



How to cite this article:

Nezafat, M. R., Shamloo, B., & Saybani, A. (2027). The Role and Status of the Prosecutor's Representative in Judicial Hearings. *Journal of Historical Research, Law and Policy*, 5(1), 1-16. <https://doi.org/10.61838/jhrp.312>



Article history:
Original Research

Dates:

Submission Date: 16 December 2025
Revision Date: 12 April 2026
Acceptance Date: 19 April 2026
First Publication Date: 27 April 2026
Final Publication Date: 01 January 2027

The Role and Status of the Prosecutor's Representative in Judicial Hearings

1. Mohammad Reza. Nezafat¹ : Department of Criminal Law and Criminology, BA.C., Islamic Azad University, Bandar Abbas, Iran
2. Bagher. Shamloo^{2*}: Associate Professor of Criminal Law and Criminology, Shahid Beheshti University of Tehran, Iran
3. Alireza. Saybani³: Department of Criminal Law and Criminology, BA.C., Islamic Azad University, Bandar Abbas, Iran

*corresponding author's email: b_shamloo@sbu.ac.ir

ABSTRACT

An assistant prosecutor, as one of the judicial authorities of the public prosecutor's office, is not independent vis-à-vis the prosecutor and, acting as the prosecutor's representative, may—beyond conducting preliminary investigations in criminal cases—perform other duties of the prosecutor as well. Although the assistant prosecutor is not independent of the prosecutor and has no right to formally oppose the prosecutor's opinion, not all decisions made by the assistant prosecutor require the prosecutor's express opinion or approval. The lack of independence of the assistant prosecutor and the obligation to follow the prosecutor's directives do not arise solely from, nor are they limited to, the type or nature of the duty entrusted to the assistant prosecutor. Rather, regardless of which duty the assistant prosecutor undertakes pursuant to the prosecutor's referral, the assistant prosecutor is obligated to comply with the prosecutor's authority. The role of the prosecutor's representative in examining cases varies depending on the subject matter of the case, even in similar offenses. The representative reports the course of proceedings to the prosecutor, thereby keeping the prosecutor informed of developments in the case. In criminal cases, the prosecutor's representative appears as the public claimant to supervise the correctness of the adjudicative process and to defend the enforcement of law and public rights; the representative's presence is mandatory and serves a role comparable to that of a judge in safeguarding legal standards, rather than acting as a party to the dispute. Accordingly, the presence of the prosecutor's representative in criminal courts is compulsory, as the representative is responsible for supervising case proceedings and the proper application of law, protecting public rights and the complainant's claims, and submitting opinions and briefs in defense of the public interest in criminal cases. Even where there is a private complainant, the prosecutor or the prosecutor's representative attends to ensure compliance with the law and the order of the court. Therefore, the legal basis for the representative's presence is to guarantee the observance of justice.

Keywords: *equality of arms; fair and impartial trial; court; prosecutor; representative (assistant prosecutor).*

Introduction

The criminal justice system in every country, in order to realize justice, safeguard public rights, and protect the rights of the accused and the complainant, is founded on legal principles and strict supervision over the course of proceedings. One of the fundamental pillars of this system is the role of the prosecutor's representative in judicial hearings; an institution that, under the law, is regarded as the representative of society as a whole and the guardian of public rights and legality in criminal procedure (1, 2). The presence of the prosecutor's representative in court



sessions is not merely a legal obligation but also constitutes the connecting link between preliminary investigations and judicial adjudication. Iranian criminal procedure law expressly provides that in all sessions of the Criminal Court Two, the prosecutor, deputy prosecutor, or an assistant prosecutor appointed by the prosecutor may appear to defend the indictment, and in the Criminal Court One, the presence of the prosecutor or his representative is mandatory unless the court deems such presence unnecessary. Although the absence of the prosecutor's representative does not usually prevent the continuation of proceedings, the legislature has formally recognized the importance of such presence (3, 4).

The prosecutor's representative in court sessions plays a central role in presenting the indictment and defending it before the judge and, in this sense, acts as the representative of the public claimant. This representative is required to actively supervise the proper implementation of procedural regulations and to present the positions of the prosecution authority in a lawful manner (2, 5). This role, in addition to its judicial dimension, has significant social and legal aspects, as public trust in the supervision of criminal justice largely depends on the manner in which proceedings are conducted and on the effective participation of legal institutions. For example, in many legal systems, prosecutors and their representatives are obliged to oversee compliance with fundamental legal principles such as the principle of legality of crimes and punishments, equality of arms, and the protection of the dignity and rights of the accused, and to submit indictments in accordance with legal standards (6, 7).

In the Iranian legal system, the Criminal Procedure Code, by emphasizing the position of the prosecutor as the public claimant, accords particular importance to the presence of the prosecutor or his representative in judicial proceedings. Even in cases where the General Board of the Supreme Court is convened to establish judicial unity of precedent, the presence of the Prosecutor General or his representative is envisaged so that the legal opinions of the prosecution authority may be reflected in significant judicial decisions (1, 8).

Given the importance of the legal and practical role of prosecutors' representatives in judicial hearings, examining the legal, executive, and practical dimensions of their presence in the course of criminal proceedings is among the issues that can contribute to a better understanding of the role of the prosecution institution in the realization of criminal justice. This article seeks, through an analysis of the legal status of the presence of the prosecutor's representative in judicial hearings, to explain its implications for strengthening public rights and judicial justice, with reliance on statutory sources (2, 5).

