

The Legal status of the Public Prosecution in Saudi Law: A Comparative Study

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Abstract

The first organisation of the Public Prosecution Service in Saudi Arabian law came with the issuance of Royal Decree No. (M/56) in 1989, which established the Bureau of Investigation and Public Prosecution to undertake the functions of criminal investigation and prosecution, replacing the police. Although its members were not part of the police force, it was under the direct authority of the Minister of Interior. The Saudi regulator introduced several amendments to the law of the Bureau of Investigation and Public Prosecution, shaping its legal status under the new name of the Public Prosecution with different powers and affiliations. In this paper, the researchers examine the law of the Public Prosecution to determine its legal status according to the latest legal amendments and compare it in some key points with the legal status of the Public Prosecution in comparative law. The main question that this work seeks to answer is: What is the legal status of the public prosecution in Saudi law? The paper demonstrates that with the recent amendments to the law, the Public Prosecution in the Kingdom of Saudi Arabia is considered as a responsible judicial authority directly attached to the King in his capacity as the Head of State.

Keywords: *Public Prosecution, Public Prosecutor, Legal status, Saudi Law, Investigation.*

Introduction

The consensus in jurisprudence is that the institution of the Public Prosecution has its pure origins in French law. Its role evolved from defending the interests of the king to safeguarding the interests of the general society, hence the name Public Prosecution (Sufyan, 2014:125) Montesquieu admired it and wrote about it in his book 'The Spirit of the Laws' stating: "Today we have a wonderful law, that the king appoints an officer in each court to pursue crimes on his behalf." (Montesquieu, 1748: 88) The French Criminal Investigation Law of 1808 and its amendments played a significant role in shaping its legal status, which it currently holds as an integral party in public criminal proceedings (Jokhadar, 1996: 41).

The establishment of the Bureau of Public Prosecution in the Kingdom of Saudi Arabia dates back to 1989, to assume the functions of investigation and prosecution under the authority of the Minister of Interior. However, later on, the legal status of the Public

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Prosecution was amended to consider it part of the judicial authority, directly reporting to the King as the head of the country, rather than the head of the executive authority.

It is evident that the Public Prosecution is considered an entity representative of the society; its actions and proceedings are conducted in the name of society, not in the name of the prosecutor. It is not his property, and it is not allowed to abandon, suspend, waive, reconcile, or neglect it (Sufyan, 2014: 128). Some even describe it as the guardian of criminal law.

This study aims to examine the legal evolution of the role of the Public Prosecutor and the development of the authority directly entrusted with this function from the establishment of the Kingdom of Saudi Arabia in 1932 to the present day.

This motivation of this study is to demonstrate the new legal status of the public prosecution in the Kingdom of Saudi Arabia comparing with the legal status in other legal frameworks. Researchers will be motivated to study, and review different points of view, legal points, and courts rulings on this issue.

Materials and Methods

The researchers have used the historical method to study the history of the public prosecution function in the Kingdom of Saudi Arabia. Additionally, they have used the descriptive-analytical and comparative methods by examining relevant legal texts and analyzing them to elucidate the new legal status of the Public Prosecution and its role in achieving criminal justice. In order to enrich the analysis, researchers will use primary data where legal texts and courts decisions will be scrutinized and reviewed, in particular when discussing the legal status of the public prosecution. Moreover, to support the comparative study, secondary data will be used as well where researchers will use academic journals and books. This will certainly support the credibility of the research.

Results and Discussion

In conclusion of this research, researchers found that the Public Prosecution in the Kingdom of Saudi Arabia is considered as a judicial authority responsible for the functions of prosecution and investigation, excluding the trial. In this capacity, it adheres to the principle of judicial neutrality. The investigator is not allowed to commence criminal investigations in the presence of circumstances that may compromise their neutrality, and similarly, the accused is permitted to request their replacement for the same reasons. Unlike many comparative legal systems where the public prosecution is under the supervision the executive authority, the Public Prosecution in the Kingdom of Saudi Arabia is directly subordinated to the King as the head of the country. With these advantages and others, the law of the Public Prosecution emphasizes its judicial nature to avoid any legal or jurisprudential disputes. It also emphasizes its independence from the executive authority and its non-interference in its affairs.

