

## The Role of the Public Prosecution in Achieving Criminal Justice Within the International and Internal Jurisdiction

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### ABSTRACT:

It is recognized that the function of the public prosecution is a function related to society, as whoever undertakes it works in the name of the community and aims for its interest represented in achieving social justice. After its issuance, and since the goal of achieving criminal justice is characterized by transcendence and comprehensiveness, which makes it not confined to a country or group of countries, but rather a goal that is universal, this leads to the fact that the international criminal justice, which operates under international law, seeks to reach it as well, which leads to the Public Prosecution at the level of The international criminal judiciary has a role to play on the path to achieving that goal, just as the public prosecutor in the internal judiciary of countries has an important role to play in the same context. This research comes within the framework of reaching a comparison between the role of the public prosecution under the statute of the International Criminal Court and its rules of procedure and evidence, with what it is under internal legislation, relying on what is the case in Iraqi criminal legislation as a model for comparison, as well as to determine the extent of the competencies entrusted to the public prosecution And the powers granted to him and the legal basis for those powers in both the international and domestic legal systems, and whether his powers are restricted in one and absolute in the other, or are they convergent powers in both.

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## 1-Introduction

We can say that the presence of the public prosecution comes in conjunction with the presence of the judiciary, and it supports the direction of monitoring the implementation of the law by the judicial authority that implements it, and thus the function of the judiciary and the public prosecution can serve to achieve the objectives of the law in establishing the rules of justice.

The Public Prosecution has a major role, starting with its role in initiating the criminal case and its participation in all stages of the case, whether it is the stage of investigation and preliminary investigation or the stage of trial, as well as the appeal and implementation of judgments. From the Iraqi criminal law, a comparison will lead to the fact that there is a difference in the scope of jurisdiction and validity between them despite the convergence in the goal, because the powers of the Prosecutor at the International Criminal Court came close to the Anglo-Saxon legal system, unlike the traditional Latin and French systems from which many legal systems were taken, including The Iraqi legal system, which was taken from the French legal system, and undoubtedly, the difference resulting from the different systems has cast a shadow over the rules that define the jurisdictions of the International Criminal Court, which has generated many differences regarding the public prosecution's practice of its function and the difference in the structure and composition of this body, which requires research to show the differences

## 2-The Research Importance

The importance of research on this subject is related to the importance of the International Criminal Court itself and its role in the trial and punishment of the most serious international crimes and in order to identify the trial and pre-trial procedures and the role of the Public Prosecution in conducting pre-trial procedures of collecting evidence, interrogating, hearing witnesses and requesting the arrest of persons. And comparing that with the role entrusted to the Public Prosecution at the internal level, and in order to take note of the issue, we will divide it. In the first, we will deal with the Public Prosecution and its role in the International Criminal Court, and we will dedicate the other to researching the nature of the Public Prosecution and its role according to internal law.

## 3-The Public Prosecution and its role in accordance with the Statute of the International Criminal Court.

With the entry into force of the Statute of the International Criminal Court on July 1, 2002, the permanent international criminal justice has become a reality, and the joints of this judiciary operate according to its jurisdiction under that system, and according to this system, the Public Prosecution has a specific structure and the role of a decree. ) From the International Criminal

Court system, how to form the Public Prosecution in the Court and its independence in its work from the rest of the Court's organs and the way it works.

### ***3.1 Legal provisions governing the Office of the Public Prosecutor at the International Criminal Court***

Since the formation of the International Criminal Court expresses the tasks entrusted to it, which is to try persons accused of committing crimes that fall within the substantive jurisdiction of the Court, the Court must have organs that achieve its goal, and it is obvious that among the permanent organs in the structure of the Court should be an organ entrusted with the task of preparing the requirements for the progress In the criminal case initiated by the court, and this body is the public prosecution agency, which operates independently from the rest of the agencies, as it acts as a party independent of the rest of the parties to the case before the court[1].

