

The status of the public prosecution in the code of criminal procedure in light of the rule of law standards

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Abstract---This article examines the status of the Public Prosecution within the Algerian Code of Criminal Procedure in light of the standards of the rule of law. It analyzes the nature of the relationship between the Public Prosecution and the executive authority. The study focuses on the powers granted to the Minister of Justice, particularly in directing criminal policy and supervising members of the Public Prosecution. The findings show that the hierarchical subordination system, the implementation of criminal policy, and the transferability of prosecutors raise several concerns. These issues relate to the extent to which the legal status of the Public Prosecution aligns with the principle of separation of powers and the requirements of judicial independence. The article concludes that institutional reforms are necessary. Such reforms should strengthen the balance between the independence of the Public Prosecution and the need for democratic accountability.

Keywords---Public Prosecution, Judicial Independence, Separation of Powers, Rule of Law, Democratic Accountability.

Introduction

There is no single, fully developed model for the Public Prosecution. This is especially true with regard to its internal organization, the authority responsible for appointing its members, and the bodies that supervise and oversee them. Yet, ensuring a sufficient degree of independence for this institution is essential. Such independence protects it from political pressure. It is also a requirement of the rule of law as understood in contemporary democratic standards.

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Guaranteeing the independence of the Public Prosecution means that it should not be subject to instructions that violate the law. This is particularly important when such instructions serve the interests of public officials or their relatives. Any such interference undermines the proper functioning of the justice system. It also weakens the rule of law.

This study seeks to address the main questions raised by the relationship between the Public Prosecution and the executive authority. It does so in light of two key principles: judicial independence and the separation of powers. These principles form the foundation of the rule of law in modern political systems.

The standards of the rule of law concerning the institutional and legal framework of the Public Prosecution, as identified by the European Commission for Democracy through Law (Venice Commission) (Strasbourg, 18 March 2016, Study No. 711/2013, see: www.venice.coe.int), can be summarized through the following questions:

- Does the Public Prosecution act on the basis of law, or on considerations of political expediency?
- Can the executive authority issue specific instructions to the Public Prosecution in a particular case? If so, must such instructions be reasoned, issued in writing, and accessible to the public?
- Can a higher-ranking prosecutor issue instructions to a lower-ranking prosecutor in a specific case? If so, must such instructions be reasoned and given in writing?
- Are the appointment, transfer, and promotion of members of the Public Prosecution based on objective criteria, especially competence and experience, or on political considerations? Are these criteria established by law?
- Are the decisions of the Public Prosecution subject to judicial review?

This study examines the current state and future prospects of the legal status of the Public Prosecution within the Algerian legal system, in light of the standards outlined above. The central research question can be formulated as follows: Does the Public Prosecution enjoy an independent position within the structure of the state, such that it acts only on the basis of law and not on political considerations, whether in the form of instructions or pressure, especially given its discretionary power in initiating prosecutions?

The key answer to this question is that, in Algeria, the Minister of Justice is considered the head of the Public Prosecution. This is established under Article 40 of the Code of Criminal Procedure (Law No. 25-14 of 3 August 2025, Official Gazette, No. 54, 2025). This is the case even though the Minister is not a member of the Public Prosecution. The law grants the Minister the power to issue instructions and requests, as well as to supervise and oversee its members. Under Article 43 of the same law, the Public Prosecution is responsible for implementing the criminal policy defined by the Minister. It is also subject to hierarchical authority.

In addition, under Article 172 of the Constitution and Article 26 of the Basic Law on the Judiciary, the Minister of Justice has the power to transfer any member of the Public Prosecution. By virtue of this authority, the Minister may also initiate disciplinary proceedings and refer members to the Supreme Council of the Judiciary. The Minister may also issue warnings, whether or not disciplinary proceedings are initiated.

This legal framework, which is similar to the French model, has led to repeated condemnations of France by the European Court of Human Rights. These rulings were based on the lack of sufficient judicial independence in relation to the executive authority. A similar assessment may apply to Algeria when its current legal framework is compared with international human rights instruments, in particular the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

This study will therefore address the manifestations of the subordination of the Public Prosecution to the Ministry of Justice (first). It will then examine how this subordination conflicts with the principle of separation of powers and the principle of judicial independence as core elements of the rule of law (second). Finally, it will propose a set of perspectives for reforming this situation (third).