First: The Historical Framework of the Public Prosecution Function and the Public Prosecution in the Kingdom of Saudi Arabia

The Public Prosecution is a relatively recent institution in the Kingdom of Saudi Arabia, as its inception dates to the year 1989 under the name of the public Investigation and Prosecution Authority. Prior to this, and tracing back to the early days of the Saudi state, the functions of prosecution and criminal investigation, in the absence of specialized agencies, fell under the jurisdiction of the heads of judicial departments within the Ministry of Interior.

Several royal decrees were issued to regulate the procedures related to the direct functions of the public prosecution and the processes of criminal investigation, along with the authority entrusted with them.

A. The Previous Legal Framework for the Function of Prosecution and the Law of the Public Prosecution:

The first law to regulate the function of the Public Prosecution in the Kingdom of Saudi Arabia since its establishment in 1932 was issued through Royal Decree No. (1310/813) dated (1935). Due to the absence of a specialized institution at the time, the founder of the kingdom entrusted this function to the head of the judicial department of the police or those acting on their behalf, such as police directors. They assumed the roles of prosecution and criminal investigation in criminal cases following simple procedures.

Subsequently, Royal Decree No. (3594) was issued on 17/02/1950, concerning the system of the General Directorate of Public Security. This decree addressed the organization of the functions of prosecution and criminal investigation. The police were assigned initial investigation procedures, receiving complaints and reports of crimes, collecting information and evidence, attributing them to the defendant (Article 82 and beyond). They then proceeded with criminal investigations, and if there was a likelihood of the accused being convicted, the criminal case was referred to the court (Article 103 and beyond). The public Prosecution, acting as a public party in criminal cases, continued its proceedings before the courts.

Various individuals, including the Director of Public Security, the Director of Criminal Affairs, the Chief of Police, the Head of Criminal Investigations Department, the Regional Chief, and precinct and district chiefs, were responsible for these tasks. No legal or Sharia qualifications were required for any of these positions (Al-Najjar, 1979: 120). According to this framework, Saudi legislation was influenced by the Anglo-Saxon system, concentrating these responsibilities in the hands of law enforcement personnel under the Ministry of Interior affairs.

B. Strengths and Weaknesses of the Previous Situation:

The first phase of initiating the role of public prosecution in the Kingdom of Saudi Arabia was characterized by investigative procedures in criminal cases that resembled the Anglo-Saxon system. This system entrusts criminal investigation procedures and filing lawsuits before the judiciary to a specialized police unit. While this system has the advantage of allowing the investigator from the police to handle all procedures from the moment a crime occurs until the case is referred to the judiciary, it is subject to criticism and poses various risks related to procedures and the individuals executing them (Channak, 1997: 120).

One risk associated with the centralized nature of the system is that individuals within the same unit often share a similar viewpoint, especially when the unit is the police, governed by blind obedience to superiors. This can lead to the misuse of power, arbitrary arrests based on suspicions, and the manipulation of cases without any oversight, particularly during the initial investigation stage where lawyers are absent, and the judicial authority does not intervene.

Furthermore, the system often fails to distinguish between preliminary investigation procedures (gathering evidence) and criminal investigation procedures, as the same individuals may handle both types of procedures. This lack of separation may lead to investigators initiating criminal investigations before meeting necessary conditions, with no opportunity for individuals to challenge the investigator, who is often a police officer.

In terms of the risks associated with the individuals executing the procedures, their status as police officers and their outward appearance play a significant role. Wearing military uniforms, carrying firearms, and using specific tools during their duties create direct

psychological pressure on the accused, making it easier for investigators to influence them and extract confessions that may be false or tainted with invalidity.

In addition to the aforementioned risks, investigators from the Ministry of Interior follow the executive authority, engaging in judicial tasks related to criminal investigations. This represents interference by the executive authority in judicial affairs, conflicting with the principle of the separation of the executive and judicial branches.

These criticisms led the British legislator in 1985 to establish the Crown Prosecution Service (CPS). Among its responsibilities are advising the police during the early stages of investigations, providing information, assistance, and support to victims and witnesses. Importantly, the CPS handles the investigations conducted by the police in criminal cases, ensuring sufficient evidence for the conviction of the accused before referring the case to the relevant court (CPS website). For similar reasons, the Saudi legislator issued a royal decree in 1989 establishing the Investigation and Public Prosecution Authority, which assumes the role of public prosecution in both investigation and prosecution (Madani, 2019: 291).