As part of its work, this office receives referrals and information about crimes that fall under the jurisdiction of the court in preparation for the initiation of the investigation mission in this regard. Material or attachment, and based on what is mentioned in the statute of the International Criminal Court [2]. The most important provisions related to the public prosecution in the International Criminal Court can be presented as follows:

#### ***First***

The Statute of the International Criminal Court included the controls for the formation of the Office of the Prosecutor in the Court, and based on them, the Public Prosecution of the Court is organized in an office called the Office of the Prosecutor, which acts as an independent organ from the organs of the Court. They have the task of carrying out any work that the Public Prosecutor is required to carry out under the Statute of the Court, and no member of the Public Prosecution Office is allowed to receive or heed any instructions or directions received from an external source and is prohibited from acting under any of these instructions shown in this research or directives [3]

#### ***Second***

The Prosecutor of the International Criminal Court is elected by secret ballot by an absolute majority of the members of the Assembly of States Parties, and in the same way the Deputy Prosecutors are elected from a list of candidates submitted by the Prosecutor. , and they may not be re-elected, and it can be said that the method adopted by the statute of the International Criminal Court for naming the Prosecutor and his deputies is considered a commendable method by not adopting the method of appointment, but rather the election, which gives an opportunity to choose the fittest among the contenders from the list of candidates, and this method may also have a role In ensuring the independence of the work of the Public Prosecution Office in the court away from the dictates and pressures that might be imagined if the occupation of this position was done by appointment [4]

#### ***Third***

The Public Prosecutor and his deputies are of different nationalities, and they exercise their functions on a full-time basis. The Public Prosecutor and his deputies are not entitled to engage in any activity that may conflict with their duties or undermine confidence in their

independence. In the field of criminal investigation and with high legal competence, and to be proficient in at least one of the working languages of the court [5]

#### ***Forth***

The Public Prosecutor or one of his deputies may request an exemption from working in a specific case, and it is up to the Presidency to approve the request for exemption, and the Public Prosecutor or his deputies may not participate in any case in which their impartiality may be questionable based on any reason, and they must be disqualified from any case previously They may participate in it in any capacity while it is presented to the court or even when they participate in a criminal case related to it at the national level related to the person under investigation or prosecution. To request at any time, the removal of the Prosecutor or one of his deputies on grounds of doubt as to their impartiality, and the Prosecutor or the Deputy Prosecutor, as appropriate, shall have the right to submit his comments on the matter [6]

#### ***Fifth***

The Assembly of the States Parties to the Court may take a decision to dismiss the Prosecutor (or (on the recommendation of the Deputy Prosecutor) by an absolute majority of those States and by secret ballot if it is established that he has committed serious conduct or a gross breach of his duties under the Statute of the Court, or If it is proven that he is unable to exercise the functions required of him under the statute, and here the public prosecutor or the deputy public prosecutor who is challenging his conduct or ability to exercise the functions of his office shall have the opportunity to present and receive evidence and submit defenses in accordance with the rules of procedure and evidence in order to defend the integrity of his position [7]

#### ***Sixth***

The public prosecutor is not required to be a judge, so it is permissible for someone who has not been a judge to occupy this position, while other court circuits require those who hold positions in them to be a judge was not a judge, but a professor at Harvard University in the United States. He is also a member of the Anti-Bribery Organization, and the head of its branches in Latin America and the Caribbean [8]

### **4-The role entrusted to the Public Prosecution at the International Criminal Court**

The Public Prosecution in the Criminal Court has an important role mainly related to the legal nature of the tasks and competencies entrusted to it, as it is based on the statute of the court that combines the powers of investigation and accusation, as it is entrusted with the task of receiving referrals and information that document crimes within the jurisdiction of the court, and he who studies them in preparation for proceeding with investigation procedures However, in some cases, the power of the Public Prosecution is restricted by the restriction of obtaining the approval of the Pre-Trial Chamber of the Court for its decisions, starting with its decision regarding the initiation of the case [9] In the sense that the public prosecutor, although he has the authority to prosecute, indict or prosecute, is subject to obtaining the permission of the Pre-Trial Chamber, which is concerned with the subpoena or the issuance of an arrest or detention order [10]

Apparently, this restriction comes from the premise that the statute of the International Criminal Court did not include what indicates the existence of any kind of judicial review or oversight over the actions of the Prosecutor while he is in the process of receiving referrals or information and evaluating it until he makes the decision to initiate investigations, and this of course contradicts the prevailing laws The National Criminal Court [11] According to which the Public Prosecution works under the supervision of the administrative authority that monitors its work and evaluates its performance:

