

The role of the public prosecution in protecting human rights in the post-sentencing period

Asst. Lecturer: Hidab Rasul Sharif, Asst. Lecturer: Mustafa Ibrahim Abdulhassan

National University of Science and Technology, Iraq
Ministry of Higher Education and Scientific Research, Iraq
College of Law, University of Dhi Qar, Ministry of Higher Education and Scientific Research, Iraq

Emails: Hadab.R.Sh@Nust.Edu.Iq, Lawp1e230@Utg.Edu.Iq

Abstract:

The public prosecutor has an important role in the criminal case, and the importance and scope of this role varies according to the stages of the criminal case, and it is spread in the public prosecution phase in cases of execution against the location of detainees and legal prisoners due to the serious infringement of basic human rights, beginning with his right to life, safety and mental rights, to his right to human dignity, which is a trick by the internal or international court to Text to criminalize it.

Dignity of the person inherent in himself.

The importance of the role of the Public Prosecution Office is highlighted in protecting human rights, as it is at the forefront of those addressed to the protection of criminal legitimacy

This requires him to be certain that the criminal procedure infringing on the rights of individuals has met the conditions and controls established by the legal rules.

2: The importance of research

The importance of the research is that it aims to clarify the role of the public prosecution in protecting human rights during the post-trial phase, those rights that all of humanity has been emphasizing on.

3: search problem

In this topic, we will discuss several questions, including:

Introduction

1- Definition of the subject

One of the basic components in supporting the application of the law, respecting legality, protecting public order and ensuring respect for the rule of law is the presence of a body that monitors legality, which is the public prosecution, whose central tasks are to protect the social body and achieve justice through its contribution to respecting the application of the law.

The public prosecution is considered the second part of the justice structure and contributes to the protection of the state's system, security and institutions, and the concern for democracy and the higher interests of the people.

Many constitutions have included texts emphasizing the protection of human rights as they represent the necessary limit to preserve the humanity and

and the second section devoted to the role of the public prosecution in protecting human rights in the implementation stage.

While the second demand dealt with the role of the Public Prosecution in postponing and suspending the implementation of sentences and conditional release, and divided into two branches, the first section was devoted to clarifying the role of the Public Prosecution in postponing and suspending the execution of sentences, and the second section the role of the Public Prosecution in conditional release.

Research on the role of the public prosecutor in protecting human rights in the post-judgment stage is of such importance that it cannot be ignored or overlooked. Monitoring the proper application of the law and the methods of appeal are defined as the means established by law for the litigants to complain against the judgment before the same court that issued it, or before a court higher than it with the intention of nullifying it, rescinding it or amending it in their interest¹.

It is one of the most important guarantees that the law provides to the parties to the criminal litigation and gives them another opportunity to prove the harm they have suffered. It also deepens confidence in the justice of judges and the strength of their

A- What is the role of the public prosecution under the law and the stages of its application in protecting human rights, how to protect human rights in the post-trial phase, and the role of the public prosecution in implementing judgments? What is the role of the public prosecutor in protecting human rights at the stage of appeal, judgments and their implementation, and what is its role in postponing the judgment and conditional release?

B - Is this role embodied in practice, or is it limited to theory only, and what is the legal basis for the relationship of the public prosecution for human rights and determining its role in oversight to ensure the proper application of the law and the achievement of criminal justice?

4: Research Methodology

We will follow the analytical approach during the research by analyzing the legal texts in the Public Prosecution Law No. 49 of 2017, the Iraqi Constitution of 2005, as well as the amended Code of Criminal Procedure No. 23 of 1971.

5: Research plan

We will address the topic of the research through two demands, as follows:

The first requirement is the role of the public prosecution in protecting human rights at the stage of appealing and implementing judgments, as it is divided into two branches, the first of which is to show the role of the public prosecution in protecting human rights in the stage of appealing judgments,

1 . Hassan Al Jokhdar: Explanation of the Jordanian Code of Criminal Procedure, Edition 1, Al-Safadi Press, Amman, 1993, p. 165.

consider his case in a fair and public view and on an equal footing with others if he feels that an injustice has been done to him.