C. Establishment of the Investigation and Public Prosecution Authority

As mentioned above, the Kingdom initially followed the Anglo-Saxon system in carrying out the functions of public prosecution and criminal investigation. This approach persisted in prosecution and investigation for half a century and a few years (1935-1989) until a specific law was issued to establish the Investigation and Public Prosecution Authority, replacing the police in the functions of prosecution and criminal investigation.

1. Transition from the Anglo-Saxon System to the Napoleonic System

During the previous period, the Kingdom prepared specialized personnel from outside the police force to perform the functions of the public prosecution. Considering this, Royal Decree No. (M/56) was issued on 30-05-1989, establishing the General Investigation and Prosecution Authority. This decree represented a legislative milestone by creating the General Investigation and Prosecution Authority as a specialized body to replace the police in carrying out the functions of public prosecution and criminal investigation. This new legislative approach marked a shift from the Anglo-Saxon procedural system to the Napoleonic system, as the General Investigation and Prosecution Authority replaced the police in the exercise of public prosecution and criminal investigation functions (Channak, 2024: 43).

2. Key Features of the Legal Status of the Public Prosecution Authority

The new law governing the Public Prosecution Authority addresses the organization of the authority and highlights the fundamental aspects of its legal framework. Some of the key features include:

- The function of the Public Prosecution Authority includes:

The Public Prosecution Authority has replaced the police in undertaking the functions of prosecution and investigation for all punishable offenses in accordance with Saudi laws (Art. 13 of Law of Criminal Procedure "The Bureau of Investigation and Public Prosecution shall conduct its investigation and public prosecution in accordance with its Law and Implementing Regulations"), falling within the jurisdiction of the national judiciary (Orhan et al. 2023) The authority initiates criminal proceedings for crimes, investigates them, and presents them before various levels of criminal courts (Madani, 2019: 48). It can only act in exceptional cases specified by the prevailing regulations. In addition to its primary role, the authority performs several other functions related to this role.

In addition, the Investigation Authority had a major role in the prosecution of some types of crime, such as its role in the control of violations of the monopoly of goods during the

period of the Covid 19 pandemic (Atem, 2021) and its role in money laundering cases (Atem, 2023).

The jurisdiction of the authority covers all crimes that occur within the territory of the Kingdom of Saudi Arabia, except those excluded by law or rules issued by the Council of Ministers. It also includes all crimes that occur outside the Kingdom if the judicial authorities in the Kingdom have jurisdiction over them under prevailing laws or treaties to which the Kingdom is a party.

In addition to these two primary functions, the authority, according to Article 3 of its law, supervises the execution of criminal judgments (first paragraph, item j) and oversees and inspects prisons, detention centers, and any other place where criminal judgments are executed. The authority also receives complaints and reports from prisoners and supervises the release of detainees without cause (first paragraph, item h). It may also exercise other powers assigned to it by laws or regulations issued in accordance with its law (item k).

- The qualifications of the members of the Public Prosecution Authority:

For the crucial roles of prosecution and criminal investigation, the Saudi legislator has set specific educational qualifications based on international guidelines regarding the functions of public prosecution (UN Guidelines, 1990). According to Article 1 of the Regulation for the Members of the Public Prosecution Authority, issued by the Cabinet's decision No. (140) dated 29/05/1989, individuals appointed to the Public Prosecution Authority must hold a degree from one of the Sharia colleges or an equivalent certificate. Alternatively, they should have a degree in Legal Systems from a Saudi university or an equivalent certificate, with the requirement that, in the case of equivalence, they pass a special exam conducted for this purpose.

- The affiliation of the Public Prosecution Authority to the executive authority (Ministry of Interior Affairs).

The judicial nature of the activities of the Public Prosecution Authority, especially criminal investigation procedures, did not grant it independence from the executive authority. Instead, the Ministry of Interior continued to supervise it, extending its role in both prosecution and investigation in the previous stage. Article 1 of the Public Prosecution Authority Law stated, "By virtue of this law, an authority called the Public Prosecution Authority is established, affiliated with the Ministry of Interior, and it has a budget within the ministry's budget." Thus, the Public Prosecution Authority is considered an integral part of the executive authority, and its members are subject to dismissal and termination of service in accordance with Article 13 of the law, which specifies conditions for the termination of an official's service by royal decree upon the decision of the Authority's Management Committee and the request of the Minister of Interior. The Saudi legislator addressed this aspect and amended it in recent modifications to the Public Prosecution Authority Law, recognizing the Authority as an integral part of the judicial authority, as will be discussed later.