#### ***4.1 The role of the public prosecutor in the investigation phase:***

The issue of granting the Prosecutor of the International Criminal Court autonomous powers and an independent role that enables him to conduct the investigation on his own has been the focus of in-depth discussion during the preparation of the ICC Statute. In the court to initiate the case and conduct the investigation on his own, the public prosecutor has a discretionary authority to select the sources from which he derives his information. He may seek the assistance of countries or international governmental and non-governmental organizations, and he may receive testimonies at the court's headquarters, and he may cooperate with any party he deems to help him. In carrying out his duties, we mention the cooperation agreement signed on December 22, 2003 between the Office of the Prosecutor of the International Criminal Court and the International Police Organization "Interpol", which aims to exchange information and cooperate in order to achieve criminal justice and search for fugitive suspects. Ali accesses the database of that organization [13]

As for the actions of the public prosecutor in the investigation, he initiates the preliminary investigation, which means a set of procedures undertaken by the investigation authority with the aim of investigating, searching for evidence, assessing the value of that evidence and its role in arriving at the truth about the crime committed and its sufficiency for conducting the trial of the accused [14] This does not prevent him from looking at any new information he has after that in the same case in order to take what he deems appropriate about it [15] To undertake the investigation or is unable to do so, and this trend reflects once again the principle of complementarity adopted by the court in addition to strengthening the role of the court in achieving criminal justice [16]

#### ***4.2 After obtaining permission from the Pre-Trial Chamber, the Prosecutor shall proceed to the investigation stage and proceed with the case through a number of procedures, as follows:***

##### ***First***

Conducting the interrogation: the interrogation generally means discussing the accused about the acts attributed to him and directing questions and inquiries about them and confronting him with the evidence confirming the accusation against him. It should affect the accused, witnesses and complainants [17]

##### ***Second***

The role of the Prosecutor of the International Criminal Court in the field of documenting evidence: The Statute of the Criminal Court adopted an approach that gives the Public Prosecution a dual role in Article 66 of it, the principle that the presumption of innocence is presumed and that the proof of guilt rests with the Public Prosecutor and that the

court must reach conviction She has no doubts about the possibility of the accused's innocence before she issues a decision to convict him [18]

At this time, we can say that the duty of the public prosecutor is not limited to the issue of proving the accused's guilt by collecting incriminating evidence, but also includes his duty to collect evidence of innocence and the obligation to disclose such evidence by him, in accordance with Article (67/2) of the statute that Provides (In addition to any other disclosure cases provided for in this Statute, the Prosecutor shall disclose to the Defense as soon as possible evidence in his possession or control which he believes shows or tends to show the innocence of the accused or mitigate his guilt or which may affect the credibility of Prosecution evidence and when the application of this paragraph is in doubt, the court shall decide on the matter), and it can be said that this is considered a commendable conduct that shows the status of the Public Prosecution at the International Criminal Court in that it is not considered an opponent in the proceedings and highlights its desired role in achieving criminal justice. Therefore, we find that the statute The International Criminal Court has empowered the Prosecutor with broad authority in the field of collecting evidence, analyzing the information it receives, and supplementing it with additional information from any source it deems appropriate, whether from countries or from any of the United Nations agencies or organizations. He died governmental or non-governmental and has received oral or written testimonies, and it can be said that this comes from the importance of the role assigned to the public prosecutor to ensure that criminal justice is achieved and that he does not represent an opponent in the case [19]

### ***Third***

The role of the Public Prosecution in issuing arrest warrants or arrest warrants against persons: According to the Statute of the International Criminal Court, the Pre-Trial Chamber is competent, at any time after the investigation begins, to issue an order or decision to arrest the accused, and this is based on a request issued by the Prosecutor after it That Chamber shall examine the application, the evidence and the information provided by the Public Prosecutor if it is satisfied that there are reasonable grounds for the arrest warrant being sought to have committed a crime within the jurisdiction of the Court, and that his arrest appears to be necessary to ensure his presence before the Court, or that it is necessary to ensure that he does not obstruct investigation or court proceedings or to endanger them, or to prevent that person from continuing to commit that offense or to prevent the commission of a related offense within the court's jurisdiction [20] The statute of the court required that the public prosecutor's request to issue an arrest warrant against a person include some relevant data, such as the person's name and any other information relevant to identifying him, the crimes attributed to him and their facts, what confirms the belief that he committed them, and the reason why the public prosecutor believes It is necessary to arrest him [21]