This is ensured by the Universal Declaration of Human Rights in its eighth and tenth articles, and what is stipulated in Article (5/14) of the International Covenant on Civil and Political Rights, which states that “every person convicted of a crime has the right to review the sentence and sentence by a higher court in accordance with the law”⁴.

Accordingly, we will explain in this requirement the role of the public prosecution in protecting human rights in the stage of appealing judgments in the first section, and its role in the implementation stage in the second section.

The role of the public prosecutor in protecting human rights at the stage of appealing judgments

Because of the seriousness of penal judgments and decisions, the law usually grants members of the public prosecution the power to challenge them in order to ensure oversight of legality.

And that the member of the Public Prosecution attributed before the competent court has the right to request the issuance of the decision or judgment that he deems in accordance with the law according to his conviction. If the court issues a

judgments, and leads society to the desired legal stability².

In this research, we will address the role of the Public Prosecution in protecting human rights in the post-judgment stage through two sections: We show in the first requirement the role of the Public Prosecution in protecting human rights in the stage of appealing and implementing judgments, and we show in the second requirement the role of the Public Prosecution in postponing judgment and conditional release.

The role of the public prosecution in protecting human rights in the stage of appealing and implementing judgments

The role of the public prosecutor in the criminal case continues until after the issuance of the penal judgment, and a new stage begins. issued³.

Because of the importance of challenging judgments as a guarantee of human rights, we find that all procedural laws have been adopted in addition to a set of human rights charters and international treaties.

This is for the same reasons that procedural legislation has adopted, in that judges are human beings who make mistakes when issuing their judgments, and in order to provide opportunities for the convict to

4 . **Osmaniye Kos: The Public Prosecution's** Role in Protecting Human Rights During the Stages of Criminal Procedures, PhD thesis, submitted to Mohamed Khedir University, Biskra, 2014, pp. 200-201.

2 . Dr. Mahmoud Mahmoud Mustafa: The Evolution of the Criminal Procedure Law, Edition 1, Cairo, 1969, p. 123

3. Muhammad Nazmi Muhammad: **The Public Prosecution's Role in Establishing a Public Prosecution in Palestine, Master's Thesis** submitted to An-Najah National University, Palestine, 2011, p. 142.

without the others participating in the crime, as they did not submit their objection, and it is clear that this method provides the original accused and his secondary lawyer his opportunity to defend .

Among the guarantees that the public prosecution adheres to when objecting to the judgment in absentia is its refusal, as the body in charge of implementing the penal judgments, to implement the judgment objected to, because it is considered a non-final judgment⁸.

The legislator's acknowledgment of the convict's right to appeal in the manner of objecting to the judgment in absentia is in line with the protection of human rights in that he has the right

to defend himself, which was prevented by a coercive excuse from appearing before the court that issued the judgment in absentia, which was affirmed by the Iraqi constitution by saying, "The right of defense is sacred and guaranteed. at all stages of investigation and trial"⁹

The Iraqi Code of Criminal Procedure referred to other methods, which we will explain as follows:

First: The Retrial

It is one of the exceptional methods of appeal that, if its conditions are met, leads to a retrial in the case in which a

decision other than what the member of the Public Prosecution requested, he has the right to appeal against it according to what is stipulated in Public Prosecution Law No. (49) for the year 2017, since the appeal is decided for all parties to the criminal case, including the public prosecution, and it should be noted that by way of appealing the penal judgments in the objection to the judgment in absentia, the public prosecution has no role in it because the trial takes place in his presence, but the role of the accused is in the objection on the judgment handed down in absentia⁵,