The Prosecutor's Representative

The prosecutor's representative, or assistant prosecutor, is a judicial authority who performs duties within the prosecutor's office under the leadership and supervision of the prosecutor and acts on the prosecutor's behalf. Pursuant to referrals by the prosecutor, the assistant prosecutor undertakes matters of supervision, preliminary investigations, enforcement of judgments, and other duties assigned to the prosecutor, and in court speaks in the name of the prosecutor to defend the indictment (3, 9).

The prosecutor is the highest authority of the prosecutor's office. The prosecutor's office is established under the leadership of the prosecutor, who is in fact regarded as the representative of society in court and is therefore referred to as the public claimant. Duties such as issuing indictments against accused persons and supervising the enforcement of punishments fall within the prosecutor's responsibilities. In general terms, the prosecutor may be described as the official responsible for pursuing the realization of justice and defending the rights of the members

of society, with the overarching mission of ensuring public security and safeguarding the existing social order (10, 11).

The Role of the Prosecutor's Representative in Court

A fair and impartial trial is regarded as a right for every society, and legislators as well as judicial authorities must pay due attention to ensuring its observance. In the judicial system, the prosecutor is an actor who can play a prominent role at both the stage of preliminary investigations and the adjudicative stage, and, consequently, the representatives appointed on the prosecutor's behalf can also be influential in this regard. When an individual is accused of committing an offense, he or she may face the risk of deprivation of liberty and other sanctions. The right to a fair trial constitutes a guarantee intended to ensure that individuals are not punished unlawfully or unjustly (1, 5).

Every person must enjoy a fair trial on an entirely equal basis. A fair trial is a process grounded in the accused's enjoyment of all defense rights, facilities, and conditions equal to those of the opposing party for the preparation of a defense. Violation of its standards deprives proceedings of their fairness, whereas compliance with those standards promises the realization of an equitable trial. The prosecutor plays a significant role in laying the groundwork for and shaping a criminal case, and failure to observe the requirements of a fair trial at different stages of the criminal process may steer proceedings toward an unjust decision (12, 13).

Although the Iranian Criminal Procedure Code of 2013 introduced notable advances with respect to the principle of impartiality, the principle of equality, the principle of judicial independence, and the principle of separation of different stages of proceedings, the legislator—without adequate regard to global and international standards concerning the essential and important role of the prosecutor in criminal adjudication—has, in certain respects, provided the grounds for an unfair trial. Some legal scholars emphasize the multiplicity of the prosecutor's duties, while others insist on the specificity of those duties. The question arises as to which of the diverse duties attributed to the prosecutor is more important. If the prosecutor were to choose to write about his or her most important duty, which would it be, and what advantages would be emphasized in describing it? (3).

General Criminal Courts and Revolutionary Courts are constituted with the presence of the head of the court or an alternate judge and the prosecutor, the deputy prosecutor, or one of the assistant prosecutors designated by the prosecutor, and they adjudicate only the offenses listed in the indictment in accordance with the relevant Criminal Procedure Code. The drafting of the judgment, after hearing the opinions and defenses of the prosecutor or his representative, is, pursuant to law, the responsibility of the court judge. In this position, the prosecutor is praised for discovering crimes—often even before law enforcement officers—uncovering criminal schemes, revealing the hidden secrets of crimes, and thwarting the plans of economic offenders; or the prosecutor is portrayed in the role of prosecution, fearlessly pursuing any official or individual, setting aside discrimination, and, with prudence and the authority of justice, suppressing violators of the law. Alternatively, the prosecutor may regard the role in preliminary investigations as paramount, adhering to regulations while combating crime and safeguarding the rights of the accused; or may speak of the duty of supervising proceedings in courts—a supervision that doubles the prosecutor's role alongside prosecuting the accused and requesting mitigation or aggravation of punishment. Beyond judicial management in courts, the prosecutor may demonstrate the strength of legal reasoning in proving charges against the accused, defend the rights of society, assist the court in reaching the truth, and ultimately, where mitigation is warranted, act without concern for personal image (14).

From this perspective, the court is viewed not merely as a venue for the circulation of files, but as a sacred forum in which the protection of people's rights is realized. Alternatively, one may assess the prosecutor's duties in the enforcement of court judgments, where all efforts aim at the issuance of judgments and the public's witnessing of their execution as a manifestation of a firm fight against crime and delinquency. Among the most important concerns of the prosecutor, alongside diverse duties, is the careful and nuanced performance of representatives in courts. At this stage, prosecutorial management can bring to fruition efforts undertaken in crime detection, prosecution, and preliminary investigations. The current practice of prosecutors in dispatching representatives to courts depends on factors such as the number of cases, prosecutors' approaches to judicial affairs, the importance of cases, and their social and political implications. A shortage of personnel in prosecutor's offices—particularly in the General and Revolutionary Prosecutor's Office of Tehran—has resulted in a diminished presence of assistant prosecutors in courts (15).