- Independence of the members of the authority professionally, and the judicial nature of its activities.

The members of the authority own complete professional independence and are subject only to the provisions of Islamic law and applicable regulations in their work, with no one having the right to interfere in their field of work. The authority's affiliation with the Minister of Interior is merely administrative, and the minister does not have the right to intervene in the authority's investigative and prosecutorial functions. Even if the administrative head – the Minister of Interior affairs – provides oral or written guidance to the authority regarding a specific case, this guidance is considered an administrative decision unrelated to the core functions of the authority in prosecution and investigation. Therefore, the authority members' decision-making in legal proceedings remains

independent from the opinion of the executive authority, and the investigator who initiated the proceedings retains decision-making authority, considering the decision as a judicial decision independent of the executive authority's opinion.

This independence stems from the nature of the authority's activities, which are inherently judicial, and it is not contradictory to acknowledge that the authority is an integral branch of the executive authority (Al-Haufan, 1979: 43). The nature of an action or procedure is determined by the action itself (Channak, 2021: 43), not the administrative affiliation of the person performing it. Considering the nature of the authority's activities (Channak et al., 2023), especially its role in public prosecution and criminal investigation, these activities are inherently judicial. This aligns with the previous conclusion reached by the Board of Grievances by the judgment of the Sixth Administrative Chambre No. 99/D/1/6 of 2008 in Case No. 1139 M 1/S of 2008, when stating, "This type of activity is not administrative decisions subject to the scrutiny of administrative justice. These activities and this situation have a judicial nature. It does not affect that the Investigation Authority is affiliated with the Ministry of Interior and not with the judicial authorities. The criterion is the type of activities it engages in and the subject matter of the decisions it issues". In conclusion, the Investigation and Prosecution Authority is considered an administrative auxiliary body for the judicial authority, operating independently in performing its functions. It is, however, undeniable that all investigative activities conducted by the authority members should be regarded as judicial activities (Channak, 2021: 43).

Second: Transition towards a new law for the Public Prosecution

After the issuance of the Judiciary Law in 2007 and the Criminal Procedure Law in 2014, it was necessary to adopt a new law for Public Prosecution that aligns with the two previous laws as it occupies the third corner of criminal justice laws. Several royal decrees and orders were issued to amend the law of the Public Prosecution Authority.

A. Reasons for amending the law of the Public Prosecution Authority include:

The Public Prosecution Law, formerly known as the Law of the Public Prosecution Authority, is one of the procedural criminal justice laws alongside the Judiciary Law and the Criminal Procedure Law. These three laws together form an equilateral triangle, and the harmony and coordination between them are necessary to maintain this geometric shape. Therefore, any amendment to one of them must align with the developments that occurred in the other laws. In this context, it was necessary to enhance and update the Public Prosecution Authority Law to align with its partner laws and contribute effectively to achieving criminal justice: the Judiciary Law of 2007 and the Criminal Procedure Law of 2013.

The new Public Prosecution Law aims to strengthen the authority of the public prosecution and establish the rules and mechanisms of its work to effectively contribute to achieving criminal justice. It also seeks to keep pace with the latest international laws and successful practices of public prosecution, contribute to the development of judicial institutions' laws, and enhance their performance, efficiency, and indicators. Moreover, the new law is in line with the Kingdom's Vision 2030, aiming to achieve goodness, prosperity, and efficient criminal justice for both citizens and residents.

The reasons for the issuance of the new Public Prosecution Law can be summarized according to the preamble to Royal Order No. A/240 issued on 17/06/2017, as follows:

1. Alignment with domestic laws, specifically the Judiciary Law and the Criminal Procedure Law.
2. Adaptation to the nature of the activities carried out by the Public Prosecution Authority, considering them as judicial activities.
3. Alignment with international laws governing public prosecution.