And that the Iraqi legislator has organized the provisions of objection to the parliamentary judgment in Articles (243 and 248) of the Code of Criminal Procedure, and this right has been granted to the person convicted in absentia, and the Public Prosecution does not have the right to challenge the judgment in absentia, because Article (5/3) of the Prosecution Law The general in force has necessitated the attendance of the Public Prosecution at the sessions of the criminal courts, except for the criminal courts and juvenile courts, and his failure to attend results in a challenge to the legality of the trial⁶

We must point out that only the objector benefits from his objection,

7 . Omar Muhammad Helmy: The right of the accused to seek the assistance of a lawyer, a **master's thesis submitted to the University of Babylon, College of Law, 2000, p. 118.**

8 . Dr. Hatem Hassan Bakkar: Protecting the **Accused's Right to a Fair Trial, Mansha'at al-Maaref, Alexandria, p. 687.**

9 . See: the text of Article (19/third) of the Constitution of Iraq for the year 2005.

5 . Dr. Saeed Hassaballah Abdullah: Explanation of the Criminal Procedure Code, 2nd Edition, Mosul University, 1982, p. 120.

6 . See: The text of Article (5) of the Third Law of Public Prosecution No. 49 of 2017 and Article Five of Instructions No. 3 of 1986 regarding the organization of public prosecution work before the criminal courts.

4- If, after the judgment, facts emerged or documents were submitted that were unknown at the time of the trial and were likely to prove the innocence of the convict.

5- If the judgment was based on a cassation judgment or was subsequently canceled by the legally prescribed methods.¹¹

The legislator granting the Public Prosecution the main role in deciding on requests for retrial and checking the reasons for which they were based represents an important guarantee of human rights (the accused), as this path is a new opportunity that allows him to exercise his right to defend himself and his right to prove his innocence from what has been attributed to him. From an accusation, those rights guaranteed by international treaties and covenants and affirmed by the Iraqi constitution in Article (19/4) "The right of defense is sacred and guaranteed at all stages of investigation and trial" and paragraph (fifth) of the same article with its text "The accused is innocent until proven guilty in a fair legal trial."

Second: The discrimination

It is an unusual method of appealing judgments, and its role is limited to revealing the extent to which the contested judgment contains an error in the application of the law in its broadest sense.

That is, whether it relates to a violation of the law, an error in its application

final judgment was issued for a penalty or measure in a felony or misdemeanor. From his wife or one of his relatives if he is deceased,

The Public Prosecution shall undertake the investigation if the request is based on it with the reasons, and attaches the case papers, then submits its review on the request to the Court of Cassation within thirty days starting from the day following the date of receiving the file to him if the sentence issued to him is death penalty¹⁰.

As this method of appeal against judgments is exceptional, it is not permissible except in felonies or misdemeanors, and in certain cases that came exclusively and are represented by the following:

1- If a judgment is passed convicting an accused of a murder, then the defendant is found alive.

2- If a person has been convicted of committing a crime, then a final judgment is issued against another person for committing the same crime, and there is a contradiction between the two judgments that requires the innocence of one of the convicted persons.

3- If a person was judged based on a testimony, expert opinion, or document, then a final judgment was issued against the testimony or expert with the penalty of perjury on the basis of this testimony or opinion, or a final judgment was issued for the forgery of the document.

11 . Dr. Abdul-Amir Al-Aqili, Dr. Salim Ibrahim Harba: Explanation of the Code of Criminal Procedure, Volume 2, Edition 1, Al-Maaref Press, Baghdad, 1973, pp. 231-232.

10 . See: The text of Articles (271 - 272) of the amended Code of Criminal Procedure No. 23 of 1971.

in the decision, and all of this is in the interest of the accused,

It is considered one of the trial guarantees that international conventions were keen to confirm and national constitutions were keen to include in texts, including the Iraqi Constitution of 2005, as it indicated in Article (19/3) that "litigation is a safeguarded right guaranteed to all."