First: The Subordination of the Public Prosecution to the Minister of Justice

Under constitutional and legislative provisions, the Minister of Justice exercises powers of direction, supervision, transfer, and disciplinary action over the Public Prosecution. This is the case even though it forms part of the judicial authority. This situation raises a fundamental issue. It concerns the extent of the independence of this body from the executive authority. It also concerns its institutional position and the degree to which its organization aligns with the principle of separation of powers and the requirements of the rule of law.

This section examines the main aspects of this subordination (A). It then considers the impact of hierarchical subordination on the executive nature of the Public Prosecution (B).

A. Forms of Subordination

The relevant provisions of the Constitution, the Basic Law on the Judiciary, and the Code of Criminal Procedure clearly show that the Public Prosecution is subordinate to the Ministry of Justice. This subordination appears in several forms. It is reflected in hierarchical authority (1), in the obligation to implement the Minister's criminal policy (2), and in the possibility of transfer (3).

1. Hierarchical Subordination to the Minister of Justice

Before examining the nature of hierarchical subordination, it is useful to outline the structure of the Public Prosecution at each judicial level. This includes the Supreme Court, the judicial councils, and the courts. This overview helps clarify the position of the Public Prosecution in its relationship with the Minister of Justice.

- **Before the Supreme Court:** The Public Prosecution is represented by the Prosecutor General at the Supreme Court. He is assisted by several deputy prosecutors. This Prosecutor General represents the Public Prosecution before the highest judicial body in the State. When instructions are issued by the Minister of Justice, he must ensure their implementation. He is subject to the Minister's direct authority.
- **Before the Judicial Council:** The Public Prosecution is represented by the Prosecutor General. He is assisted by one or more Deputy Prosecutors General. Their role is to act on his behalf during his absence. In addition, assistant prosecutors support the work of the office. The Prosecutor General supervises all Public Prosecutors (Republic Prosecutors) working within the courts under the jurisdiction of the council. At that level, they act under his supervision and control.
- **Before the Courts:** The representative of the Public Prosecution is the Public Prosecutor (Republic Prosecutor). He acts either personally or through one of his assistants. He is responsible for initiating and conducting public prosecutions within the territorial jurisdiction of his court.

Members of the Public Prosecution are subject to hierarchical authority, as established by the Code of Criminal Procedure. The Prosecutor General at the judicial council is under the supervision of the Minister of Justice, in accordance with Article 40. The Public Prosecutor and his assistants are, in turn, subject to the authority of the Prosecutor General, in accordance with Article 43. Public prosecutors at the court level consult the Prosecutor General. The latter, in turn, consults the Minister of Justice. Hierarchical subordination thus operates in two directions. Upward, it links members of the Public Prosecution to the Minister of Justice. Downward, it places them under the authority of the Prosecutor General.

– The Authority of the Minister of Justice

As noted above, members of the Public Prosecution are subject to a hierarchical system headed by the Minister of Justice, even though the latter is not formally a member of this body. In this capacity, the Minister may notify the Prosecutor General of offences under criminal law. The Minister may also issue written instructions requiring the Prosecutor General to initiate proceedings, or to have such proceedings initiated. In addition, the Minister may request that the competent judicial authorities be seized of a matter through written submissions. This is provided for in Article 40 of the Code of Criminal Procedure, which states that the Minister of Justice may notify the Prosecutor General of offences and may instruct him, in writing, to initiate or arrange for prosecutions, or to refer matters to the competent courts through written requests.

Article 41 of the same Code further provides that members of the Public Prosecution are required to submit written requests in accordance with instructions received through hierarchical channels.

The subordination of the Public Prosecution to the Minister of Justice appears in several forms:

- the notification of offences to the Prosecutor General;
- instructions to initiate or arrange for prosecutions;
- the obligation imposed on prosecutors to submit written requests in line with hierarchical instructions.

The above provisions make it clear that instructions issued by the Minister of Justice must be in written form. However, the law does not expressly prohibit oral instructions. This leaves room for such practices. Oral instructions tend to arise in sensitive contexts, particularly in political matters. A more serious concern arises when such instructions aim at closing case files involving political figures or their relatives.

This issue has been addressed in French law. Legal reforms there require that individual instructions in specific cases be issued in writing and included in the case file. They must relate to the initiation of proceedings, not to their discontinuation. A similar approach would be desirable in Algerian law. Even with such reforms, individual instructions in specific cases remain problematic. They may conflict with the principle of equality before the law. For this reason, the Truche Report on the reform of the French justice system recommended a complete prohibition of such individual instructions.