4. Granting complete independence to the Public Prosecution Authority in carrying out its functions.

5. Independence from the executive authority.

B. The main features of the new Public Prosecution Law include:

The recent amendments introduced by the Saudi legislature have added new dimensions to the legal status of the Public Prosecution. One of the most significant changes is conferring a judicial character upon the Public Prosecution and its activities. This implies that its members are subject to the principle of judicial neutrality. Additionally, the amendments emphasize the independence of the Public Prosecution from the executive authority, with a direct subordination to the King in his capacity as the head of the country.

1. Establishment of the Public Prosecution and Granting Judicial Character to its Functions.

To put an end to any debate regarding the nature of the Public Prosecution's activities, the Saudi legislator issued Royal Decree No. (M/31) on 03/02/2015, amending Article 5 of the Public Prosecution Law to emphasize the judicial nature of its activities. The amended article states: "The members of the authority shall have a judicial character..." With this, all the actions carried out by the Public Prosecution, from initiating public criminal lawsuits to decisions of dismissing or referring cases and making accusations are considered judicial actions.

Given the judicial nature of the Public Prosecution's activities and in line with the systemic rules and principles followed in many countries worldwide, as well as in accordance with legal rules and provisions, and recognizing the importance and necessity of separating the executive authority in the state from the entity and its activities, considering it as part of the judicial authority, and granting it complete independence in carrying out its tasks to ensure the direct execution of its work with impartiality and without influence from any entity, the Saudi legislator amended the name "Public Prosecution and Investigation Authority" to "Public Prosecution" and its head is now referred to as the "Public Prosecutor" (Royal Order No. A/240 issued on 17/06/2017). The legislator replaced the phrase "Public Prosecution and Investigation Authority" with "Public Prosecution" and replaced the phrase "Head of the Public Prosecution and Investigation Authority" with "Public Prosecutor" wherever they appeared in the laws, orders, decrees, regulations, and decisions related to the matter (Royal Decree No 125/M issued on 07/05/2020).

2. Considering the Public Prosecution as an Integral Part of the Judicial Authority.

There has been significant debate, especially in countries that adhere to the principle of the separation of judicial functions, regarding the nature of the public prosecution. In France, for instance, it is referred to as "magistrats du parquet" and it operates under the executive authority while primarily serving the role of representing society in prosecutions (Boucobza, 2001:109). Before 1993, the prevailing opinion was that the public prosecution was not composed of true judges ("faux juge"), as only trial judges benefited from the principle of the independence of the judicial authority. The concept of judicial authority ("autorité judiciaire") was believed to be limited to trial judges. This opinion was based on the idea that the prosecutorial function is a state task, not inherently judicial (Lemesle, Pansier, 1998: 21), but rather executive, or at least a function distinct from that of judges (Renoux, 1984: 58).

However, after the constitutional amendment of the Supreme Judicial Council in 1993 and the decisions of the Constitutional Council dated August 11, 1993, and February 2, 1995, the public prosecution gained a new legal status. It became part of the judicial authority and was subject to the principle of the independence of the judicial authority,

similar to trial judges (Boucobza, 2001). Despite this, some argue that the independence of the public prosecution is not genuine due to its subordination to the executive authority and the appearance of its members as "fonctionnaires d'accusation" (accusation officials), compared to the investigating judge who enjoys legal independence from the executive authority (Mantelli, 2022: 170)

At the European level, the European Court of Human Rights did not recognize the judicial status of the public prosecution (Renucci, 2009: 600). France has been condemned multiple times for violating Article 5(3) of the European Convention on Human Rights, which requires the presentation of the detainee to a judge or other lawfully authorized judicial officer. The term "judicial" according to the European Convention on Human Rights encompasses both investigative and trial judges (CEDH, Case Medvedyev, 2010) (CEDH, Case. Moulin, 2010).

The Saudi legislator has addressed all the interrogations raised in comparative law regarding the legal status of the public prosecution and resolved the issue regarding its nature and the nature of its activities in public criminal lawsuits. Considering the nature of its actions and the immunity it enjoys, similar to judicial immunity, the Saudi legislator classified it as a judicial authority by Royal Decree (M/125) dated 07/05/2020, which stipulated that "the Public Prosecution is part of the judicial authority, enjoys complete independence, and is organizationally linked to the King, with no one having the right to interfere in its affairs."

