

A Typology of Judicial Oversight Systems in Criminal Investigation and Prosecution: A Comparative Study

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Abstract

Judicial oversight is essential in Criminal Investigation and Prosecution to protect individuals' rights and prevent the abuse of power. While Western countries and the International Criminal Court recognize its significance, laws in Iran and Syria lack proper distinction and definition of (especially *ex-ante*) oversight types and systems. This article aims to provide a comparative explanation of judicial oversight, distinguishing it from other forms of oversight. Using an analytical and descriptive approach, the study highlights the dynamic nature of oversight in criminal investigation and prosecution. The research emphasizes the need for explicit and precise classification of judicial oversight types in Syria, Iran, and legal doctrine. Such classification would enhance criminal justice, safeguard individual rights and freedoms, and prevent abuse of power.

Keywords: Investigation, Prosecution, Criminal Procedure, Judicial Oversight, *ex-ante* Oversight.

Introduction

The term "نظارت" (*nezārat*) in Persian refers to supervision, oversight, and monitoring of activities (Moein, 2007: 1947; Dekhoda, 1998: 2561). In English, it can be translated as "supervision, stewardship, control, overseeing, inspection, and monitoring (Saatchi, 2000: 2730)." The Arabic equivalent of the term is "الإشراف، الرقابة" (*Al-Ishrāf, Al-Riqāba*) (Abdel-Moneim, 1999: 191; Omar, 2008: 923). Furthermore, the Holy Quran refers to divine oversight through angels^I and oversight through the faculties and members of human beings.^{II} The concept of oversight has historical roots, with individuals appointed as supervisors in monarchies to oversee the proper conduct of certain affairs (Moein, op cit.: 1947). Today, oversight can be found in various forms, such as the appointment of

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^I Surah Al-Ahzab, Verse 52: "And Allah is, over all things, a Witness."

^{II} Surah An-Nur, Verse 24: "On the Day when their tongues, their hands, and their feet will bear witness against them as to what they used to do."

trustees and inspectors in bankruptcy cases or corporate affairs. In legal terminology, Oversight involves monitoring the work of others to ensure proper execution (Jafari Langroudi, 2002: 3613) and examining actions to determine their correctness or incorrectness (Hashemi, 1996: 38).

Oversight is discussed in various fields of knowledge, including administration, politics, and social sciences (Nezhad, 2004: 22). In administration, oversight is construed as a *sine quo* none to effectiveness and productivity (Sharif zadeh & Adabi firuzjai, 2008: 127), referring to mechanisms that prevent deviation from goals and ensure efficiency in resource utilization (Mirmohammadi, 2004: 12-13). In legal studies, oversight is primarily associated with public law, referring to examinations conducted by political, public, administrative, judicial, etc (Hashemi, 2023: 159). institutions on other institutions and organizations alongside concepts such as the rule of law and separation of powers (Rasekh, 2009: 22; Amid Zanjani, 2010: 53). Yet it has also become relevant in criminal law, particularly in criminal proceedings. Today, there are different types of judicial review of prosecutorial discretion (Stahn, 2009: 247). Judicial oversight during the preliminary investigation phase involves the supervision of the public prosecutor's office by an independent and impartial judge to ensure the legitimacy of actions impacting individual rights and freedoms (Shamseldin, 2007: 55).

The final resolution of the 15th International Congress on Criminal Law,^{III} specifies that "any decision made by an authorized authority that relates to fundamental rights of individuals - including actions by police officers- must be approved by a judge and subject to their supervision" (Khazani, et al., 1996: 475). Similarly, in this research, judicial oversight refers specifically to the oversight of the court (sitting judges) on the performance of the public prosecutor's office. It requires an object or subject of oversight (Nezhad, op cit.: 22), which refers to actions carried out in the executive, judicial, and legislative branches (Rasakh, op cit.: 15). Examples of judicial oversight can be found in different countries. In Italy, prosecutors are independent of the Ministry of Justice (Riccardo, 2009: 41; Voena et al., 2014: 57-88) and are subject to the Higher Council of the Judiciary (CSM)^{IV}. In the United States, prosecutors are often elected and accountable to the public (Gordon & Huber, 2002: 334-351). England delegates the investigative role to the police, with oversight of prosecution handled by the Crown Prosecution Service (Khanalipour Vajargah, 2018: 103).