This authority of the Minister of Justice over the Public Prosecution entails the right to initiate disciplinary proceedings against its members when they fail to comply with the instructions addressed to them. Article 22 of the Basic Law on the Judiciary provides that the Minister of Justice initiates disciplinary proceedings before the Supreme Council of the Judiciary in its disciplinary formation.

The Minister may also issue a warning to a member of the Public Prosecution. This is provided for in Article 71-1 of the same law, which allows the Minister to issue such a warning without initiating disciplinary proceedings. Accordingly, failure to comply with the Minister's instructions constitutes a disciplinary offence. Article 60 of the same law defines a disciplinary offence as any breach of professional duties committed by a judge. In the case of prosecutors and state commissioners, it also includes failure to comply with obligations arising from hierarchical subordination.

– The Authority of the Prosecutor General at the Level of the Judicial Council

At the level of each judicial council, the Public Prosecution operates under the authority of the Prosecutor General. He exercises authority over Public Prosecutors (Republic Prosecutors) in all courts within the jurisdiction of the council. At that level, they act under his supervision and control.

By virtue of this authority, the Prosecutor General may issue binding administrative instructions. These must be respected by Public Prosecutors. If a Public Prosecutor acts in a case contrary to such instructions, his conduct is considered to fall outside the scope of the authority granted to him. It may also give rise to administrative liability.

The hierarchical powers of the Prosecutor General over Public Prosecutors within his jurisdiction include the following:

- overseeing the proper application of criminal law;
- ensuring the proper functioning of the Public Prosecution at the level of the courts;
- coordinating the policy of public prosecution within his jurisdiction;
- the possibility of issuing individual instructions.

The law has, however, limited the effects of hierarchical subordination during court hearings. Article 41, paragraph 1, of the Code of Criminal Procedure requires prosecutors to submit written requests in accordance with hierarchical instructions. Yet paragraph 2 of the same article grants them a degree of autonomy during hearings. It allows them to present oral observations freely, whenever they consider this necessary in the interest of justice.

Once a case is brought before the court, the Public Prosecution no longer has full control over it. At that stage, the prosecutor enjoys freedom in presenting submissions and arguments. He may plead in the manner he considers most consistent with his mission. He is no longer strictly bound by the instructions of his superiors, since the matter is now before the judiciary.

In French legal practice, this principle is expressed by the well-known formula: “La plume est servie, mais la parole est libre” (the pen is bound, but speech is free). This means that while written submissions may reflect hierarchical instructions, the prosecutor’s oral argument in court remains free. During the hearing, the Public Prosecution may express what it considers to be in accordance with the law and in the public interest.

2. Implementation of the Criminal Policy of the Ministry of Justice

Article 43, paragraph 3, of the Code of Criminal Procedure provides that the Prosecutor General is responsible for implementing the criminal policy defined by the Minister of Justice. He must also submit periodic reports on its implementation.

Although the Public Prosecution enjoys discretionary power in deciding whether to initiate proceedings, this power remains influenced by its hierarchical subordination to the Minister of Justice. In practice, it may receive instructions and requests in order to ensure the application of the Minister’s criminal policy. Criminal policy refers to the set of measures adopted by the government to prevent and address crime. It therefore forms part of the general policy of the State.

This raises a key issue. Criminal policy is, in principle, legislative in nature, in line with the principle of legality of offences, penalties, and security measures. This situation may place the Public Prosecution in a dual position. It serves the law on the one hand and the government on the other.

In a democratic system, this tension may appear limited, since the government is expected to act within the framework of the law. However, in certain political or sensitive cases, the interests of the government may diverge from the strict application of legal rules. A conflict may then arise between governmental will and legal requirements. The fact that the Public Prosecution is placed under the authority of the Minister of Justice may reinforce this risk.

The Minister of Justice may impose his own understanding of the public interest through written instructions addressed to prosecutors. He may notify them of offences, as provided by Article 40 of the Code of Criminal Procedure. They are also required to submit written requests in accordance with his instructions, under Article 41. In this way, the Minister exercises significant influence over the activity of the Public Prosecution.

Some may argue that hierarchical subordination and the obligation to implement criminal policy do not undermine the independence of the Public Prosecution. This view relies on the freedom granted to prosecutors during court hearings. Article 41, paragraph 2, allows them to present oral observations

freely when required in the interest of justice. In addition, the Public Prosecution has discretionary power under Article 47 of the Code of Criminal Procedure. The Public Prosecutor may decide to discontinue a case, to initiate proceedings, or to resort to alternatives such as mediation.