Some judicial colleagues merely sign court minutes to observe the formal appearance of legality; some representatives lack sufficient knowledge of case contents to respond adequately to the defenses of the accused and their lawyers; certain attendances amount only to a symbolic display of legality and fail to embody the progressive principle of prosecutorial supervision over courts; some assistant prosecutors show little inclination to participate in such sessions; and, most importantly, there is an overall shortage of personnel to attend all criminal court sessions. The large number of courts, the diversity of cases, and the explicit legal requirement for the presence of prosecutors' representatives in court sessions necessitate investment in this area so that the prosecutor, in addition to managing cases, can effectively perform the supervisory role in courts. The role of the prosecutor's representative varies depending on the subject matter of the case. In homicide cases, press offenses, or certain serious crimes, a significant portion of the representative's time is devoted to reading the indictment and responding to objections raised by defense counsel or to the accused's defenses. Emphasis on the rhetorical and analytical abilities of prosecutors' representatives and their capacity to present arguments in court can have a deterrent effect. Requiring prosecutors' representatives to submit written reports on their actions in court is a novel approach emphasized by the Tehran Prosecutor's Office. Through this initiative, the representative can briefly report the course of proceedings to the prosecutor and thereby keep the prosecutor informed of developments in the case (9).

At present, the multiplicity of duties and routine matters handled by prosecutors sometimes results in the absence of prosecutors' representatives from hearings in important cases. Regular attendance of prosecutors' representatives in courts yields significant outcomes, including the following:

- The prosecutor fulfills the supervisory role in courts in an informed and scientific manner.
- During proceedings, the prosecutor's representative identifies weaknesses in investigations and evidence presented at the prosecutor's office or strengths in the performance of the investigating judge, and by reporting these to the prosecutor, prevents the repetition of weaknesses in other cases.
- In important cases, the prosecutor can discharge supervisory duties effectively by dispatching capable representatives.
- The conduct of court judges or prosecutors' representatives may entail educational insights, such as whether the court provides sufficient opportunity for the representative to respond to objections as necessary.
- The presence of prosecutors' representatives in courts prevents repeated scheduling of hearings and, consequently, delays in proceedings.

- Consultation and deliberation among prosecutors' representatives regarding complex cases enhance the scientific capacity of judicial colleagues.
- A strong and effective presence of prosecutors' representatives enables prosecutorial supervision over proceedings, correction of procedural flaws, and remediation of deficiencies in the processes of crime detection, prosecution, and preliminary investigations.
- Avoiding attendance at court sessions involving disputes unrelated to the prosecutor's mandate is among the advantages recognized by vigilant prosecutors' representatives.
- The presence of prosecutors' representatives in courts facilitates the use of judicial colleagues' experiences by representatives and the transfer of such experiences to newly appointed prosecutors' office judges.

On the other hand, the presence of the prosecutor's representative in the issuance of indictments is of particular importance, a matter that requires separate and dedicated discussion.

The Presence of the Prosecutor's Representative in Court Sessions: From Legal Obligation to Systematic Protest Action

Despite the explicit provision in the Iranian Criminal Procedure Code requiring the presence of the prosecutor's representative in court sessions, in practice this presence is not realized in a continuous and comprehensive manner. Nevertheless, the prosecutor, in a coherent and systematic way, lodges objections to issued judgments and thereby preserves the supervisory role within the adjudicative process (2, 4).

From Legal Obligation to Executive Reality

From a legal perspective, it is expected that the prosecutor's representative attend the court hearing and, by examining the available evidence, present legal arguments. In practice, however, due to administrative and operational constraints, this role has increasingly assumed a formalistic and superficial character. The ceremonial dimension of the prosecutor's role in Iran's judicial system—particularly in criminal courts—is among the challenges that tangibly affects the course of proceedings and the realization of criminal justice (4, 5).

This problem largely stems from limitations in human resources, a high volume of cases, and time shortages within the adjudicative process, all of which impede the full and effective performance of the prosecutor's role (2, 15).

One of the most significant manifestations of this formalistic role is the lack of the representative's physical presence at court sessions. Under the law—especially in Criminal Court One—the presence of the prosecutor's representative is mandatory; yet, in practice, because of executive difficulties and heavy caseloads, prosecutors' representatives are unable to attend all hearings on a consistent basis. This absence of physical حضور means that the prosecutor's representative cannot actively participate in the adjudicative process, conduct precise and expert examinations, or articulate positions tailored to the specific conditions of each case (1, 4).

Under such circumstances, instead of physical attendance in court, the prosecutor's representative tends to be more prominent in the early stages—particularly in drafting the indictment—whereas in the subsequent stages of proceedings and court sessions the representative is often absent; indeed, even where the representative's name is mentioned in the text of a judgment, the presence may not have occurred in a real and physical sense. This situation causes the prosecutor's representative to function more as a ceremonial and symbolic actor, rather than providing substantive opinions and deeper analyses regarding the case and the accused's situation. In many

instances, although the representative is not physically present, the issued decision nonetheless records that the prosecutor's representative attended the hearing and expressed an opinion. This is more formalistic than real and substantive. In effect, this practice reflects a gap between theory and practice in the judicial system. Such formalism can undermine transparency and accuracy in the adjudicative process. Rather than the prosecutor (or representative) genuinely acting—through analysis of the accused and the file—to realize criminal justice, the process may be reduced to an official, paper-based performance designed merely to preserve formality and outward compliance with procedural principles. Under these conditions, the outcome will typically not align with the principal objectives of criminal proceedings—namely, ensuring societal security and the rehabilitation of offenders (7).