3. The Relationship of the Public Prosecution with the Executive and Judicial Authorities.

Recognizing the public prosecution as part of the judiciary seriously raises the question of its independence from the executive authority. In comparable systems, since the Public Prosecution is subordinate to the Minister of Justice, the latter can issue written orders to the Public Prosecution to take action in public proceedings (Sufyan, 2020), such as initiating a case, filing an appeal, or appealing in cassation (Pradel, 1995: 121). In contrast, after the important amendments made by the Saudi legislator to the Public Prosecution Law, especially its direct subordination to the King as the head of the country, the executive authority no longer has any authority over the Public Prosecution. Neither the Minister of Interior (the former head of the Public Prosecution) nor the Minister of Justice can give orders to the Public Prosecution regarding its work as a prosecutor, as it receives its orders from its direct superior (the King). According to this new status, it can be said that the Public Prosecution is an independent public legal personality that is subordinate to the King and exercises its jurisdiction in public prosecution in accordance with the Code of Criminal Procedure and its own law. However, this independence from the executive authority does not mean a complete severance of its relationship with the executive authority. Instead, this relationship remains, but in a one-way direction that obliges the executive authority to cooperate with the Public Prosecution. Its duty is to execute its orders regarding public criminal proceedings, including the duty of criminal investigators to comply with the orders of the Public Prosecution and implement them under the penalty of responsibility.

As for the relationship of the Public Prosecution with the judicial authority (trial judiciary), it remains within the limits of the role of the Public Prosecution in prosecution and investigation. It directly handles public criminal lawsuits before the trial judiciary as an integral party, having the right to submit requests, present evidence of the accusation against the accused, or refute it. The Public Prosecution can also object to judicial rulings. However, according to Saudi law, as part of the judicial authority, the Public Prosecution does not engage in trial proceedings as a judicial entity or participate in issuing a criminal judgment in public lawsuits. This is because, organizationally, the Public Prosecution is subject to a special law independent of the Judicial Authority Law. Additionally, there is no mobility for its members between the functions of the Public Prosecution and the judicial functions, as seen in some comparative legal systems where the Public

Prosecution is considered organizationally part of the judicial authority. For instance, In the Lebanese Code of Criminal Procedure, which distinguishes between the three judicial functions (prosecution, investigation, and trial), a member of the Public Prosecution is chosen from among the judges to carry out the prosecutorial function. Since they are considered judges, they can transition from the prosecution function to criminal investigation and then to the trial judiciary, and vice versa. However, a judge is not allowed to preside over a case in which they had previously engaged in the prosecutorial or investigative function. Article 50 of the Lebanese Code of Criminal Procedure states: "The Public Prosecutor who made a claim in a case may not undertake the investigation or ruling therein". Fearing that they may have made a decision in a previous stage and remain committed to his decisions, convictions and beliefs during the trial.

4. Direct Subordination of the Public Prosecution to the King as the Head of country.

One of the most significant aspects of Royal Order No. (A/240) dated 17/06/2017 is the declaration of the Public Prosecution's independence from the executive authority (Ministry of Interior). It is now directly subordinated to the king as the head of the country, not as the head of the council of ministers or the head of the executive authority. The Royal order states that: "The Public Prosecution is directly linked to the king, enjoys complete independence, and no one is allowed to interfere in its work." Undoubtedly, this direct subordination to the king has granted the Public Prosecution a strong legal position that ensures its independence in dealing with all authorities. Consequently, the Public Prosecution is considered completely independent from the executive authority, both organizationally and professionally. Article Five of the public prosecution law provides that: "Members of the Bureau shall enjoy judicial capacity and total independence, and they shall not be subject, in conducting their work, except to the provisions of Sharia and applicable laws, and no one shall interfere in their work.". It is subject to its own law and regulations regarding administrative subordination. Public Prosecution carries out its responsibilities in accordance with its law, the Criminal Procedure Law, and other relevant regulations. As a result, the dismissal of a member of the Public Prosecution is only permissible by royal order. Article 13 of Public Prosecution Law, amended by Royal Decree No. (125/M) on 17/05/2020, states: "In cases other than death, reaching the statutory age, and the non-proven competence of the member during the probation period, the service of a member of the Public Prosecution terminates by royal order based on a decision from the Public Prosecution Council". In French and other laws, prosecution judges are hierarchically subordinate to the Minister of Justice and are subject to a hierarchy that organizes the work of the prosecution itself, and they do not benefit from the immunity of judges of the court in terms of non-transferability (Braud X, 2023; 80).