However, this discretionary power may also serve as a channel for executive influence. Through instructions, the executive authority may guide decisions to discontinue proceedings in favor of political actors, or to initiate proceedings against opponents.

The hierarchical subordination of the Public Prosecution clearly distinguishes it from trial judges and investigating judges. These judges do not receive instructions from any authority. They decide cases on the basis of their personal conviction and are subject only to the law. This principle is affirmed in Article 163 of the Constitution, which states that the judiciary is an independent authority and that judges are subject only to the law.

3. Transferability

Article 172 of the Constitution provides that trial judges may not be transferred except under the conditions set out in the same provision. It also states that a judge may not be dismissed, suspended, relieved of duties, or subjected to disciplinary sanctions during or in connection with the exercise of judicial functions, except in cases and under guarantees defined by law, and by a reasoned decision of the Supreme Council of the Judiciary.

Article 26 of the Basic Law on the Judiciary further affirms that stability of position is guaranteed for trial judges. A judge may not be transferred or appointed to a new position within the Public Prosecution or to an administrative post without his consent. In contrast, the same provision allows the Minister of Justice to transfer members of the Public Prosecution or appoint them to other positions when required by the interest of the service. The Supreme Council of the Judiciary must be informed at its next session.

This power granted to the Minister of Justice may create a form of executive control over prosecutors. It may also affect their functional independence.

B. The Impact of Hierarchical Subordination on the Executive Nature of the Public Prosecution

Hierarchical subordination has led to significant debate بشأن the nature of the Public Prosecution. The question is whether it belongs to the judicial authority or to the executive authority. Legal scholars have expressed different views on this issue. These views will be presented first (1), before identifying the position that best reflects the current Algerian legal framework (2).

1. Presentation of Doctrinal Views

Legal doctrine offers several differing opinions on the institutional status of the Public Prosecution:

- **First view:** The Public Prosecution is part of the judicial authority. This view is based on its role in initiating public prosecutions, supervising judicial police, and appearing before all judicial bodies (Article 39 of the Code of Criminal Procedure).
- **Second view:** The Public Prosecution belongs to the executive authority. According to this position, when it initiates public prosecutions, its purpose is to ensure the enforcement of legal rules, which is a function of the executive.
- **Third view:** This view adopts a combined approach. It considers the Public Prosecution both a judicial and an executive body. This is due to the dual nature of its functions.
- **Fourth view:** According to this opinion, the Public Prosecution is a procedural body. Its main task is to initiate public prosecutions on behalf of society and to seek the application of the law.

2. Weighing the Different Views

After presenting the various opinions on the legal nature of the Public Prosecution, the following question arises: which view best reflects the Algerian legal system?

The legal framework governing the Public Prosecution in Algeria is set out in several texts. These include the Basic Law on the Judiciary No. 04-11, the Law on the Supreme Council of the Judiciary No. 04-12, and the Code of Criminal Procedure. Article 2 of the Basic Law on the Judiciary provides that the judicial corps includes both trial judges and members of the Public Prosecution at the Supreme Court, the judicial councils, and the courts of the ordinary judicial system. In this sense, prosecutors are formally integrated into the judiciary and are described as judges. This follows the traditional doctrinal view, which refers to them as “sitting judges,” since they perform their duties while seated during hearings.

However, Article 40 of the Code of Criminal Procedure places members of the Public Prosecution under the authority of the Minister of Justice in both administrative and functional matters. This subordination reflects their position within a hierarchical structure. It contrasts with the status of trial judges, who are not subject to hierarchical authority in the exercise of their judicial functions.

From one perspective, the Code of Criminal Procedure treats the Public Prosecution as a branch of the executive authority. Its members are required to comply with the instructions and orders issued by the Minister of Justice. Articles 40 and 692-3 oblige prosecutors to follow such instructions. The Minister may notify the Prosecutor General of criminal offences, instruct him in writing to initiate or arrange prosecutions, or refer matters to the competent courts through written requests. The Public Prosecution is also responsible for implementing the criminal policy defined by the government and must report on its execution.

From another perspective, the same legal framework considers the Public Prosecution part of the judicial authority. Its members are granted powers to supervise judicial police officers, as provided in Article 20 of the Code of Criminal Procedure. They also perform certain functions related to criminal investigation, including the collection of evidence, preliminary judicial inquiry, and the conduct of prosecutions before the courts.

In light of these elements, it can be concluded that the Public Prosecution in Algeria has a dual nature. It is both a judicial and an executive body, and it remains subject to the authority of the Minister of Justice.