Judicial oversight in common law is generally simpler compared to Romano-Germanic systems, as judges hold a higher position in the structure and

^{III} Held in Rio de Janeiro, Brazil, 1994

^{IV} The Consiglio superiore della magistratura

the role of the prosecutor's office is relatively weak (Khazani, 1998: 190). In general, the provision of judicial oversight over the prosecutor's office is more consistent in adversarial Legal Systems than Inquisitorial legal systems (stahn, op. cit: 247). The European Court of Human Rights (ECHR) has limited jurisprudence on judicial oversight over prosecutors. The ECHR indicates that prosecutors may be subject to the oversight of an independent judge who has independence from the parties and executive authorities in the trial (Nowak, 2014: 61). The proximity of the concept of judicial oversight with concepts such as judicial supervision orders, Supreme Court oversight of lower courts, and oversight of judges' behavior has led to a conceptual overlap. In the following sections, we will discuss the Typology of Judicial Oversight Systems in Criminal Investigation and Prosecution to provide a comparative explanation of various types of judicial oversight, highlighting their differences from other forms of oversight.

Types of Judicial Oversight

Judicial Oversight can be classified based on various criteria. Although these classifications are not explicitly provided for in criminal procedure laws of countries such as Iran and Syria, various types can be extracted from the existing manifestations.

A. Based on the Responsible Institution

i. Internal Oversight

Internal oversight refers to supervisory mechanisms implemented within the same institution, whether it involves an individual or a panel of judges affiliated with said institution. Internal oversight is exemplified in the practices of Syria and Iran. In Syria, the public prosecutor's office assumes leadership and oversight responsibilities, as outlined in Article 14 of the Criminal Procedure Code of 1950. Similarly, in Iran, the prosecutor oversees and leads the office of the public prosecutor, as stipulated in Articles 28, 32, and 33 of the Criminal Procedure Code of 2013. The public prosecutor's office in both countries wields significant authority in making crucial decisions without requiring authorization from higher authorities. However, this concentration of power can have adverse consequences, making it challenging to address any resulting harm.

Prosecutors often take on roles similar to defense lawyers, representing the state and advocating for the punishment of individuals. However, the court institution should impartially establish guilt while safeguarding the innocent from baseless charges (Hawmad, 1987: 153). Extensive research shows that criminal laws can be vulnerable to interference from law enforcement agencies and prosecutors, who may selectively prosecute cases, conduct investigations, and file

charges, potentially neglecting serious crimes (Goldstein & Marcus, 1977: 240-241). Despite this, the institution itself oversees its own decision-making, serving as both the overseer and subject of oversight.

ii. External Oversight

External oversight involves institutional supervision by judges from outside the relevant institution. In France, judges of freedom and detention exercise supervisory jurisdiction over measures such as temporary detention, judicial supervision, and house arrest, potentially affecting the rights and freedoms of individuals (Mertens, 2017: Online). In Syria, the "referring judge" serves as an external oversight entity, overseeing investigations and decisions made by the investigating judge and referring criminal cases to the courts (Al Koulsi, 2018: 150). Additionally, the preliminary branch in Syria oversees preliminary investigations conducted by the public prosecutor's office or investigating judges to ensure their lawfulness.

These different forms of oversight contribute to the overall goal of ensuring accountability, legality, and fairness in the judicial (investigation and prosecution) processes. A comparable illustration of oversight in France can be seen in the establishment of the "investigative branch" as stipulated in Article 191 of the French Code of Criminal Procedure.⁵ This branch serves as an intermediary stage between investigation and prosecution (Vie-publique, 2022), exercising oversight over decisions made by investigating judges, hearing judges, and detention judges (Céline Laronde-Clérac, 2021: 239). It has the authority to amend or invalidate such decisions. Similarly, within the International Criminal Court (ICC), the preliminary chamber, consisting of three judges, exercises oversight over the prosecutor's authorization to initiate prosecution (Safferling, 2018: 324).