Within Iran's Criminal Procedure Code, this aspect has largely been neglected, and the prosecutor or the prosecutor's representatives have, in effect, been left without clear obligations or specific operational guidelines. Put differently, the Code refers only to the necessity of the prosecutor's presence in court but does not concretely determine what resources the prosecutor must deploy, what positions must be adopted, or which criminal policy should be pursued (13). This legislative deficiency indicates noncompliance with the principles of transparency and qualitative adequacy of criminal laws, which can contribute to distrust in the administration of justice and failure to achieve the goals of a fair trial (16).

Systematic Objections by the Prosecutor's Representative

Although the prosecutor's representative in many cases does not have active and direct participation in court sessions, the representative plays a salient role in objecting to court judgments. Such objections are typically raised due to legal errors or deficiencies in issued decisions, with the aim of correcting judicial processes and preventing unjust judgments. The prosecutor's representative can pursue these objections in a systematic manner; however, in some cases, objections may be advanced not primarily out of concern for justice, but to consolidate the institutional position of the prosecution authority and reinforce its power. Where judgments clearly conflict with laws or legal principles, such objections may be substantively effective; yet, in many cases, they function more as an oversight mechanism than as a direct influence on the original decision-making process. Accordingly, while the prosecutor often does not play a prominent role at the initial adjudication and judgment stage, the role becomes more visible during appellate review and cassation-type proceedings (1, 2).

Nevertheless, this approach also faces challenges. One major issue concerning prosecutorial objections is the lack of transparency in the criteria used to select which judgments are challenged. The multiplicity and vagueness of criteria may cause objections to serve, rather than the correction of legal defects, the reinforcement of a strict and punishment-centered approach within the criminal system. For this reason, in some cases such objections may, instead of enhancing justice, lead to indirect pressure on judges, weaken judicial independence in the adjudicative process, and on the other hand contribute to the persistence of criminality. It is self-evident that institutional independence requires the judiciary to be able to perform its functions free from the influence of other actors (17).

In this context, the prosecutor's right to object—based on Unified Precedent Decision No. 823, which relates to Article 442 of the Criminal Procedure Code—can also be analyzed from a criminological perspective. This right may not only have significant effects on the process of reform and rehabilitation of offenders, but in certain cases may also disrupt that process, particularly where unfounded or repetitive objections by the prosecutor prevent the effective implementation of rehabilitative programs. This can adversely affect the goal-oriented character of criminal proceedings and the attainment of corrective and rehabilitative objectives (7, 8).

In fact, Article 442 was drafted to create motivation in the accused to accept responsibility and to reduce delays in proceedings. Under this provision, an accused who waives the right to appeal may, in exchange, benefit from mitigation of punishment up to one quarter. This rule is, in a sense, grounded in criminological theories of reform and rehabilitation. When the accused accepts the judgment, it indicates a degree of readiness to accept reform; in such circumstances, mitigation can function as an incentive instrument to facilitate exit from the cycle of criminality. Unified Precedent Decision No. 823 permits the prosecutor to object even where the accused has waived the right to appeal. This produces two major consequences: first, deprivation of the accused from the possibility of mitigation; a defendant who in good faith accepted the judgment and expected mitigation may suddenly face a prosecutorial objection and, consequently, not only lose the expected reduction but also face a different penalty at the appellate stage, which fosters distrust in the judicial system. Second, a sense of deception and distrust in criminal justice: from a criminological perspective, the accused must feel confidence in the justice of the judicial system in order to be motivated to exit criminality; if an individual who sought mitigation by accepting the judgment then confronts a prosecutorial objection, the individual may feel subjected to an unequal bargain and deceived, and this distrust can return the person to criminal pathways. One of the most important criminological consequences of such a pattern is an increased likelihood of recidivism. When an accused feels that the judicial system does not adhere to its own understandings, motivation to accept responsibility or reform diminishes. As a result, not only are reform and rehabilitation goals not achieved, but the probability of reoffending increases (7).

From a criminal policy standpoint as well, Unified Precedent Decision No. 823 generates a kind of tension between the roles of the prosecutor and the court. On the one hand, Article 442 provides mitigation for an accused who waives appeal; on the other hand, the unified precedent authorizes the prosecutor to object even in that situation. This duality can produce inconsistency in criminal policy regarding encouraging acceptance of responsibility and reducing procedural delay. Ultimately, modern criminal law philosophy tends toward reducing crime through reform-oriented tools rather than purely repressive approaches. In such a context, a decision like Unified Precedent Decision No. 823—capable of generating feelings of inequality and deception among defendants—requires reconsideration (8, 18).

Ultimately, the performance of the prosecutor's representative in objecting to court judgments requires review and serious reform. So long as objection criteria are neither transparent nor appropriate, and so long as judicial independence against prosecutorial pressures is not preserved, this process will not only fail to advance justice but may become an instrument for reinforcing authoritarian tendencies within the judicial system. Therefore, to create genuine justice, efforts should be made to ensure that objection mechanisms serve not merely to strengthen oversight over proceedings but also function as an important factor in enhancing transparency and safeguarding judicial independence (13).

The Content of the Prosecutor's (or the Prosecutor's Representative's) Request Concerning Punishment

The content of the prosecutor's request regarding punishment is of high significance, because the prosecutor's (or the prosecutor's representative's) opinion in this area is regarded as the opinion of a criminal-law specialist who, in addition to mastery of legal issues, has full awareness of offenders' characteristics and the methods of crime commission. The prosecutor is also aware of obstacles and circumstances that may affect the execution of punishment (2). Within this framework, the prosecutor's request mainly focuses on three fundamental axes: the gravity of the offense, the offender's personality, and the effects and consequences of the offense for the victim.