Second: The Inconsistency of the Subordination of the Public Prosecution to the Minister of Justice with the Standards of the Rule of Law

The legal status of the Public Prosecution in Algeria closely resembles its position in French law. This situation has led the European Court of Human Rights to find that the French Public Prosecution lacks both independence and impartiality. This section first presents the Court’s findings in relation to France (1), and then draws implications for the Algerian legal system (2).

1. The Case Law of the European Court of Human Rights on the Lack of Independence and Impartiality of the French Public Prosecution

The European Court of Human Rights has repeatedly found against France, notably in the *Medvedyev* and *Moulin* cases. In the *Moulin v. France* judgment, the Court reaffirmed its earlier ruling in *Medvedyev v. France* of 29 March 2010. It held that members of the Public Prosecution in France do not meet the requirement of independence from the executive authority, given the nature of their status. According to established case law, independence, together with impartiality, is a fundamental guarantee of the concept of a “judge” within the meaning of Article 5 of the European Convention on Human Rights.

Article 5(3) provides that any person arrested or detained must be brought promptly before a judge or another officer authorized by law to exercise judicial power, and must be tried within a reasonable time. In its judgment of 29 March 2010 in *Medvedyev and Others v. France*, the Court found that the Public Prosecutor in the French legal system is subject to the executive authority. As a result, the prosecutor cannot be regarded as a “judicial authority.” This situation constitutes a violation of Article 5(3) of the Convention.

The Court confirmed the same principle in its judgment of 23 November 2010 in *Moulin v. France*. It stressed that the Public Prosecutor does not have the status of a judicial authority within the meaning of

Article 5(3). The Court also emphasized that France must ensure that its legislation complies with the Convention by guaranteeing the independence and impartiality of the Public Prosecution.

The Court further noted that subordination to the executive undermines independence. Independence is a key criterion for belonging to the judicial authority and reflects the principle of separation of powers. It is therefore difficult to reconcile the subordination of the Public Prosecution to the Minister of Justice with its classification as part of the judiciary. Subordination to the executive implies a lack of independence within the judicial function.

This dual situation, between subordination and independence, gives the Public Prosecution a hybrid character. Such a position is often seen as problematic. It may create uncertainty for its members and raise concerns for litigants.

It is true that the French Constitutional Council affirmed, in its decision of 21 February 1992, the unity of the judicial body (*loi organique modifiant l'ordonnance n° 58 – 1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*, R J C I-483)—the principle of *unité du corps judiciaire*. The same principle was reiterated in its decision of 6 May 2011, emphasizing that the judicial authority comprises both trial judges and members of the Public Prosecution (*Cons. Const, décision n° 2011 – 125 QPC, 6 mai 2011, M. Abderhmane L., J.O. 7 mai 2011, texte n° 76*).

However, in the view of the French Constitutional Council, members of the Public Prosecution are not covered by the guarantees of non-removal or non-transfer that apply to trial judges, as stated in its decision of 21 February 1992 (*Cons. Const, décision n° 92 – 305 DC, 21 février 1992*).

Accordingly, although the Council affirmed the principle of the independence of Public Prosecutors as a constitutional principle, it did not grant them the same constitutionally recognized rights as trial judges. This explicitly indicates that the Public Prosecution lacks the essential elements of independence due to its clear subordination to the authority of the Minister of Justice.

This situation is directly applicable to the Algerian Public Prosecution. Simply stating that Public Prosecutors are part of the judicial authority is not sufficient to ensure a position free from subordination. On the contrary, the prevailing situation in both the French and Algerian legal systems demonstrates that Public Prosecutors remain under hierarchical control.

Thus, the French Constitutional Council's interpretation follows a strictly constitutional logic rather than a rights-based approach. This interpretation contrasts with the rulings of the European Court of Human Rights in 2010 in the *Medvedyev* and *Moulin* cases, which explicitly considered that the Public Prosecutor is not a judicial authority due to the lack of independence from the executive branch.

In contrast to the Constitutional Council's reasoning, the French Court of Cassation revised its previous position in its Criminal Chamber decision of 15 December 2010. Based on Article 5(3) of the European Convention on Human Rights, it acknowledged that, although the Public Prosecution is formally part of the judicial authority under Article 5(3) of the Convention, it lacks guarantees of independence and impartiality. Consequently, it remains a body subordinate to the executive authority (*Cass., Crim, 15 décembre 2010, n° 10 – 83.674, Affaire Philippe Creissen*).