Third: The Correcting the discriminatory decision:

The way to correct the discriminatory decision is a new method of extraordinary appeal brought by the current Iraqi Code of Criminal Procedure¹⁵.

Correction of the cassation decision is through a request submitted by the public prosecutor, the convicted person and the rest of those involved in the criminal case, as the request is submitted by them to correct the legal error in the decision issued by the Court of Cassation if this request is submitted within thirty days from the date of notifying the imprisoned or detained convict of the cassation decision Or from the date of the arrival of the case papers from the Court of Cassation to the Subject Court¹⁶ and the Iraqi legislator indicated the reason for the correction by saying (Request to correct the legal error), which means that the Court of Cassation committed a legal error, which appeared in the discriminatory decision issued by it,

15 . Dr. Abdul Amir Al-Aqili, d. Salim Harba: Explanation of the Code of Criminal Procedure, previous source, p. 325.

16 . See the text of Article (266) of the Code of Procedure No. 23 of 1971, as amended.

and interpretation, or the invalidity of criminal procedures¹².

The Iraqi legislator granted the public prosecutor, the accused, the complainant, the civil plaintiff and the civil official the right to appeal to the Court of Cassation¹³.

We note the role played by the Public Prosecution in monitoring the correct application of the law by the courts through the judgments they issue,

The appeal submitted by the public prosecution allows the court to reduce or aggravate the penalty, as the appeal of the public prosecution entails transferring the subject matter of the case to the Court of Cassation and issuing the appropriate judgment in it within the limits of the law.

And that the protection of human rights in the appeal of discrimination is highlighted by the fact that the Court of Cassation represents the final reference for the protection of rights as the supreme judicial body for all courts in Iraq, which is charged with overturning any judgment in which it finds a violation of the rights of the accused¹⁴.

There is no doubt that granting this right to a court whose judges enjoy legal transparency and high knowledge that enables them to examine the flaws

12 .Mahmoud Nazmi Muhammad: A previously mentioned source, p. 145.

13 . See: The text of Article (249/a) of the amended Code of Criminal Procedure No. 23 of 1971.

14 . Dr. Salim Ibrahim Harba: The Public Prosecution's Discrimination of Judgments and Decisions Issued by Courts, Jurist Journal, Numbers 1-4, Sixteenth Year, 1984, p. 171.

The role of the public prosecutor in protecting human rights in the implementation phase

Legislation generally gives the

Public Prosecution its role in implementing the rulings issued in criminal cases within its role in

monitoring the implementation because the penalties and measures prescribed by law for any crime can only be implemented by virtue of a ruling issued by a competent court. However, legislation is not the same in all parts of the world. Some of these Legislation, including Iraq, sentences issued in presence are executed or considered as adversarial judgments, even if the judgments issued are judgments in absentia, with the exception of the death sentences, the sentences of imprisonment issued in

violations, as they are only implemented after gaining the degree of finality, provided that the convict presents a guarantor to attend the execution The penalty of imprisonment whenever he is asked to do so, otherwise the penalty will be executed immediately¹⁹, and this is confirmed by Article (12/first) of the Iraqi Public Prosecution Law No. 49 of 2017, as it stipulates that ((the court shall be provided with a penalty or measure that deprives of freedom upon issuing the judgment The Public Prosecutor in the Iraqi Correctional Department and the Juvenile Reform Department, each according to their jurisdiction, with a copy of the decision of conviction,

19 . Article (282) of the Iraqi Code of Criminal Procedure.

any error in the provisions of the Penal Code and the principles of criminal trials,

For example, the Court of Cassation issues its decision in a way that recommends convicting the accused, and then issues the decision to certify the verdict of innocence, or it was criminalized by an act for which there was no text criminalizing it and imposing its penalty on the convicted person¹⁷.

The correction shall be by annulment of the cassation decision and returning the case to the trial court for retrial, or reversing the contested ruling and issuing a new decision commensurate with the reasons that support the outcome of the appeal to correct the cassation decision¹⁸.