These three axes assist the court in considering a punishment proportionate to the nature of the offense and its specific circumstances and in observing justice in its decision-making.

The Gravity of the Committed Offense

In this part, the prosecutor generally addresses the disruption created by the committed offense in public order and its impact on the security of individuals, property, and the tranquility of community members (8). Since crime may pose a threat to the social structure and the fundamental rights of individuals, the prosecutor emphasizes the necessity of imposing an educative and deterrent punishment. The aim of such punishments is not only to confront the offense but also to create deterrence and encourage correct conduct in the future so that other members of society refrain from committing similar offenses. This type of punishment is raised in line with a utilitarian function of penal sanctions, aimed at restoring social order and preserving public security (6).

The most important and fundamental issue upon which the formation of any type of penal policy is based is the determination of the function or functions envisaged for the guarantee of penal enforcement. What appears striking in this context is that, in many instances, there is no explicit reference in statutory texts and their general principles to the public functions of such enforcement guarantees. In particular, on the basis of certain provisions in Iran's newer Islamic Penal Code that require the judge, in determining punishment, to take into account the "circumstances and conditions of the offense and the personality of the offender," it is not possible to derive with clarity a precise understanding of the functions of penal enforcement guarantees. Undoubtedly, the circumstances of the offense and the offender's personality are among the essential criteria in determining and selecting enforcement guarantees; yet, on the other hand, the offender's personality alone has not been sufficient to establish criminal responsibility and cannot, by itself, fully guide the determination of the public functions of penal enforcement (6).

Accordingly, the position of substantive criminal law regarding the functions of punishment faces notable contradictions. In practice, the current reactive system simultaneously claims to realize all functions of punishment—including deterrence, moral censure, and rehabilitation—yet often does not achieve any of these aims. Another important issue is that judges, at the time of issuing a conviction, frequently do not possess a clear conception of these functions and do not expressly know what objective should be pursued. Along the same lines, the law has, to a considerable extent, granted individualized discretion in sentencing to judges. In the absence of a principled and clear orientation, such discretion can lead either to reformative and rehabilitative measures or, conversely, to judicial authoritarianism. All of these reasons indicate an urgent need for a modern penal statute that clearly and transparently determines and defines the various functions assigned to penal enforcement guarantees. Such a statute can assist judges in making decisions with greater precision and awareness and in preventing excess and deficiency in the application of punishments (13).

The Offender's Personality

The prosecutor's assessment of the offender's personality plays a vital and influential role in the criminal adjudicative process, because such an assessment can have a significant effect on mitigation or aggravation of punishment (19). This task, of course, entails its own complexities, because the offender's personality file comprises a set of multiple factors, each of which may directly affect judicial decisions. Under the relevant regulatory framework for establishing the accused's personality file, this file includes the accused's personal information, including

individual, familial, social, educational, employment, economic, medical, and psychiatric background, as well as criminal records. This file is formed alongside the judicial case file and for use in judicial decision-making pursuant to the relevant provisions of the Criminal Procedure Code. Among the most important components of the offender's personality file are the examination of criminal history and assessment of risks the offender may pose to society; the offender's psychological and mental condition and family situation, employment and economic status, and the evaluation of the possibility of reintegration into society; interests and activities (including cultural engagement, recreation, sports, and entertainment) that may inform personality assessment; and susceptibility to environmental influences, levels of intellectual impairment or immaturity, and other factors that may affect the individual's social behavior. These assessments are conducted with the aim of reaching appropriate judicial decisions in sentencing and determining the individual's corrective path. Therefore, identifying and analyzing these factors is necessary and pivotal for the prosecutor (20).

The Results and Consequences of the Offense for the Victim

Although the victim's lawyer may present the necessary evidence for compensating damages and argue the victim's entitlement, in circumstances where the manner of committing the offense is painful, or accompanied by hatred, or where the effects of the committed offense on the victim are severe and tangible, the prosecutor or the prosecutor's representative must clarify for the court the overt and latent dimensions of the situation and bring them to the court's attention. In such cases, not only the material and moral damages of the victim must be taken into account, but also the psychological and social consequences imposed on the individual must be examined carefully and articulated.

One operational method in restorative justice programs is training aimed at sensitizing convicted persons to the victim's situation and conditions. In this process, the convicted person is encouraged to accept responsibility for the harms inflicted on the victim. In this manner, the victim can clearly demonstrate how the offender's conduct affected the victim's life—how the offense disrupted daily life, endangered psychological and physical health, and affected the victim's comfort and tranquility. In addition, the impacts of the offense on other members of the victim's family can be raised, showing how they too have not remained unaffected. Narrating these experiences and observing the offender's reactions can help the victim better cope with the situation and process what has occurred. At the same time, this process provides the offender with awareness of the breadth of the harm inflicted and the extent to which it exceeded initial تصور. Implementing such programs not only fosters empathy and remorse in the offender but also encourages greater efforts to compensate for the inflicted losses, and, as a result, guides the offender's rehabilitation process toward reform and reintegration into society (18).

The Degree and Quantity of Punishment

As a general rule, the prosecutor or the prosecutor's representative does not have a legal obligation to propose a specific quantum of punishment and, in practice, does not intervene in this regard, leaving the matter to the judge's discretion. Nevertheless, because the prosecutor is the representative of the state and society and has extensive experience regarding the effects of sentencing, the prosecutor's view is of particular importance for the court and may influence judicial decisions. The prosecutor may also submit proposals regarding factors that warrant aggravation of punishment—especially with the aim of preventing recidivism—or in cases where mitigation or the

imposition of supplementary punishments appears necessary. In particular, with respect to legal persons, the prosecutor must pay special attention to the type of punishment applicable to such persons (1, 2).