2. The Opinion on the Lack of Independence of the Public Prosecution in Algeria

The same considerations that led the European Court of Human Rights to condemn France apply fully to the Algerian context. Article 98 of the Code of Criminal Procedure provides that: "If, during preliminary investigation, the judicial police officer must detain a person for more than 48 hours, the individual must be presented before the Public Prosecutor before the expiration of that period." It is well-known that the Public Prosecutor does not constitute a judicial authority, as the prosecution lacks guarantees of independence from the Minister of Justice, unlike trial judges who safeguard fundamental freedoms.

In this context, the Algerian situation conflicts with Article 9(3) of the International Covenant on Civil and Political Rights, which mirrors Article 5(3) of the European Convention on Human Rights. Article 9(3) stipulates: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Consequently, the European Court of Human Rights ruling based on Article 5(3) is fully applicable in Algeria through the lens of Article 9(3) of the Covenant.

Although the Algerian Constitution, in Article 163, states: “The judiciary is an independent authority. The judge is independent and is subject only to the law,” the legal status of Public Prosecutors in Algeria does not meet these requirements. They are subordinated, alongside the law, to the Minister of Justice, from whom they receive directives.

The Public Prosecution acts as a party in criminal proceedings, as it brings charges and implements the government’s criminal policy. Under these circumstances, it cannot be considered independent or impartial in the conduct of proceedings. Article 40 of the Code of Criminal Procedure, which codifies the principle of hierarchical subordination to the Minister of Justice, reflects the dual nature of the Public Prosecution: it serves both the law and the executive authority. This duality undermines both the appearance of neutrality and actual independence.

Given the broad powers of Public Prosecutors, it is necessary to establish new legal guarantees, which would require reforming the law governing the judiciary.

The right to an independent and impartial tribunal requires that the trial judge occupies a central role in criminal proceedings, in contrast to the Public Prosecutor, whose powers have expanded through successive transfers of authority without corresponding guarantees for the accused, rendering the prosecutor a “quasi-judge” (*Voir C. Lazerges, La dérive de la procédure pénale, RSC, 2003, p. 644*).

The Public Prosecution holds judicial discretion in most cases: it can decide whether to prosecute or drop cases, refer matters to alternative procedures, or initiate simplified measures such as immediate appearance, which effectively constitutes a preliminary judgment. It can also extend detention, hear the detainee, issue orders for appearance (*Art. 185(3)*), and travel to the scene of the incident (*Art. 90-1*, which requires the judicial police officer to cease investigation upon the prosecutor’s arrival at the scene).

The Public Prosecution, in this sense, acts as a prosecuting party executing government criminal policy. Under these conditions, given its legal position, it cannot function as an independent or impartial body. Its subordination to the Minister of Justice deprives it of both independence and neutrality.

According to constitutional legislation, the judiciary is one of the three state authorities, entrusted with the administration of justice independently from the legislative and executive branches. Therefore, the Public Prosecution must be independent of the executive and must not be subordinated to the Minister of Justice.

This principle was adopted by the Egyptian legislature through its amendment to the Judicial Authority Law (Law No. 142 of 2004), which removed the Public Prosecution’s subordination to the Minister of Justice. This reform reflects both organizational and personal judicial independence, unlike the French and Algerian systems, which remain inconsistent with international standards for judicial independence established in multiple United Nations declarations, including Article 10 of the Universal Declaration of Human Rights (1948) and Article 14 of the International Covenant on Civil and Political Rights (1966).

3. An Opinion on Ensuring the Independence of the Public Prosecution from the Minister of Justice

Before presenting an opinion on how to establish the independence of the Public Prosecution in Algeria, it is necessary first to outline the potential risks associated with such independence. These risks form the basis for proposing the type of independence suitable for the Algerian Public Prosecution.

1. Risks to Independence

Reforming the Public Prosecution by separating it from the Ministry of Justice and granting it full independence may raise certain issues. This leads to the following questions: To what extent does separating the Public Prosecution from the Ministry of Justice truly consolidate judicial independence? And to what extent could this change strengthen the judiciary in ways that serve its own interests rather than those of society?

Granting the Public Prosecution full independence from all other authorities and allowing it to manage its affairs autonomously—whether in terms of policy-making, implementation, or evaluation (which is precisely what judges demand as the correct interpretation consistent with the Constitution, elevating the judiciary to the level of an independent authority parallel to the other branches)—may risk judicial overreach, potentially leading to what is known as a “judge-centered state.”