And the important role that the Public Prosecution plays in protecting human rights by correcting the discriminatory decision, because this method of appealing judgments represents one of the human rights guarantees (the accused) that allows him to present the decision issued against him to a body that studies it in order to correct Legal errors that are tainted by him and that have a significant impact on him, especially as they affect the rights and freedoms of the accused.

17 . D. Fakhri Abd al-Razzaq al-Hadithi: Explanation of the Code of Criminal Procedure, Dar al-Sanhouri Beirut, 2015, p. 562.

18 . D. Saeed Hasab Abdullah: A previous source, pg. 462.

in prison until the procedures for executing the sentence are completed, and the death sentence is not executed except by a republican decree²² and when a death sentence is issued, the court sends the case papers to the

Prosecution Office The General Prosecution immediately²³ and when the case file is received by the Presidency of Public Prosecution, it is referred to the General Authority, which consists of the Chief Public Prosecution, his deputy and members (the Public Prosecution in the Criminal and Juvenile Commissions. Less than eight members of the panel, and opinions are taken by the majority of those present. If the votes are equal, the side on which the president belongs shall return. After checking, the papers are sent to the Court of Cassation accompanied by the opinion of the Public Prosecution Presidency²⁴.

Second: Liberty-depriving penalties

These are the penalties that deprive the convicted person of freedom for the period specified in the judgment based on the limits set forth for penalties in the law for each of the crimes²⁵.

The freedom-depriving penalties are life imprisonment and temporary imprisonment, and both simple and severe imprisonment. As for the

incrimination, placement and judgment with a warrant for imprisonment, deposition or imprisonment, and as a result of any court decision in this regard.

The law has entrusted the member of the public prosecution in the institution to follow up the implementation of judgments, decisions and measures, and the Iraqi reform department and the juvenile reform department must tell the public prosecution member in the institution or prison to follow up on the prisoner from his admission to the social reform home until the completion of the sentence²⁰.

We will show the role of the Public Prosecution in implementing the penalties as follows:

First: The death penalty

The death penalty has been known to Sharia since ancient times, and it was implemented by cruel and merciless means. However, the development of ideas and the emergence of a large number of those calling for its abolition and questioning the basis of its legality, has achieved

many modifications in its implementation, and it has become limited to mere taking a soul without torture²¹, and this is what prompted the Iraqi legislator to lay the foundations and rules for how to implement the death penalty, as the convict is placed

22 . See the text of Article (285) of the Iraqi Code of Criminal Procedure.

23 . See the text of Article (10/First) of Public Prosecution Law No. 49 of 2017.

24 . Adnan Muhammad Hadi: The Public Prosecution's Role after the Trial, Research Presented to the Justice Council in the Ministry of Justice, 1989, p. 38.

25 . Dr. Dhari Khalil Hammoud: The Simple Explanation of the Penal Code (General Section), Edition 1, 2004, p. 137.

20 . Ghassan Jamil Al-Wasasi: Public Prosecution, Legal Culture Series, Central Workers Press, Baghdad, 1988, pp. 98-99.

21 . Mohsen Naji: General Provisions in the Penal Code, Explanation on the Body of Penal Texts, 1st Baghdad, 1974, p. 390

Prosecution Law, and accordingly, we will show in this section the role of the Public Prosecution in postponing and suspending the implementation of sentences in the first requirement and its role in conditional release in the second requirement, as follows:

The role of the public prosecutor in postponing and suspending the implementation of sentences

To enable the legislator for the Public Prosecution to carry out the tasks entrusted to him within the framework of monitoring the implementation of judicial rulings, as he obliged him to exercise it, which he will mention in succession, illustrating the role of the Public Prosecution in it, and we will explain it as follows:

First: The role of the prosecution in postponing judgments .