Supplementary punishments, as the term itself indicates, constitute a form of penal response to a criminal act that is specifically imposed, under the law and from among an enumerated list, on the offender with aims such as prevention, punishment, or reform and rehabilitation. These punishments—whether discretionary or mandatory—may be general and applicable to all crimes, or may be specifically envisaged for certain offenses. In 2013, by extending the scope of supplementary punishments beyond ta'zir offenses, the Iranian legislature expanded the judge's maneuvering power to provide a response proportionate to criminal conduct. However, because the conditions for implementing different types of these punishments have not been specified clearly in light of the principle of legality and the qualitative requirements of defining crimes and punishments, certain shortcomings can be observed in this area (1, 13).

Substantive Issues Concerning the Prosecutor's Representative in Judicial Hearings

In mixed criminal justice systems, proceedings at the stage of preliminary investigations are conducted in an inquisitorial manner, whereas adjudication before the criminal court is carried out in an adversarial form. Nevertheless, today in most such systems, the preliminary investigation stage has moved away from a purely inquisitorial nature and is even evolving toward greater adversariality. Developments in the Iranian Criminal Procedure Code of 2013, as amended thereafter, likewise indicate that in Iran's criminal justice system the preliminary investigation stage has undergone a similar transformation (1). Moreover, the separation of the prosecutor's office from the court itself embodies respect for the principle of impartiality in adjudication, because it would be unfair for a single institution to be responsible both for conducting investigations and for issuing judgments. Accordingly, the prosecutor, in view of the powers, facilities, and independence vested in the office during preliminary investigations, may collect the evidence necessary to substantiate the claim of the accused's criminal responsibility and present that evidence before the criminal court.

Adversarial adjudication in court means that the criminal judge, as an impartial and independent authority, evaluates the competing arguments and evidence presented by the accused and the prosecutor and issues an opinion as a neutral third party. Adversarial proceedings contribute to the protection of the accused's defense rights, in the sense that the accused—who may have faced various limitations during the preliminary investigation stage—can now confront the prosecutor and present evidence in support of innocence. Today, however, respect for the principle of equality of arms in criminal proceedings requires that even at the preliminary investigation stage, the accused enjoy tools equal to those available to the prosecutor for proving innocence (1). Therefore, the prosecutor's task does not end with the issuance of the indictment; rather, the more demanding phase of prosecutorial work begins at that point. In other words, the prosecutor must, before the criminal court, defend the indictment and the evidence gathered during preliminary investigations and, throughout the hearings, engage in adversarial proceedings against the accused and defense counsel to uphold the prosecutorial position.

It should be noted that in criminal adjudication the prosecutor is one of the parties to the dispute. Despite the explicit legal recognition of this status, in practice there still exists a perception that the prosecutor and the judge stand on one side of the dispute and the accused on the other. One of the reasons for this perception may lie in structural factors within the justice system (11).

Accordingly, once the prosecutor is regarded as one of the parties to the criminal dispute, all the legal consequences of that status apply as well. One such consequence is the obligation to notify the prosecutor of hearings and to summon the prosecutor to attend court sessions (10). In this context, the appellate court has correctly paid attention to this procedural requirement and, for that reason, has annulled the first-instance judgment and remanded the case. Pursuant to paragraph (c) of Article 14 of the Law Amending the Law on the Establishment of General and Revolutionary Courts (2002), General Criminal Courts and Revolutionary Courts were constituted with the presence of the head of the court, the prosecutor or the prosecutor's deputy, or one of the assistant prosecutors designated by the prosecutor, and adjudicated only the offenses listed in the indictment. The drafting of the judgment, after hearing the opinions and defenses of the prosecutor or the prosecutor's representative, lay with the court. Therefore, after receipt of the indictment and the scheduling of a hearing, the court was required to notify the prosecutor—as one of the parties to the dispute—of the hearing date.

The Criminal Procedure Code of 2013, as amended, compared with the Law Amending the Law on the Establishment of General and Revolutionary Courts (2002), addresses the necessity of the prosecutor's presence in court in greater detail, particularly in Articles 300, 342, and 359. Under Article 342, the court is obliged, when setting the hearing date, to notify the prosecutor and the other parties to the dispute. Likewise, after the indictment is read in court, pursuant to paragraph (b) of Article 359, the court is required to hear the statements and evidence presented by the prosecutor or the prosecutor's representative to prove the attributed charge (1).

Regrettably, in Article 300 of the Criminal Procedure Code of 2013, as amended, the legislature—apparently in view of practical constraints and shortages of human resources, which are by no means justifiable—did not make the presence of the prosecutor, the deputy prosecutor, or an assistant prosecutor designated by the prosecutor mandatory in Criminal Court Two, but instead rendered their attendance optional. This interpretation can be inferred from the use of the phrase “may attend” and the converse implication of the clause “unless the court deems their presence necessary.” Consequently, the presence of the prosecutor, the deputy prosecutor, or an assistant prosecutor chosen by the prosecutor in Criminal Court Two is not mandatory unless the court considers such presence necessary. By contrast, the presence of the prosecutor in Criminal Court One is mandatory, and the prosecutor, the deputy prosecutor, or an assistant prosecutor designated by the prosecutor is obliged to attend those proceedings (1).