5. Judicial Immunity for Members of the Public Prosecution.

According to the provisions of the Public Prosecution Law, its members enjoy immunity similar to judicial immunity. They cannot be criminally pursued except through special procedures. In cases other than being caught in the act, no arrest or investigative procedures can be taken against a member of the Public Prosecution, or a criminal lawsuit filed against them, without the permission of the Public Prosecution Council. However, this does not prevent the collection of information about the crime without infringing upon their freedom, person, or the sanctity of their homes (Channak 2024:90). To initiate public prosecution against a member of the Public Prosecution, a request is submitted to the Public Prosecution Council to lift immunity from the accused member (Sharif, 2022: 51,85). The council can either refuse to give permission or grant it, and in the latter case, public prosecution is initiated against them. In cases of being caught in the act, where malice against a member of the Public Prosecution is excluded, they can be arrested and detained. Search procedures can be conducted at their residence. The authority that initiated the investigation must submit the case to the committee responsible for managing the institution within the following 24 hours. The committee can decide to continue the detention, release on bail, or release without bail (Al-Minshawi 2017: 92).

Article 19 of the public prosecution law provides that: In situations where the accused is caught in the criminal act, the case, upon arresting and detaining the member of the Bureau, shall be referred to the Bureau Administration Committee within the following 24 hours. The Committee may decide whether to continue detaining the accused or to release him with or without bail, and the members of the Bureau may request the hearing of his statements before the Committee upon presenting the matter thereto. The Committee shall determine the period of detention in the decision issued concerning detention or its continuation. The aforementioned procedures shall be observed whenever it is determined to continue preventive detention after the expiry of the period decided by the Board. Except for the foregoing, a member of the Bureau may not be arrested, subject to investigation procedures, or a criminal suit be brought against him without obtaining the permission of said Committee. Members of the Bureau shall be detained and punishments restricting their freedom shall be executed in separate facilities.

6. Members of the Public Prosecution and the principle of impartiality

In the legal frameworks that strictly separate the three judicial functions (prosecution, investigation, and adjudication), the public prosecutor does not fall under the provisions of recusal and disqualification that apply to judges (Pradel, 1995:120). This is because the public prosecutor is a public, just and honorable party (Channak, 2024: 45) in the criminal case, representing the public interest, and has rights similar to the accused. The public prosecutor is a neutral and just party, representing society, and the accused or the party with private rights does not have the right to request their recusal, even if there are grounds for recusal of judges (Al-Marsafawi, 1981: 39).

Similarly, the public prosecutor cannot voluntarily withdraw from the case because they are a party to it and only have the right to present requests and defenses, which do not bind the adjudicating judge, who makes decisions based on personal conviction. The final word in the case lies with the adjudicating judge, and the public prosecutor does not participate in this decision. Therefore, all the laws that assign the functions of prosecution and investigation - as is the case in Kuwaiti law and Egyptian law - stipulate that members of the Public Prosecution are not subject to the provisions of recusal and recusal, as is the case with ruling judges (Sorour, 1985: 39).

This principle holds in legal systems where the functions of prosecution and investigation are separate, such as in Kuwaiti and Egyptian laws. However, in contrast to these legal systems, Saudi Arabian legislation has placed both prosecution and investigation functions under the authority of the public prosecutor. Nevertheless, the Saudi legislator perceived a different legal status for the public prosecutor in comparison to the principle of judicial neutrality that applies to adjudicating judges. Recognizing the significant powers held by the public prosecutor in initiating and finalizing investigations, determining the course of public prosecutions, and deciding whether to conclude them before entering the jurisdiction of the judiciary (e.g., dropping charges or proceeding with a case), the Saudi legislator believed that members of the public prosecutor's office should be subject to the same rules of impartiality as adjudicating judges (Channak, 2024 :45). This idea was introduced in Article 12 of the draft regulatory bylaw for the General Prosecution, Investigations, and Public Prosecution Authority, although this draft has not been enacted. The concept was ultimately incorporated into the new Criminal Procedure Law, Royal Decree No. (M/2) dated 25/11/2013, and its executive regulations. According to Article 21 of the Criminal Procedure Law and Article 8 of its executive regulations, an investigator from the public prosecutor's office cannot conduct an investigation if there are circumstances that cast doubt on their impartiality. Any party involved in the case can request the recusal of the investigator before or during the investigation. Article 21 of Law of Criminal Procedure provides that: "A member of the Bureau of Investigation and Public Prosecution may not assume or decide on any case in the following events:

1. if said member is the victim or the spouse, relative or in-law up to the fourth degree of any litigant;
2. if enmity or affinity exists between said member and any of the litigants which may influence the course of investigation; or
3. if he has previously contributed to the case as an expert, arbitrator, agent, witness or the like.”