The Iraqi legislator has clarified the case of postponing the execution of the sentence or its replacement if the person sentenced to death is pregnant, in Article (12/fourth) of the Public Prosecution Law, as it stipulates: “If the death sentence is found pregnant, the Iraqi Correctional Department, upon receipt of the order to implement the sentence The Public Prosecutor in the Iraqi Reform Department approached this so that he would express his reading to the Chief Public Prosecutor to submit it to the President of the Supreme Judicial Council, accompanied by his opinion, causing the postponement of the execution of the judgment or its replacement according to the procedures stipulated in this law or in the Code of Criminal

freedom-negating measures, they are intended to place delinquents in boys’ and boys’ rehabilitation schools with the aim of reforming them and rehabilitating them for social life. Late with the release of the convict at noon of the day on which it is decided to terminate it²⁶, and the public prosecutor before the adult reform and juvenile reform departments follows up the implementation of the penalties and measures depriving freedom starting from the day of receiving the inmate until the execution of his release by fulfilling the sentenced period or the conditional release²⁷ .

The role of the public prosecutor in postponing and suspending the implementation of sentences and conditional release

The public prosecution represents the public interest, the public right, and the interest of the law. It must have a role even after the ruling is issued, in order to achieve the interest of society. With this, rulings must be followed up in a way that achieves the public interest, and that the role of the public prosecutor is important in postponing the ruling as well as stopping its implementation, which is unique to the Iraqi legislator. And as the role of the Public Prosecution in the conditional release emerged in the new Public

26 . Dr. Fakhri Abdul Razzaq Al-Hadithi: previous source, pg. 594.

27 . See: The text of Article (12/Second/Third) of the Public Prosecution Law, and Article Three of Instructions No. 1 of 1987 regarding **organizing the work of the Public Prosecutor’s** Department before the Departments of Adult Reform and Juvenile Reform.

causing the postponement of the execution of the judgment or its replacement according to the procedures stipulated in the law Public Prosecution and Criminal Procedure³⁰.

Second: The Public Prosecution's Role in Suspending the Execution of Judgment

The Iraqi legislator empowered the Public Prosecution to request from the court that issued the judgment starting from the suspension of the sentence, if after the judgment became final, a law was issued that permits the crime for which the convict was imprisoned³¹, and the Penal Code³², the convict may also request a stay of execution. The member of the Public Prosecution shall submit a request to stay the execution of the judgment issued by the court in the event of a new law being issued that renders the act or omission for which the accused was sentenced is not punishable, and the court that initially issued the judgment shall order the stay of the execution of the judgment and after the judgment is issued by the court, it shall be considered as a judgment acquittal and erases the judgment that has been issued in it, which results in the fall of the crime and the penalties included in the judgment, it prevents the execution of the penalty, and if part of it is

Procedures. In another case, the legislator permitted Postponing the execution of the penalty in it, which is if a man and his wife are sentenced to a penalty depriving of liberty for a period not exceeding one year, even for different crimes, and they were not imprisoned before, if the execution may be postponed on one of them until the release of the other spouse, if they are sponsoring a young girl who has not completed twelve of his age and they have a specific place of residence, and the decision to postpone the execution is issued by the court that issued the judgment and upon the request of the convicted person²⁸, and it may request the presentation of a guarantor to attend the execution of the penalty when the reason that required it is removed Postponement, and the court must provide the amount of the bail in the decision issued for the postponement, and it may stipulate for the postponement of execution what it deems necessary in the precautions to prevent the convict from escaping in order to ensure the fulfillment of the state's right to punishment²⁹.

The Iraqi legislator granted the Public Prosecutor in the Iraqi Reform Department the right to present his opinion to the Chief Public Prosecutor whether the person sentenced to death was pregnant, and the Head of Public Prosecution must submit it to the President of the Supreme Judicial Council, accompanied by his opinion,

30 . See the text of Article (12/fourth) of Public Prosecution Law No. 49 of 2017.