From our perspective, there are objective factors that contribute to concerns regarding absolute independence for the Public Prosecution:

- **First:** The judicial body is influenced by multiple competing currents, each seeking to control key positions of authority. Evidence of this is visible in the way responsibilities are distributed, which often relies less on merit or competence and more on allegiance to the dominant faction. This strong factional conflict, often rooted in regional affiliations, presents a significant risk for establishing a judge-dominated state and raises doubts about the effectiveness of managing such independence.
- **Second:** Judicial decisions and rulings may be influenced by entrenched interest groups, representing what is sometimes called the “deep state.” These groups may exploit the judiciary to protect their interests and assets, or at least align with it to safeguard shared goals. In such a scenario, the judiciary may appear independent from the legislative and executive authorities in practice, but simultaneously remain aligned with corrupt networks that form the backbone of the deep state.

Given these practical concerns, which carry a considerable degree of credibility, the question arises: what is the proper approach regarding the implementation of independence for the Public Prosecution from the Ministry of Justice? In principle, there are three possible solutions for assessing this issue and evaluating the discussion objectively.

First Solution: Maintaining the Status Quo

The first solution is to maintain the current system and continue the Public Prosecution’s subordination to the authority of the Minister of Justice. This reflects the approach in some democratic countries, where this link remains due to its practical function in giving the Public Prosecution a strong position and ensuring its role in implementing the general policy of the state. However, we do not agree with this solution, as judicial independence—whether of trial judges or prosecutors—is a key requirement for justice reform and its advancement.

Second Solution: Separating the Judiciary into Two Distinct Bodies

The second solution proposes dividing the judiciary into two separate entities. On the one hand, the Public Prosecution would remain a hierarchical body under the Minister of Justice but would forfeit its independence. On the other hand, trial judges would remain fully independent.

For this model to respect rights and freedoms, significant changes in criminal procedures would be necessary. It would be essential to allow prosecutions to proceed without being exclusively tied to the approval of the Public Prosecution, especially in cases involving the conduct of elected officials, where establishing a civil party may be difficult. Furthermore, some powers of the Public Prosecution should be transferred to judges at headquarters, the rights of defense—particularly during preliminary investigations—must be reinforced, and the budget for legal aid should be increased.

Third Solution: Recognizing Greater Independence for the Public Prosecution

The third solution is to grant the Public Prosecution greater independence. One option is the establishment of a “Prosecutor General of the Nation,” as exists in Argentina and Colombia. A similar proposal was attempted in France (see, for example, Constitutional Bill No. 3930, registered at the Presidency of the National Assembly on 10 November 2011, establishing the position of Prosecutor General of the Nation). However, even this reform would not resolve all issues, particularly those raised by the European Court of Human Rights in the *Medvedev* and *Moulin* cases (Cour EDH, 29 March 2010, *Medvedev v. France*; Cour EDH, 23 November 2010, *Moulin v. France*). Even if the Public Prosecution were independent, it could not be considered fully neutral as long as it remained part of the hierarchical structure responsible for implementing criminal policy. To comply with European and international human rights law, independence should also be accompanied by a limitation of the Public Prosecution’s powers over potential violations of fundamental rights and freedoms.

Preferred Approach: Balancing Independence and Oversight

The most effective approach is to balance the demand for the Public Prosecution's independence as a body responsible for initiating and conducting public prosecutions with the need to prevent judicial overreach and the consolidation of a "judge-centered state." This can be achieved by placing the Public Prosecution under the authority of the Prosecutor General at the Supreme Court, appointed by the High Council of the Judiciary, and assigning this office the task of setting general criminal policy while remaining accountable to parliament. This approach aligns with reforms recently adopted in Morocco, where Parliament approved Law Project 33.17.

Our support for this position is based on the following considerations:

- Requiring the Prosecutor General at the Supreme Court to prepare an annual report outlining the features of criminal policy and its implementation before a parliamentary committee aligns with the new constitution. Parliament, in addition to its legislative and oversight functions, is now tasked with evaluating public policies under Articles 111 and 158 of the Constitution.
- One of the foundations of good governance in any sector is strengthening oversight, whether internal or external, and whether exercised by a single body or multiple bodies. Oversight contributes to sound planning and effective implementation, ensuring the achievement of intended outcomes. The justice sector is no exception.
- The Constitution links responsibility with accountability. The Prosecutor General at the Supreme Court, as head of the Public Prosecution, assumes judicial responsibility when initiating and pursuing public prosecutions. Additionally, he assumes political responsibility by establishing the framework for criminal policy to be followed. Accordingly, the logic of the new Constitution requires that such responsibility be accompanied by accountability, whether through judicial mechanisms or political ones, primarily oversight by representatives of the people.
- The principle of separation of powers does not imply a mechanical division that allows each authority to act without regard for the others. Rather, it entails separation while granting each authority oversight powers over the others to ensure balance. This does not constitute interference in the functions of another authority. Therefore, the submission of a report by the Prosecutor General at the Supreme Court on criminal policy falls within legislative oversight as a new mechanism granted by the Constitution. This evaluation mechanism complements the Parliament's legislative and oversight functions.