The Federal Constitutional Court of Germany has also played a significant role in judicial oversight. In a notable ruling in 2001, the court emphasized the need for a narrow interpretation of urgency in searches of individuals' residences. It affirmed that any infringement upon fundamental rights must be justified by a judge's authorization. The court established the principle that judicial searches should be conducted, with non-judicial searches limited to cases of urgency (Bundesverfassungsgericht, 2001: Online).⁶ Additionally, the German Code of Criminal Procedure (paras. 1 & 2, Art. 119) mandates that meetings and communications of detainees must be authorized and monitored.

In 2022, the Federal Constitutional Court of Germany ruled on a case involving wiretapping after a confession and initial conviction. The court declared

⁵ Art.191. Code de procédure pénale.

⁶ Urteil vom 20. Februar 2001-2 BvR 1444/00.

that further surveillance of conversations between the individual and their parents was unnecessary and disproportionate. It regarded these actions as an intrusion upon privacy and emphasized the need for decisions to be reasonable and justified (Bundesverfassungsgericht, 2022: Online). This demonstrates that oversight extends beyond the establishment of decisions to their implementation. Oversight over the adoption and initiation of decisions alone is insufficient; oversight over their implementation is equally important.

In another ruling in 2005, the Federal Constitutional Court of Germany invalidated the judgment of a cantonal court that justified a search without a judicial order and the confiscation of a mobile phone. The court emphasized that investigators had failed to contact a competent judge and found no evidence indicating a risk of evidence destruction (Bundesverfassungsgericht, 2005: Online). This highlights the importance of oversight in ensuring the legality of investigative actions. In contrast, the legal systems of Iran and Syria lack comparable oversight over investigative and prosecutorial decisions at the time of their adoption.

B. Based on Temporal Aspects

Some scholars argue against categorizing oversight as *ex-ante* and *ex-post* or *discretionary* (*Istiswābi*) and *informative* (*Istila'i*), advocating instead for a division of oversight solely into *ex-post* and *informative* oversight (Rasekh, op cit.: 20). Our perspective classifies oversight based on the criterion of time, dividing it into *ante-judicial* and *post-judicial* oversight. Additionally, oversight can be categorized as *informative* or *discretionary* based on its degree of influence.

i. Ex Post Judicial Oversight

Ex-post oversight occurs after a decision is made, and subsequent oversight addresses objections. In England, for example, defendants or individuals associated with detained defendants can request a review of the legality of detention by competent judges through a process called "Habeas Corpus" (Ashoori, 1997: 11). In many Romano-Germanic countries, victims of crimes also have the right to object to the abuse of prosecutorial powers (Luna & Wade, 2010: 1432).

In Syria, decisions made by investigating judges are categorized as investigative decisions and judicial decisions. Investigative decisions include matters such as detention, property seizure, and searches. These decisions cannot be independently appealed at the time of their issuance but must await the final decisions of the investigating judge (Jukhdar, 2009/2: 229). Judicial decisions may

be subject to appeal if they concern jurisdiction, time, or the inherent nature of the court. Oversight over these decisions is ex-post facto and falls under the purview of ex-post oversight. Most of the Typologies of oversight of the Public Prosecution's decisions in Iran and Syria are of the Typology of ex-post oversight⁷, and some of them are not even subject to oversight⁸.

ii. Ex-Ante Judicial Oversight

Ex ante oversight occurs before the implementation of decisions or actions by competent authorities. It acts as a preventive measure when it adheres to an appropriate framework, embodying independence and impartiality. Ex-ante oversight serves as a deterrent against inappropriate decisions, safeguards individuals' rights and freedoms, and minimizes potential harm or damages. Iranian law recognizes the manifestation of ex-ante oversight in the Criminal Procedure Code. Article 149 addresses the sale of property that requires significant expenses for its preservation or is at risk of damage, corruption, or price reduction. The approval of the prosecutor or a court order is required for such sales, emphasizing the role of judicial power as a protector of individuals' properties and assets.