31 . Muhammad Maarouf Abdullah: **Public Prosecution's Oversight of Legitimacy**, PhD thesis submitted to the University of Baghdad, College of Law and Politics, 1978.

32 . See the text of Article (3/2) of the amended Iraqi Penal Code No. 111 of 1969. , School of Law

28 . Dr. Sami Al-Nasrawi: General Principles in the Penal Code, Part 1, Dar Al-Salaam Press, Baghdad, 1977, p. 48 and beyond.

29 . See: the texts of articles (296, 297) of the Iraqi Code of Criminal Procedure

And what is meant by conditional release is the permissibility of releasing the convict with a penalty depriving of liberty, such as imprisonment, imprisonment or detention, if he spent the greater part of these penalties in prison and proved that he is new by being exempted from carrying out the rest of the penalty, as he had benefited from the implementation of the previous part of it and because of that He quit committing the crime, so he straightened his conduct and behaved well³⁶.

The conditional release is a grant granted to him by the administration when he improves his behavior inside the prison, and this system aims to encourage the convict to comply after his release so that he does not return to prison a second time³⁷.

The Iraqi legislator dealt with conditional release (331-337) of the applicable Code of Criminal Procedure and Articles (84-86) of the Juvenile Welfare Law in force. Both laws did not define a conditional release, but left it to jurisprudence. Liberty-negative original that he has spent three-quarters of the period if he is an adult, or two-thirds of the period if he is a juvenile, and that it has been shown to the court that his conduct and behavior have been straight, provided

Public Prosecution in Iraq and the Arab Countries, Yarmouk Press, Baghdad, p. 74.

36 . Dr. Abdul-Sattar Al-Jumaili: The Correct Concept of Conditional Release in Iraqi Criminal Legislation, Dar Al-Salaam Press, Baghdad, 1972, p. 12.

37 . Dr. Muhammad Subhi Najm: Al-Wajeez in Criminology and Punishment, Edition 2, Dar Al-Thaqafa, Amman, 1991, p. 170.

implemented, the implementation of the remaining part of it shall be suspended³³ But if the new law only mitigates the penalty, it is permissible for the public prosecutor or the convicted He must ask the court that initially issued the judgment to reconsider the sentence imposed in the light of the provisions of the new law³⁴, and there is no provision in Egyptian legislation regarding stopping the execution of the judgment if the Iraqi legislation is unique in taking it.

The role of the public prosecutor in the conditional release

The Public Prosecution Service is considered a major organ of the state to monitor legality and respect for the application of the law. The importance of the Public Prosecution emerges from the purpose for which it was found, which is to protect the public right, the most important of which is the role of the Public Prosecution in the conditional release. These provisions entrust the Public Prosecution with an active role within the framework of The application of these provisions by the competent court as well as the supervision of the parolee in order to confirm that he has implemented his legal conditions in order to achieve the objectives of conditional release, which are the reform of the convict released on condition³⁵.

33 . D. Sami Al-Nasrawi, General Principles in the Penal Code, a previously mentioned source, p. 50.

34 . See the text of Article (3/2) of the amended Iraqi Penal Code No. 111 of 1969.

35 . Dr. Abdul-Amir Al-Akaili, Dr. Dhari Khalil Mahmoud: The Legal System of the

what it decided to implement, or implementation of the principal or subsidiary penalties it decided to postpone.

3. Submitting a review to the court before it issues its decision to cancel the conditional release decision because the released person has violated the conditions of conditional release or has been sentenced to a penalty of deprivation of liberty⁴⁰.

Conclusion

First: the results

1- We found that the public prosecution is the main and important pillar in the judicial process, and there is no doubt that the role played by the public prosecution is of importance that cannot be ignored or overlooked, as it represents, in general, the protection of the public interest by monitoring the legality of the decisions issued by the investigative courts and the competent courts, including arrest warrants. The accused must be arrested or detained during the investigation stage in order to protect personal freedom.