With regard to the grounds for recusal of a prosecutor, article 146 of Saudi Criminal Procedure Law refers to the provisions contained in the Civil Procedure Law. The article 96th of the Civil Procedure Law provides: “A judge may be recusal for any of the following reasons:

- If either he or his wife has a case similar to the case before him.
- If he, or his wife, has a dispute with a litigant or his wife after the lawsuit was filed and pending with the judge, unless that [latter] lawsuit was filed with the intention of disqualifying him from considering the case before him.
- If his divorcee with whom he has a child or one of his relatives or in-laws up to the fourth degree has a dispute before the judiciary with a litigant in the case, or with his wife, unless the case was brought with the intention of disqualifying him.
- If a litigant is his servant or the judge had habitually dined or lived with him, or if he had received a gift from him shortly before the lawsuit was filed or thereafter.
- If enmity or friendship exists between him and a litigant such that it is likely he would not be able to judge impartially.”

Conclusion

The Public Prosecution in the Kingdom of Saudi Arabia is one of the judicial institutions that undertake the function of investigation and public prosecution before the criminal judiciary. This study revealed the historical framework for the development of the public prosecution apparatus on the one hand, and the evolution of its functions on the other. It also revealed that the amendments made by the Saudi legislator to the Public Prosecution Law came in response to urgent necessities, namely:

1. The need to develop the work of the public prosecution to confront new non-traditional crimes, given that the public prosecution in the Kingdom of Saudi Arabia assumes both investigative and prosecutorial functions, unlike most comparable laws that assign it only the prosecutorial function.
2. Harmonizing the Public Prosecution Law with the Criminal Procedure Law of 2014, which includes many amendments related to the Public Prosecution and its functions.
3. Harmonize the Public Prosecution Law with international legal principles and rules for the work of the public prosecution institution, as one of the legal institutions that contribute to achieving criminal justice alongside the judiciary.

The amendments that we referred to in the body of this scientific paper had a great impact in crystallizing the new legal status of the Public Prosecution in the Kingdom of Saudi Arabia, so that the Public Prosecution was characterized by some characteristics (features) that we did not find in comparative laws. The following are the most important of these features:

1. The Public Prosecution combines the functions of investigation and prosecution, unlike most comparable laws that adopt the principle of separating the three judicial

functions (prosecution, investigation, and trial), as is the case in French, Syrian, Lebanese, and Jordanian law.

2. The Public Prosecution is a judicial authority that reports to the King in his capacity as head of the country and not in his capacity as head of the executive branch. It follows from this result that the Public Prosecution enjoys a legal personality independent of the executive authority, and its members are now completely independent of the executive authority, unlike the previous situation where they were subordinate to the Minister of Interior, and unlike what is the case in most comparable laws, where the Public Prosecution is subordinate to the Minister of Justice.

3. Considering the public prosecution as an integral part of the judicial authority ends any controversy about its nature and the nature of the actions it undertakes after the initiation of public criminal proceedings. Accordingly, members of the public prosecution enjoy judicial immunity, and investigators of its members are subject to the same provisions of dismissal and recusal as the judiciary. In contrast, members of the public prosecution in comparative law are not subject to the provisions of dismissal and recusal, even in countries that assign the public prosecution the function of investigation and prosecution, such as Kuwait and Egypt.

At the conclusion of this paper, we can determine the legal status of the Public Prosecution in the Kingdom of Saudi Arabia as “a judicial authority with an independent legal personality, subordinate to the king in his capacity as president of the country, and not the head of the executive authority. As such, it is independent of the executive, the legislative, and the judicial authority. It combines the functions of public prosecution and criminal investigation in the pre-trial stage and undertakes the procedures of public criminal action before the judicial authority as Representing public rights”.

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