Article 150 of the Iranian Criminal Procedure Code prohibits the monitoring of individuals' telecommunications, except in cases involving security threats or specific crimes listed in the law. Monitoring, including duration and frequency, requires the consent of the Head of the Judiciary or the first instance court. Similarly, the monitoring of prisoners' telecommunications and bank accounts necessitates authorization from the executing judge or the chief of the judicial district. Additionally, the monitoring of bank accounts is carried out by investigators, and according to Article 151 of the Iranian Criminal Procedure Code, it requires the authorization of the chief of the judicial district. Another example of ex ante oversight can be found in the Rules of Procedure and Evidence of the former Yugoslav and Rwandan Tribunals. Article 51 allows the prosecutor to request the rejection of criminal charges at any stage of the proceedings, subject to approval by the Tribunal. The ICC Statute also allows for deferral of investigations or prosecutions by the United Nations Security Council, with confirmation required by the Pre-Trial Chamber for all matters of investigation and prosecution (Saber, 2015: 120). Most States worldwide endeavor to entrust the authority to make decisions that limit individual rights and freedoms to judges. In exceptional circumstances where this authority is delegated to the police and

⁷ - The defendant in Syria criminal procedure only has the right to appeal the decisions of Article 118 and the decisions of incompetent to stand trial decision.

⁸ -e.g Art 70/3 Syria criminal procedure code.

the public prosecutor's office, such decisions must be expeditiously approved by the court (Khazani, et al, op. Cit.: 470). In international documents, the concept of a *hearing judge* does not encompass judges and members of the public prosecutor's office (Tangestani, 2018: p38) Transferring the authority to make decisions that restrict individual rights and freedoms to the public prosecutor's office weakens judicial, and the absence of oversight over the public prosecutor's office significantly diminishes judicial guarantees (*Ibid*: 191.). As prosecutorial judges do not possess inherent judicial status, their decisions require oversight by a judge.

C. Based on the Degree of Influence

Oversight can be further classified into discretionary (*Istiswābi*) and informative (*Istitla'i*) oversight in Islamic jurisprudence. These two types of oversight are significant in the Iranian public law framework, particularly in monitoring government actions, electoral affairs, and contemporary criminal procedure law.

i. Informative Oversight

Informative (*Istitla'i*) oversight, as defined in Moein's dictionary, involves consultation and notification without the authority to approve the actions of the trustee in trust affairs (Moein, op cit.: 1947). In the context of criminal procedure law, this type of oversight gives the overseer the right to be informed, without the power to reject or approve actions. The overseen party is obligated to report to the overseer, who lacks the authority to issue judgments or orders, and there is no guarantee of compliance with the overseer's opinion. The primary purpose of informative oversight is to provide accurate information to the overseer (Yazdi, 1999: 75). The Inspection Organization of Iran is an example of an entity with informative oversight authority under Article 174 of the Iranian Constitution. Its role is to gather accurate information regarding the performance of duties by the overseen party (Marandi, 1999: 52).

The Iranian Code of Criminal Procedure of 2013 also contains instances of informative oversight. Article 114 prohibits the suspension of industrial and service activities by investigators without reasonable evidence of harmful criminal acts against public health, security, or order. However, investigators are obligated to inform the prosecutor. Similarly, Article 109 mandates investigators to inform the prosecutor about the issuance of precautionary measures, without requiring their consent or approval. In an Advisory Opinion (No. 2083/96/7) issued by the Legal Department of the Judiciary, it is clarified that oversight by the county prosecutor's office over the actions of prosecutors and judicial authorities in the

city's courts does not entail interference in their administrative and judicial duties. The county prosecutor's office supervises the proper implementation of the law in the relevant court and provides instructions and reminders if necessary, without interfering in the process of relevant cases. Discretionary oversight is deemed inappropriate in this context (National System of Laws and Regulations of the Islamic Republic of Iran, 2017/N, Online).