The Statute also gave the Prosecutor, instead of requesting an arrest warrant, to request the Pre-Trial Chamber to issue a summons for the person, and if the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person has committed the alleged offense and that a summons is sufficient to secure a person's appearance before the Court, it should The summons shall be issued and the summons shall contain data, including: the name of the person and any other information relevant to identifying him, the specific date on which the person must appear in attendance, as well as a specific reference to the crimes within the jurisdiction of the court that the person is alleged to have committed, and a brief statement of

the alleged facts It constitutes that crime, and thus the public prosecutor has the discretion to decide whether an arrest warrant should be issued or whether a summons to appear before the court is sufficient to ensure the appearance of the person accused of crimes within the jurisdiction of the court to initiate investigations [22]

### ***4.3 The role of the public prosecutor in the trial and appeal stage:***

1. The role of the Prosecutor before the start of the trial sessions: According to the procedural rules and the rules of evidence of the International Criminal Court, the Trial Chamber holds a preparatory session in order to determine the date of the trial, and the Prosecutor, based on Rule (132/1), has the right to request the Trial Chamber to postpone the trial [23] The Public Prosecutor may also, during this stage, request the Trial Chamber in writing to decide on any issue related to the conduct of the proceedings. The Public Prosecutor may submit a written request to the Trial Chamber before the trial begins to decide on any issue related to the conduct of the proceedings. Therefore, when the trial begins, the Trial Chamber asks the Public Prosecutor or the defense if they have any objections or observations related to the conduct of the procedures taken before and after the confirmation hearings are held. Raising such objections or observations or submitting them again in the a subsequent event during the trial proceedings without the permission of the circuit of the court conducting the proceedings, but the Trial Chamber may, at its request, the Prosecutor or the defense decide on issues that may arise during the trial [24]

Court, and the Public Prosecution has a prominent role in it, as the pre-trial circuit holds a session to approve the charges that the Prosecutor intends to request a trial in the presence of that person and his lawyer. The Pre-Trial Chamber in the event that the person waived to appear, or when the accused is a fugitive and has not been found provided that reasonable steps to ensure that he appears in court to inform him of the charges have been taken, in which case the absent accused will be represented by counsel when the Pre-Trial Chamber decides that In this he has an interest, and the public prosecutor shall, during the hearing, support each of the charges with sufficient evidence to prove their attribution to the accused, and he may rely on evidence Documentary or brief presentation of evidence and does not need to call witnesses expected to testify in the trial, and the public prosecutor may, after the adoption of the charges and before the start of the trial, amend the charges with the permission of the pre-trial department and after notifying the accused, but if the public prosecutor seeks to add other charges or replace For a more severe accusation, a hearing must be held within the framework of this article to confirm the charges [25]

2. The role of the public prosecutor in the stage of trial and appeal of judgments: the trial stage relates to facts that take place before the first instance circuit in charge of conducting the trial of the accused or the accused before it of the charges that they are supposed to have been informed of and the available evidence regarding them in the preliminary stage and in the pre-trial session related to the confirmation of the charges The Public Prosecutor has a role at this stage related to the issue of accepting evidence at the Trial Chamber and his role in issues related to the confidentiality of evidence and the restriction of disclosure of evidence, as trial sessions are held before the Trial Chamber and those sessions are, in principle, public and adversarial and in the presence of the accused, his lawyer and the public prosecutor, who bears the

burden Of course, at the beginning of the trial, the Trial Chamber begins to read out the charges that had previously been approved by the Pre-Trial Chamber, and here the Prosecutor has the right, after the approval of the Trial Chamber, to withdraw some of the charges that were initially claimed [26]

