing the society and monitoring the implementation of laws.
2. Contradictions emerge in laws and decrees due to not having a supervision on the constitutionality of the laws.

Recommendations:

1. Members of constitution preparation project regulate the public prosecutor in terms of structure.
2. Kurdistan parliament should ensure the independence and activity of the public prosecutor through issuing a law.
3. In case of legalizing any option, one of these two principles should be inscribed into a law:
 - A. The public prosecutor files a legal complaint against the crimes related to the governance system and public wealth, without the need to inform.
 - B. The public prosecutor should have the authority to monitor the legality of the laws.
4. Legal awareness should be spread concerning the significance of the public prosecutor's role through forums and seminars, so as to let the civilians could inform the public prosecutor concerning crimes, and be able to help in following and finding the criminals.

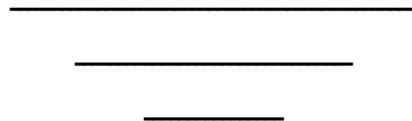
**Sources:**

1. Law of Public Prosecutor number 159 of 1979
2. Law number 24 of 2007, appendix law of Public Prosecutor number 159 of 159 of the Kurdistan region
3. Criminal Procedures, Dr. Muhammad Zaki Abu Amir

Paper Supplement:

According to the law number 24 of 2007 of Public Prosecutor in the Kurdistan region, the duties of Public Prosecutor are as follow:

1. Protection of the governance system and public wealth in the Kurdistan region through supervising the legitimacy, fixing the rule of law and implementation of the legal pillars as they are.
2. Assisting the courts and relevant institutions in swift inspection of the criminal acts, especially those related to the security of the region and its democratic system.
3. Monitoring and implementing the decisions, decrees and punishments in accordance with the law.
4. Contribution to the evaluation of existing laws and comparison to the reality.
5. Contribution in combating the phenomenon of crime and recommendation to resolve and mitigate it.
6. Contribution in protecting the rights of children and families.





Kurdish Institute for Elections [KIE] is an independent NGO founded in the mid 2002 by some legal experts and lawyers to spread awareness of the concept and elements of election and political participation among the people.

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Some scenes of the paper activities