Similar instances of informative oversight can be found in Syria. The Code of Criminal Procedure of 1950 stipulates that the investigating judge must obtain the prosecutor's opinion when issuing a detention order in crimes punishable by imprisonment or more severe penalties (Article 106). The prosecutor's opinion is also required for the release of individuals (Article 117). Informative oversight, characterized by consultation, notification, and non-interference in matters within the jurisdiction of the overseen, plays a significant role in ensuring the provision of accurate information and proper implementation of the law.

ii. Discretionary Oversight

The term *istiswāb* (discretion) has been mentioned in Islamic jurisprudence in the context of endowment (*vaqf*). It refers to "approval" or "authorization" in Arabic. In public and constitutional law, its French equivalent is "le pouvoir" and "d'approbation préalable," while in English, it is referred to as "Approval Supervision" (Marandi, op cit. 52). Discretionary oversight involves ex-ante approval and oversight by the overseeing authority before the implementation of actions (Moein, op cit., 1947). The overseer verifies and approves all decision-making and actions to prevent abuses and errors, and non-compliance with these orders or rulings is subject to sanctions (enshrined in the Iranian Constitution under Article 156; Marandi, op cit. 52; Yazdi, op cit., 75-76). The overseeing authority has the power to issue orders or rulings, ensuring compliance. However, the overseer's intervention must be lawful and not arbitrary (Shole Sadi, 1999: 170).

In the Iranian Criminal Procedure Code, discretionary oversight is exemplified in several articles. Article 44 stipulates that judicial officers report crimes to the prosecutor's office to obtain necessary orders, and the prosecutor issues orders to continue investigations or make judicial decisions. Article 46 requires judicial officers to inform the prosecutor about the outcomes of their actions, and the prosecutor can issue orders to ensure the completion of actions and investigations. Prosecutorial oversight over judicial officers in non-flagrant offenses is considered discretionary (*istiswābi*). The Code also addresses specific situations where discretionary oversight applies. Article 96 prohibits the publication of images and

private information of suspects during the preliminary investigation stage, except in certain crimes with the request and approval of the county prosecutor. Similarly, Article 151 of the Iranian Criminal Procedure Code mandates the chief of the judicial district's approval for the control of bank accounts by the investigating officer.

The oversight of prosecutorial assistants provides another example of discretionary oversight. Assistants are required to comply with and obtain the approval of the prosecutor for their actions to be effective (Khaleghi, 2016: 138). Advisory Opinion No. 3103/95/7 clarifies that prosecutorial oversight of investigating officers can be informative or discretionary, depending on whether the officer is obligated to consider the prosecutor's opinion or not. Discretionary oversight is applicable in determining the sufficiency of guarantors and completing investigations (Article 221), as well as in the publication of images and private information of suspects (Article 96). Informative oversight, such as in Article 109, relates to the implementation of precautionary measures before notification. The purpose of prosecutorial oversight is to ensure the proper implementation of laws and regulations in the preliminary investigation process (National System of Laws and Regulations of the Islamic Republic of Iran, 2017/F, Online).

Oversight in Major Legal Systems

In the realm of oversight in preliminary investigations, two prevailing models can be identified: the closed model and the open model. In the closed model, those responsible for prosecution and investigation lack the authority to make decisions about matters with legal implications and related to individuals' rights and freedoms. Instead, they are required to present the matter to an independent and impartial judicial authority, such as the preliminary investigation branch of the ICC, for decisions on detention and more. Conversely, in the open model, those in charge of prosecution and investigation possess the competence to make decisions involving legal implications or conflicts with individuals' rights and freedoms (Abdi & Ardabili, 2020: 151). Some legal scholars have also referred to these two models as the model lacking judicial oversight and the model with judicial oversight (Yousefi, 2012: 7). The model lacking judicial oversight signifies the absence of an overseeing entity or individuals possessing the competencies of judges. In other words, oversight may exist, but it lacks judicial characteristics. Hence, it is asserted that in inquisitorial systems, the prosecutor typically exercises oversight over investigations.

A. Italy

In Italy, the pre-trial stage involves the participation of four authorities: the prosecutor, the police, the preliminary investigating judge,⁹ and the preliminary hearing judge¹⁰ (Montana, 2016: 292). The enactment of the Criminal Procedure Code in 1988 brought about significant changes, aligning the Italian criminal procedure system more closely with the adversarial system observed in Anglo-Saxon countries. These changes involved the elimination of the investigating judges and preliminary investigations, which were symbolic of the Romano-Germanic system. While the prosecutor retained their position at the apex of the prosecution structure, their discretion was curtailed to protect the rights and freedoms of individuals and ensure equality among the parties involved, designating them as one of the parties to the case (Ashoori, 1997: 178).