According to Article (65) of the Basic Statute, and in the event that the accused confesses the accusation against him, the Trial Chamber shall take measures, including ascertaining whether the admission of guilt is supported by the facts of the case contained in the charges brought by the public prosecutor that the accused confesses, and any materials supplementing the charges submitted by the Public Prosecutor Any other evidence provided by the public prosecutor or the accused, such as the testimony of witnesses, is accepted by the accused, and the Trial Chamber may request the Public Prosecutor to provide additional evidence, including the testimony of witnesses, as the burden of proof falls on him, and therefore he must prove that the accused is guilty [27]

According to the same Article The court is not bound by any discussions that take place between the public prosecutor and the defense regarding the amendment of the charges, the confession of guilt, or the penalty to be imposed, meaning that it is not possible to admit a bargaining that may take place and which is to push the accused to confess guilt on charges that are less serious than the actual reality, because such bargaining If it occurred and was recognized, then it represents an insult to criminal justice and a condemnation of the judicial system that approves it. Articles (81 and 82) of the Procedural and evidence Rules of the International Criminal Court grant the Prosecutor the jurisdiction to restrict the disclosure of evidence, and to restrict the disclosure of protected materials and information based on Article (54/3/e) of the Statute [28]

It can be said that the powers granted to the public prosecutor in this aspect come in the context of balancing the interest in the proper conduct of the trial and the achievement of justice in a manner that does not harm the ongoing or additional investigations and obtaining new evidence on the one hand, and on the other hand, preserving the privacy of information providers or witnesses and ensuring their safety and even being in This is to encourage those who have information or testimony to give to deal with the court, and when the first instance circuit issues its judgment, its mission ends, and here the public prosecutor has a role represented in his request to appeal the judgment issued based on reasons that are: procedural error, error in facts, and error in the law, as well [29]

The convict or the public prosecutor on his behalf may file an appeal based on any of these reasons, in addition to any other reason that affects the integrity or reliability of the procedures or decision, as well as the appeal in case of disproportion between the crime and the penalty, although the judgments issued by the Appeals Chamber are considered final. It is not acceptable to appeal, but it may arise from reasons that allow an opportunity to reconsider it, and in this case, the public prosecutor on behalf of the convict may submit a request to the Department of Justice to appeal to reconsider the final judgment of conviction or punishment based on such reasons, which are [30]

The discovery of new evidence that was not available at the time of the trial, and it is of such importance that if it had been proven at the trial, it would have been likely to result in a different judgment, meaning That this way of appeal must be based on new evidence that, if it had existed before, would have had a decisive impact on the conviction or punishment, the right to this appeal cannot be based, for example, on

the allegation that there was an error in evaluating the facts presented during the trial, or an error in the procedures Or in the law [considering that all of this is considered one of the issues that are related to it by way of appeal, also a request can be submitted to reconsider the final judgment if it was found that false or forged evidence was taken into account at the time of the trial and relied upon in the conviction, or if it was found that one or more of the judges who participated in deciding the guilt or confirming the charges have committed in that case gross misconduct or breached their duties seriously in a manner serious enough to justify the dismissal of that judge or judges [31]

## 5-Public Prosecution and its role in accordance with internal law5

The Public Prosecution Authority is considered a representative of the social body to consider the public case, as it represents the society in enforcing its right to punish whoever commits any act in violation of the law. The Basic Statute of the State, and in order to achieve these tasks, the law assigned him all procedures in order to uncover the truth by conducting an investigation or taking precautionary measures that benefit the law [32]

### 5.1 Naming the Public Prosecution Service

Countries differed in naming their representative in claiming their right to punishment according to the procedural regulations applied in those countries. Some of them are called the Public Prosecution Office, as in France (). It is represented by the Public Prosecutor, and this label exists in Egypt as well, and this label was mentioned in Article (1/1) of the amended Egyptian Code of Criminal Procedure No. 150 of 1950, as the Public Prosecution is concerned with initiating and conducting a criminal case, and it is not permissible to initiate a criminal case except from others. If the law provides otherwise, the Public Prosecution is a judicial body. In addition to its competence in accusing and investigating, the law obliges its members to be represented in court sessions, and the failure to involve members of the Public Prosecution in court sessions leads to the invalidity of the formation of the court. In some countries, it is called the Public Prosecution, and it is represented by the Chief Public Prosecutor. The Public Prosecution Institution in Iraq is part of the judicial authority, and it is the representative of the community and its representative. It represents the public interest and seeks to achieve the obligations of the law. Thus, it is considered a mainstay in judicial work, as it stands by the judiciary and works within the framework of the law [33]