The optimal solution is this approach, which grants the Public Prosecution both independence and responsibility while subjecting it to oversight and evaluation by the legislative authority. This will strengthen governance in the justice sector and prevent the domination or overreach of judges, which could otherwise lead to the creation of a "judge-centered state," with potentially severe consequences across all sectors.

2. Some Reform Proposals

- Assign the leadership of the Public Prosecution to the Prosecutor General at the Supreme Court and establish the complete independence of the Public Prosecution from the executive authority, in full implementation of the principle of separation of powers.
- Explicitly recognize the unity of the judicial body in the Constitution, highlighting the position of the Public Prosecution within the judiciary. While Article 163 of the Constitution guarantees the independence of the judiciary, Article 172 distinguishes between trial judges and prosecutors by limiting the principle of non-transferability to trial judges only, excluding members of the Public Prosecution.
- Entrust the task of ensuring judicial independence to the Supreme Judicial Council, as an independent body, instead of the President of the Republic. At minimum, the Council should participate equally with the President in this matter.
- Grant the Supreme Judicial Council the authority to propose appointments of Prosecutors General, public prosecutors, and members of the Public Prosecution at the Supreme Court.

- Make the appointment of other members of the Public Prosecution subject to prior approval by the Supreme Judicial Council.
- Prohibit oral and individual directives, limiting instructions to general written orders only.
- Assign the Supreme Judicial Council exclusive authority over the disciplinary system for judges, without distinction between trial judges and members of the Public Prosecution.
- Allow the government, through the Ministry of Justice, to communicate the general criminal policy to the Prosecutor General at the Supreme Court in writing, ensuring that it is not linked to specific cases.
- Transfer full supervision of judicial police matters to the Public Prosecution and designate them as bodies of the judiciary.
- Establish a Council of the Public Prosecution under the direct authority of the Prosecutor General at the Supreme Court, with the power to propose criminal policy guidelines, oversee their implementation, review decisions of the Public Prosecution regarding the dismissal of complaints and other grievances, and monitor its activities.
- Strengthen the independence of prosecutors in expressing their opinions freely and autonomously during public sessions.
- Ensure that members of the Public Prosecution enjoy the same immunity against transfer or dismissal as trial judges. At minimum, any automatic transfer of a prosecutor should require prior approval by the Supreme Judicial Council based on the public interest.

Conclusion

From this analysis, it is evident that the Public Prosecution in Algeria lacks the conditions required for judicial independence according to the standards of the rule of law. The subordination of the Public Prosecution to the Minister of Justice—whether through hierarchical authority, the implementation of criminal policy, or the transfer system—weakens its functional independence. This is particularly concerning given the broad procedural powers of the Public Prosecution and the impact of its decisions on individual liberties.

Comparative analysis, in light of the jurisprudence of the European Court of Human Rights and relevant international standards, shows that such subordination deprives the Public Prosecution of the necessary guarantees of independence. Consequently, it cannot be considered a judicial authority in the strict sense. The Algerian system, therefore, remains exposed to the same criticisms that have been directed at legal systems with similar organizational structures.

At the same time, granting absolute independence to the Public Prosecution without clear regulatory and oversight mechanisms could disrupt the principle of separation of powers.

Thus, the solution lies neither in maintaining a dependent system that weakens independence nor in granting unrestricted independence that risks the absence of accountability. The optimal approach is a balanced one. This approach establishes a middle path that ensures the independence of the Public Prosecution while subjecting it to democratic accountability. It involves separating the Public Prosecution from the executive authority and placing it under the leadership of an independent judicial authority, coupled with parliamentary oversight of criminal policy in terms of evaluation and monitoring.

Such a framework would strengthen governance within the criminal justice system, reinforce the neutrality of the Public Prosecution, and guarantee the protection of rights and freedoms in line with the Algerian Constitution and the state's international human rights obligations.

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