The opening sentence of Article 300 begins with the phrase “in all sessions,” meaning that where the prosecutor, the deputy prosecutor, or an assistant prosecutor is required to attend court sessions, such attendance is not limited to the first session or to the reading of the indictment, but must extend to all hearings. As discussed above regarding the foundations of the necessity of the prosecutor's presence in court sessions, attendance at all hearings appears consistent with legal principles and standards.

As one of the parties to the criminal dispute, the prosecutor is obliged to attend hearings, and the criminal court is likewise obliged to notify the prosecutor of the hearing date and to summon the prosecutor to attend. Although the absence of the prosecutor does not prevent adjudication, failure to notify the prosecutor of the hearing date and failure to invite the prosecutor to attend may result in the annulment of the judgment at higher levels of review. Unfortunately, in Iran's criminal justice system, for various reasons, the role of the prosecutor in criminal trials has often been reduced to mere attendance and, at most, the reading of the indictment or a brief defense thereof, despite the fact that the Criminal Procedure Code envisages an active and participatory role for the prosecutor in criminal court sessions. This active role can be inferred from the obligation to attend “all sessions” stipulated in

Article 300 of the Code. Nevertheless, practical constraints—such as shortages of human resources and the high volume of cases referred to prosecutor’s offices—pose serious challenges to the realization of this legal obligation. This issue is closely connected with the accused’s defense rights and the proof of innocence and may lead to violations of the principles of fair trial. Conversely, the active and participatory presence of the prosecutor in criminal court sessions can contribute to the protection of societal rights, the pursuit and resolution of the public aspect of criminal claims, and, ultimately, the proper fulfillment of the prosecutor’s role (4).

Absence of Clear Criteria in Case Assignment and the Inflation of Referred Cases

Prudent and well-considered management of case assignment, accompanied by comprehensive, lawful criteria and effective enforcement mechanisms, plays a constructive and influential role in the administration of judicial affairs and in safeguarding the integrity of the adjudicative process and the efficiency of the judiciary (12). Fair assignment of cases—free from any bias, favoritism, or delay resulting from the absence of clear deadlines—constitutes a form of management that combines scientific method and practical skill, and is essential to the realization of “procedural justice” and even “substantive justice,” as well as to ensuring the soundness of a fair trial process (6). The application of procedural rules in achieving judicial justice is no less important than substantive rules. The significance of criminal procedure lies in the fact that it is the law governing all members of society. Unlike substantive criminal law—namely, the law of punishment—which addresses offenders and becomes relevant only upon the commission of a crime, criminal procedure applies broadly to all individuals within society (1). Paragraph 3 of the conclusions of the 2000 Declaration of the First Study Commission on the Administration of Justice and the Position of the Judiciary of the International Association of Judges, under the title “Judicial Independence within Its Organization,” states that among the factors capable of jeopardizing judicial independence are excessive workload, quota systems, and arbitrary case assignments. Accordingly, case-assignment management is a technical and professional matter with a substantial impact on guaranteeing impartial adjudication and the integrity of investigative processes.

In practice, the preliminary steps for assigning criminal cases—considered one of the pillars of judicial case-management—are initiated through the submission of cases via electronic judicial service offices or law-enforcement officers to the prosecutor, the prosecutor’s deputy, or the assistant prosecutor responsible for assignment. Whatever title the assignment authority bears, its performance must be such that, in addition to the parties to the case, judges themselves do not experience apprehension regarding the assignment. This form of assignment is indispensable for maintaining order in judicial case-management, and arbitrary entry or handling of cases without formal assignment would give rise to suspicions of bias. Conversely, assigning a large volume of cases to investigative assistant prosecutors without any clear criteria or organization may likewise undermine impartiality and judicial independence (5). In other words, regardless of the fact that the prosecutor is the authority responsible for prosecution and may not, through selecting a preferred investigative judge, compromise impartiality, the absence of clear criteria and the referral of an excessive number of cases to assistant prosecutors for investigation is incompatible with the independence of that judicial office (21). As one interviewee stated: “When two hundred cases per month are assigned to me, it is obvious what the quality of adjudication in my branch will be like. Alongside this, you are expected to produce an output equal to the input. Clearly, you cannot properly examine the cases, nor can you conduct thorough investigations in at least some of them—indeed, even in one of them.”

The obvious consequence of excessive case referrals, in addition to delays in adjudication, is the accumulation and congestion of cases in assistant prosecutor branches. The investigative assistant prosecutor is placed in a position where maintaining a balance between monthly inflow and outflow, as well as clearing past cases, becomes unavoidable. This situation causes quantity to take precedence over quality, leading to a decline in the standard of preliminary investigations. As a strategic response, the existence of comprehensive, transparent laws aligned with judicial realities and case volumes, clarification of the importance of the assignment authority's role, regulation of the criteria for selecting and appointing assignment officials, organization of case assignment through appropriate standards governing both the allocation and number of cases, establishment of performance-evaluation mechanisms for assignment authorities, activation of oversight and inspection systems, and effective supervision over the quality of assignment management can prevent obstacles and harms to impartial adjudication and to the independence of investigative assistant prosecutors (21).