Article 89 of the Iraqi Constitution states that "the federal judicial authority consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, and the Public Prosecution Service." Article (25) of the repealed Public Prosecution Law No. 159 of 1979 also stipulated this name. As well as the text of Article (1) of the Public Prosecution Law in force No. 49 of 2017, which stipulates that (First: A body called the Public Prosecution Service shall be established and it is one of the components of the federal judicial authority [43].

## 6- Definition of public prosecution in criminal jurisprudence

Criminal jurisprudence has provided several definitions of the public prosecution, regardless of the term used, whether it is the public prosecution or the public prosecution. Some of them go to define it as the body that initiates the criminal case and initiates everything related to it before the judiciary [44]. Others have gone to define the Public Prosecution or the Public

Prosecution as the body that acts on behalf of the state in initiating the criminal case and conducting it before the judiciary to the point where it is decided by a final judgment [45]. Others have defined it as a device that initiates and initiates a criminal case before the competent authorities until a verdict of acquittal or conviction is issued, and it follows that the Public Prosecution is merely a representative or representative of the community in demanding the imposition of a criminal penalty on the defendant [46]. And some of them define it as the body by which society resorts to the judicial authority in order to impose punishment on the perpetrator of the crime.

Others define it as the body that initiates the criminal case on behalf of the community, since the community is the plaintiff, but because the community cannot undertake this function, it has been entrusted to a body acting on its behalf to undertake the prosecution on behalf of the community on the grounds that it has the right to punishment. We conclude from the foregoing that the Public Prosecution assumes this role as it acts as a deputy (legal agent) to act as a public prosecutor in accordance with the law on behalf of the community in initiating the criminal case when the higher interest defined by the Constitution and the law relating to the duties of the Public Prosecution or the Public Prosecution Office is affected. The agency is either an agreement (a contract of agency between two parties whose source is the contract) or a legal agency whose source is the text of the law, such as the attorney general [47]

## 7- The legal system of the public prosecution

Jurisprudential opinions differed in terms of obligating the Public Prosecution to initiate the criminal case among those who believe that they are obligated to initiate the criminal case when it is verified that the crime was committed; Among the jurisprudence are those who see that this apparatus has a discretionary power in order to move it: the jurisprudential opinions have been divided into two parts:

**7.1 Part one:** It takes the principle of legality (the imperative to initiate the criminal case), which obliges the public prosecution to initiate the criminal case when the news or complaint reaches it, i.e. when it is verified that the crime was committed. We believe that the Iraqi legislator has adopted the system of legitimacy with regard to the role of the Public Prosecution in initiating the criminal case. Thus, the Public Prosecution is obliged to initiate the lawsuit in the event that it is not dependent on a complaint or permission from a certain authority [49]

**7.2 Part two:** Some legislations take the principle of appropriateness, and this system gives the Public Prosecution a discretionary authority in terms of whether or not to file a case to the judicial authority, as the Public Prosecution has the right to file an accusation or not, despite the availability of the elements of the crime. One of the most important justifications for applying this principle is that it allows the Public Prosecution to assess the facts and the extent of the social benefit obtained from the prosecution or not. This principle was adopted by Egyptian law [50]

## 8-Legal Effects of Discriminatory Intervention

Within the (24) twenty-four hours to the competent investigative judge from the date of arrest of the accused. Which he took within three days from the date of its issuance. The third article of the law of the Public Prosecution in force stipulates that he (to attend when conducting an investigation into a felony or misdemeanor and to express his observations and legal requests

and to appear in sessions of criminal courts except for the Federal Court of Cassation and to submit appeals and requests to the criminal court And to the Court of Appeal in its original capacity when considering judgments and decisions issued in cases and misdemeanors, to the Court of Appeal in its cassation capacity, or to the Federal Court of Cassation and according to its jurisdiction. Judicial officers are not affiliated with the Public Prosecution, because the Public Prosecution follows the judicial authority, while members of the Judicial Enforcement report to the executive authority, but they practice their work under the supervision of the Public Prosecution, and it can also file a criminal case when laws are violated, in addition to asking the competent authorities to file a disciplinary lawsuit [51].