Furthermore, a new judge known as the preliminary investigating judge was introduced to safeguard the rights and freedoms of individuals and exercise *ex ante* oversight over the decisions of the prosecutor's office, including those related to the referral of the case to courts. However, in cases of flagrant offences, minor offenses, or when the accused confesses, the prosecutor's office may directly refer the case to court. Crimes carrying a sentence of less than 4 years of imprisonment are handled by a single judge, referred to as the "Pretore," but any action affecting individual freedom must be carried out through the preliminary investigating judge (ibid: 179-181). The preliminary investigating judge, often referred to as the "judge without a file," intervenes in exceptional situations upon the request of the parties involved in the proceedings concerning the restriction of fundamental rights (Caianiello, 2012: 252).

In Italy, similar to other systems, the prosecutor's decisions regarding prosecution and referral of the case to court are subject to the oversight of two groups of judges: investigating judges for preliminary investigations and trial judges for preliminary hearings (Nelken, 2013: 263). Upon being informed about the commission of a crime, the prosecutor must take action, with certain exceptions. After the preliminary investigations, they must submit a request to the preliminary investigating judge (GIP) to initiate prosecution or archive the case¹¹ (Montana, 2009: 30). The preliminary investigating judge may designate a person as a defendant if their involvement in the investigations becomes clear (Article 415, paragraph 2). Some argue that this action should be carried out by the prosecutor, who holds the sole right to bring charges in the Italian system.

⁹ Giudice per le indagini preliminary(GIP)

¹⁰ Giudice per I 'udienza preliminare(GUP)

¹¹ Instances of archiving are mentioned in Articles 408, 411, and 415 of the Italian Criminal Procedure Code

However, it is justified on the grounds of preserving the legality of prosecution, which is a constitutional principle (Caprioli, 2014: 511-685).

The preliminary hearing judge (GUP), after considering the evidence and statements of the parties, assesses the evidence and may decide to dismiss the prosecution, refer the case to court, or request further investigations from the prosecutor (ibid: 522-534). The prosecutor must request the judge's authorization to detain suspected individuals, and they must provide sufficient and reasonable grounds to demonstrate that the accused intends to destroy evidence or is about to commit further crimes. In emergencies, such as when there are sufficient grounds to fear the suspect's escape, the prosecutor may detain the person and present them before a judge within 48 hours to obtain a detention order. Similarly, judicial authorization is required for the collection of DNA samples and the interception of communications; otherwise, the evidence obtained will not be admissible at any stage of the proceedings (Caianiello, 2012: 259-260).

B. Germany

In Germany, the judiciary functions as an independent administrative body responsible for the administration of justice, and it maintains a neutral stance in criminal proceedings. It operates intending to uncover the truth and serve the interests of society as a whole, without adopting an adversarial approach towards the parties involved (Siegismund, 2001: 64). The prosecutor in Germany possesses the authority to initiate investigations to substantiate public lawsuits.^{12,13} In cases where the police report a crime, the prosecutor is obligated to commence the investigation promptly.¹⁴ However, in practice, the police hold the power to conduct investigations or handle certain cases without referring them to the prosecutor's office (Kremens, 2021: 121).

According to the German Constitution, inspections (Paragraph 2, Article 13) and arrests (Paragraph 2, Article 104) are conducted exclusively by judges, and in exceptional circumstances, by the police and the prosecutor. Although the prosecutor is responsible for conducting investigations, judicial authorization is required for any investigative action that may infringe upon individuals' rights. Therefore, only a judge can authorize actions that may encroach upon the rights and freedoms of individuals (Weigend & Salditt, 2007: 85). Investigators in Germany can be categorized into three groups: the first group comprises all police officers, including those without the status of "Ermittlungspersonen," who possess the authority to initiate investigations and make decisions such as the emergency

¹² Öffentliche Klage

¹³ §160 (1) StPO

¹⁴ §163 (2) StPO

detention of individuals, as well as taking photographs or fingerprints. The second group consists of police officers who hold the status of "Ermittlungspersonen," granting them the authority to initiate investigations and, in emergency situations, carry out actions such as physically inspecting suspects and non-suspects, conducting seizures, and so on.