2 - The protection of human rights in criminal procedures is one of the important and vital issues that help in identifying the rights and penal guarantees enjoyed by the individual and the guarantees that can be provided to protect these rights.

40 . See: the text of Article (12/sixth/seventh/eighth) of Public Prosecution Law No. 49 of 2017.

that the period he has spent is not less than six months and the remainder³⁸ which is not more than five years³⁸.

The request for conditional release shall be considered by the court within whose jurisdiction the prison or correctional institution in which the convict is serving his sentence falls, and the president of the appeals court may allocate one or more courts for this purpose. The conditional release at the Criminal Court within thirty days starting from the day following its issuance³⁹.

The Public Prosecution has an important role in the conditional release, as a member of the Public Prosecution in the Iraqi Reform Department or the Juvenile Reform Department does the following:

1. Expressing an opinion on requests for conditional release, monitoring the validity of the conditional release and the obligations imposed on him by the court, and monitoring the validity of the conditions and obligations imposed on him by the court, and informing it of everything he commits in violation of these conditions. He may refer to the interim councils and social organizations to achieve this.
2. Providing the court with information that necessitates a review of its decision of conditional release in whole or in part, or postponement of

38 . Dr. Saeed Hassaballah Abdullah: Explanation of the Code of Criminal Procedure, a previously mentioned source, pp. 315-316.

39 . **Burhan Badri: The Public Prosecution's Role in the Criminal Case, a master's thesis** submitted to the University of Baghdad, College of Law, 1999, p. 99.

whether the necessary conditions are met or not.

3- The role of the Public Prosecutor in the case of deciding the conditional release plays a prominent role, as it manifests itself by deciding on the release request and determining the availability of legal grounds therein. It also has the right to subject the conditionally released person to his supervision and to cancel the release in case of breaching its specific conditions.

4- The reference in the Code of Criminal Procedure No. 23 of 1973 to the necessity of the arrest and arrest warrants, because they are among the serious measures that affect human rights and fundamental freedoms. Therefore, this freedom should not be wasted. It is necessary to raise the legal awareness of members of the judiciary to spread the culture of human rights in the light of the Universal Declaration For human rights to develop a program, curricula and lessons for the purpose of introducing basic human rights.

References

Books

- 1- Dr. Hatem Hassan Bakkar: Protecting the Accused's Right to a Fair Trial, Mansha'at Al Maaref, Alexandria.
- 2- Hassan Al-Jokhadar: Explanation of the Jordanian Criminal Procedure Code, Volume 1, Al-Safadi Press, Amman, 1993.
- 3- Dr. Sami Al-Nasrawi: General Principles in the Penal Code, Part 1, Dar Al-Salaam Press, Baghdad, 1977.

3- The new Public Prosecution Law has neglected to refer to many matters, including the duties of members of the Public Prosecution Office, in addition to not including an explicit text stipulating his duty to protect human rights and respect his dignity, despite being considered the legitimate representative of the public interest.

4 - The public prosecution's protection of human rights in the criminal proceedings is of great importance, because it is the legitimate representative of the social body and the one in charge of protecting its interests, especially if we know that the accused person is the first person to protect his rights and freedom, as he is the subject of the actions taken and the crime that may cause Aggression against him or his legally established rights.

Second: recommendations

- 1- Activating the role of the Public Prosecution Office in protecting human rights at the trial stage, by supervising the trial procedures, by appealing against penal judgments, and by monitoring prisons and rehabilitation homes.
- 2- By activating the role of the Public Prosecution in challenging criminal judgments, since its role varies according to each method, as we find that its role is completely absent within the scope of objecting to the judgment in absentia, while this role is clearly evident when appealing through the retrial method, since the Iraqi legislator was authorized to decide on the applications submitted and determine

14- Dr. Mahmoud Mahmoud Mustafa: The Evolution of the Criminal Procedure Law, 1st Edition, Cairo, 1969.

Thesis

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