It can be said that the powers of the member of the Public Prosecution in accordance with Law No. 159 of 1979, which is repealed, and Law No. 49 of 2017 in force, granted the Public Prosecution some powers, but it is noted that his main role is to initiate and follow up the criminal case and to supervise the investigative work. We agree with the position of the Iraqi legislator by adopting the principle of separation between the functions of the accusation and the function of the preliminary investigation [52]. However, we call for expanding the powers of the public prosecution in a way that makes it more effective with the judiciary to achieve justice.

### **8.1 Results**

1. We found out that the Iraqi legislator required the Public Prosecution to initiate a criminal case in all crimes, except in cases where its initiation depends on the victim's complaint or the necessity of having permission or a request from a specific authority
2. The public prosecution is part of the judicial authority and has competencies and powers stipulated by various laws, including the canceled and new Public Prosecution Law
3. The Public Prosecution Authority is considered a basic supporter on which the judicial work is based, through the exercise of its main function, which is the initiation and initiation of the criminal case, as well as its control over the investigation and trial process
4. The Public Prosecution Authority is a legal prosecution representing the social body
5. It turns out that the Public Prosecution Authority is an independent body linked to the judicial authority represented by the President of the Supreme Judicial Council
6. It turns out that the authority of the public prosecution varies according to the system applied therein

### **8.2 Recommendations**

1. We suggest that the Public Prosecution Law include a text referring to its role in the event that the criminal case depends on the victim's complaint or the existence of a request or permission from a specific authority
2. Joint and effective cooperation between the judiciary, the Integrity Commission, the Office of Financial Supervision and the Public Prosecution in addressing crimes of financial and administrative corruption against honor and limiting the waste of public money
3. The need to fully support the Public Prosecution in order to play its active role in accordance with the constitution and the law, to prosecute all manifestations of financial and administrative corruption and terrorist crimes, and to preserve state funds from waste and the integrity of the state and society's security

4. We recommend that the persons specialized in the Public Prosecution be of persons with experience and the necessity of including them in qualifying courses to ensure that they carry out their duties in the fullest manner
5. The need for the Public Prosecution Service to be independent in terms of selecting its members, away from favoritism and affiliation, to ensure that members are selected on the basis of competence

## دور الادعاء العام في تحقيق العدالة الجنائية ضمن الاختصاص الدولي والداخلي

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### ملخص البحث:

تعرف أن وظيفة الادعاء العام هي وظيفة تتعلق بالمجتمع، حيث يعمل من يتولاها باسم المجتمع ويهدف لمصلحته المتمثلة في تحقيق العدالة الاجتماعية. بعد صدورها، ونظرًا لأن الهدف من تحقيق العدالة الجنائية يتميز بالانتشار والشمولية، مما يجعله ليس مقتصرًا على بلد أو مجموعة من البلدان، بل هو هدف عالمي، وهذا يؤدي إلى حقيقة أن العدالة الجنائية الدولية، التي تعمل بموجب القانون الدولي، تسعى لتحقيقه أيضًا، مما يؤدي إلى أن الادعاء العام على مستوى القضاء الجنائي الدولي له دور يلعبه على طريق تحقيق ذلك الهدف، تمامًا كما يلعب الادعاء العام في القضاء الداخلي للبلدان دورًا هامًا في نفس السياق.

هذا البحث يأتي ضمن إطار الوصول إلى مقارنة بين دور الادعاء العام بموجب نظام المحكمة الجنائية الدولية وقواعدها الإجرائية والأدلة، مع ما هو عليه في التشريعات الداخلية، مع الاعتماد على ما هو الحال في التشريعات الجنائية العراقية كنموذج للمقارنة، وكذلك لتحديد مدى الصلاحيات المفوضة للادعاء العام والسلطات الممنوحة له والأساس القانوني لتلك السلطات في كل من النظامين القانونيين الدولي والمحلي، وما إذا كانت سلطاته مقيدة في أحدهما ومطلقة في الآخر، أو هل هي سلطات متقاربة في كليهما.