The third group encompasses the prosecutor's office, which possesses all the powers of the previous groups and additional powers (Kremens, op cit.: 154-155). It is important to note that the police must always obtain judicial authorization for inspections, arrests, seizures, or detentions (Ibid: 155). In Germany, since 1975, the investigating judge known as "Untersuchungsrichter," with extensive powers, has been replaced by the "Ermittlungsrichter," who is also a judge but does not engage in investigation. The investigating judge has the authority to conduct investigations at the prosecutor's request and, concurrently, possesses jurisdiction over the decisions of the prosecutor that could potentially infringe upon the rights and freedoms of individuals in matters of inspection, arrest, seizure and detention (Ibid: 77 & 157).

C. France

In France, the powers of prosecutors are limited through guidelines issued by higher authorities.¹⁵ At the apex of this hierarchy is the Minister of Justice. Actions concerning the rights and freedoms of individuals require a warrant issued by a judge of freedom and detention. These powers encompass a wide range of actions, such as the interception, recording and transcription of correspondence sent by electronic communications,¹⁶ police detention exceeding 48 hours,¹⁷ searches and seizures of documents outside legal hours,¹⁸ as well as specific investigative techniques like the use of devices to collect technical communication data,¹⁹ audio systems, and image stabilization of specific locations or vehicles,²⁰ seizure of computer data,²¹ authorization to search in preliminary investigations,²² as well as accessing fugitives through interception, recording and transcription of correspondence sent by electronic communications,²³ etc. These indicate that prosecutors have been deprived of many investigative powers.

¹⁵ Art.39-1; C.p.p.

¹⁶ Art.706-95; C.p.p.

¹⁷ Art.706-88 ; C.p.p.

¹⁸ Art.706-89; C.p.p.

¹⁹ Art.706-95-20; C.p.p.

²⁰ Art.706-96; C.p.p.

²¹ Art.706-102; C.p.p.

²² Art.76; C.p.p.

²³ Art.74-2; C.p.p.

Conclusion

In contrast to areas such as public law, the literature on criminal procedure has given limited attention to the judicial oversight of prosecution and investigation. Despite its vital role as a safeguard for the rights and freedoms of individuals and as a means to prevent abuse of authority by officials, the position and significance of this institution have not been adequately addressed in procedural laws.

Western countries, particularly those with a Romano-Germanic legal system and the ICC, have established judicial oversight in their criminal procedure codes. By examining the laws of these countries and ongoing developments, it becomes apparent that many investigative actions, including inspections, seizures, arrests, and actions relating to individuals' privacy, are carried out under the judicial oversight of a pre-trial judge. For example, France has a judge of freedom and detention, and Italy has an investigating judge, who is responsible for protecting the fundamental rights of suspects and defendants and preventing the abuse of judicial powers during the investigative stage. This includes mitigating potential biases of law enforcement officers and prosecutors resulting from structural or non-structural influences, as well as justifying the actions of investigators in terms of the reasons and methods employed when dealing with suspects and defendants.

These justifications support the implementation of *ex-ante* judicial oversight in the investigation and prosecution processes. Judicial oversight of investigation and prosecution entails overseeing the judicial and investigative actions of responsible authorities, particularly coercive actions during the pre-trial phase, which are carried out by judges possessing the full attributes, such as independence and impartiality. Coercive actions at this stage have irreversible consequences, such as deprivation of liberty, violation of privacy, and other impacts. Therefore, the proposition of judicial oversight for such actions, especially in countries where the responsibility for investigation and prosecution lies with the police or the prosecution service, is of utmost importance.

Consequently, it is feasible to enhance and strengthen oversight of the performance of investigation and prosecution bodies in Iran and Syria by establishing an independent judicial oversight body, akin to a Court of Liberties and Detention or a Preliminary Investigation Branch, with defined jurisdiction and competencies within a framework outlined in the criminal procedure code. This framework should restrict the absolute discretion of prosecution officials and explicitly provide safeguards against misconduct or abuse by prosecution and investigation authorities during the preliminary investigation stage. Additionally, institutionalizing the concept of judicial oversight and emphasizing its necessity,

particularly about significant and high-profile cases, and incorporating explicit regulations into the preliminary investigation phase, would be viable.

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