Judicial Validity and Competence of the Prosecutor's Representative (Assistant Prosecutor) in Adjudicating First- to Third-Degree Crimes

If an assistant prosecutor examines a case involving a third-degree offense—under the assumption that it concerns a fourth-degree offense—and, after issuing an order for prosecution and an indictment, the case is referred to Criminal Court Two, which then issues a ruling of lack of jurisdiction in favor of Criminal Court One due to the classification of the offense as third degree, the following question arises: may Criminal Court One adjudicate a case that has been investigated by a judicial authority lacking jurisdiction (the assistant prosecutor), or must the case be returned to the prosecutor's office so that an investigating judge (the competent judicial authority) may formally charge the accused, issue a decision on preventive measures and prosecution, and thereafter the prosecutor issue a new indictment? What judicial decision would be appropriate under each assumption?

In response, the opinion of the Supreme Board holds that invalidating the investigations and the indictment in the circumstances described is not justified. It is evident, however, that this does not preclude returning the case to the prosecutor's office for further investigation by an investigating judge. Accordingly, the second minority opinion, to the extent of the stated inference, is correct.

The majority opinion maintains that the prerequisite for initiating proceedings before Criminal Court One—namely, an indictment for the alleged act—is present in the case file. However, due to the absence of preliminary investigations conducted by an investigating judge, there exists a procedural defect in the investigation stage. Consequently, Criminal Court One is obliged, pursuant to paragraph (a) of Article 389 and Article 280 of the Criminal Procedure Code, to return the case to the prosecutor's office for completion of investigations by an investigating judge and the issuance of an order for prosecution. After completion, the case should be forwarded to Criminal Court One without substantive comment.

By contrast, the minority opinion holds that because the jurisdiction of the assistant prosecutor and the investigating judge over preliminary investigations is inherent (subject-matter) jurisdiction, any investigation conducted by the assistant prosecutor in the case at issue is invalid. Accordingly, the resulting order for prosecution and the indictment are likewise invalid. Since the case has been referred to Criminal Court One on the basis of an invalid indictment, the court is under no obligation to proceed with adjudication in its current state, and the prerequisites for trial before that court are lacking. Therefore, Criminal Court One should return the case to the

prosecutor's office for preliminary investigation and issuance of an order for prosecution by an investigating judge, followed by the issuance of an indictment by the prosecutor (9).

A second minority view argues that, pursuant to Article 382 of the Criminal Procedure Code, proceedings before Criminal Court One commence upon the issuance of an indictment, and where such an indictment has been issued by a competent judicial authority for the alleged act, and the law has not deemed investigations conducted by an assistant prosecutor in relation to first-, second-, or third-degree crimes to be invalid, Criminal Court One may not disregard the investigations conducted nor decline adjudication on the basis of the indictment issued by the prosecutor or assistant prosecutor. Accordingly, the case—supported by an indictment issued by a competent judicial authority for the alleged act—falls within the jurisdiction of that court and suffers from no procedural defect.

Conclusion

In criminal cases, the prosecutor, as the public claimant, is responsible for defending societal rights and public order. In this regard, the prosecutor's representative reports the course of proceedings to the prosecutor, thereby keeping the prosecutor informed of developments in the case. Accordingly, the presence of the prosecutor's representative is essential for advancing the public claim and for presenting an opinion regarding the charge. The prosecutor's representative attends the hearing in order to explain the issued indictment, present the evidence and documentation supporting the charge, and, at the conclusion of the session, state an opinion regarding the guilt or acquittal of the accused. Consequently, the role of the prosecutor's representative varies depending on the subject matter of the case, even in similar offenses. In serious crimes such as homicide, armed robbery, kidnapping, and major economic offenses, a significant amount of the prosecutor's representative's time is devoted to reading the indictment and the collected evidence, as well as responding to objections, questions, and the defenses raised by the accused or defense counsel. Requiring prosecutor's representatives to submit written reports on the manner in which they have acted in court has been placed on the agenda of some prosecutor's offices.

Thus, in Iranian law, although the Criminal Procedure Code has deemed the presence of the prosecutor or the prosecutor's representative mandatory in Criminal Court One and optional in Criminal Court Two, it has not established any specific criteria, policy, or defined duty for this role. This has resulted in the prosecutor's presence in many hearings being merely formal and lacking clear planning, such that in practice the prosecutor, instead of playing an active role in the criminal adjudicative process, often limits involvement to attendance at the session and the reading of the indictment.

This legal gap, stemming from an incomplete adaptation of the French model, has impeded the development of a coherent and effective criminal policy for the prosecutor's office in Iran. Moreover, there are no mechanisms in place in Iran for prioritizing responses to crimes based on local conditions. As a result, given limited resources, prosecutors are unable to participate effectively in all cases.

The performance of the prosecutor's representative within the criminal justice system—whose necessity is expressly emphasized in Article 300 of the Criminal Procedure Code—has, in practice, faded and been replaced by a minimal and sometimes purely ceremonial presence. In reality, this provision has lost its functional effectiveness, and it may be said that its "judicial vitality" has disappeared, reducing it to an ineffectual text. Consequently, a figure that once appeared as one of the fundamental pillars of criminal justice has now become, rather than an effective actor in the courtroom, a marginal objector—an objector who exercises authority not through substantive argumentation in court, but through systematic objections to issued judgments. This situation has led

many prosecutor's representatives to prefer remaining in their offices instead of attending court hearings, seeking to preserve their influence through formal objections rather than direct participation in proceedings.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

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