

PUBLIC PROSECUTOR LAW 159 OF 1979

(AS AMENDED TO 14 MARCH 2010)

Law Number 159 of 1979

Decree number 1723

In the name of the People

The Revolutionary Command Council:

Based on the provisions of the 42nd article, sub-paragraph a, of the Constitution

The Revolutionary Command Council has decided to issue the following law:

Number 159 of 1979

Public Prosecutor Law

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Introduction

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The Public Prosecutor Law 159 of 1979 replaced the Prosecution section of the Criminal Procedure Code 23 of 1971, contained in Articles 30 to 38 of that law. As can be seen from the 'Justifying Reasons' reproduced at the end of the text below, the 1979 Law was one of a number of laws emerging from the reforms which followed the Law of Legal System Reform No. 35 of 1977. Prior to amendment by Law No. 10 of 2006, it was full of references to "people's democracy", "defending the achievements of the revolution" and "maintaining the assets of the state and the socialist sector".

GJPI re-translated this law from scratch because the text of the law in the English language Official Gazette is unfortunately a very poor translation. The translation is still imperfect.

All post-1979 amendments have been checked against the texts in the Arabic Official Gazette, the English language Official Gazette published between 1959 and 2002, the CPA era Official Gazette published in English and Arabic in 2003 2004 and GJPI English translations of the post CPA era Official Gazette where relevant.

The law regulates the Public Prosecution service which is a part of the Judiciary falling under the supervision of the Higher Judicial Council.

There are a number of references to the Ministry of Justice or the Minister of Justice within the text of the Public Prosecutor Law which are clearly designed to refer to the Ministry in its former role in authority over the judiciary. CPA Order 35 re-established the Council of Judges independent of the Ministry of Justice (the Council of Judges later evolved into the Higher Judicial Council pursuant to CPA Order 100 Section 3(13) and Article 45 of the Transitional Administrative Law). Section 7 of CPA Memorandum 12, signed on 8 May 2004, published in the Official Gazette, issue 3985 of July 2004 rather unhelpfully states:

References in Iraqi law to the Ministry of Justice or the Minister of Justice shall, where necessary and proper in light of CPA Order 35 or the Law of Administration for the State of Iraq for the Transitional Period, or where otherwise necessary and proper to maintain the independence of the judiciary, be construed to refer to the Council of Judges or its President, or to the Court of Cassation or its Chief Judge, or to the Supreme Federal Court or its Presiding Judge, as appropriate. The courts shall have sole jurisdiction to adjudicated disputes in this connection.

A separate text contains the law as it applies in the Kurdistan Region of Iraq. Following Kurdish Decree 11 of 1992, the view of Kurdish lawyers, judges and legislators is that save for laws relating to the exclusive federal powers as listed in Article 110 of the 2005 Constitution, post 1992, new laws and amendments to existing law originating from Baghdad are not recognised as applicable in the Kurdistan Region of Iraq unless expressly endorsed by legislation of the Kurdistan Parliament. This includes the CPA orders issued in 2003 / 2004 – despite the wording of Articles 26 and 54(B) of the Transitional Administrative Law.

List of Amendments to the Public Prosecutor Law No. 159 of 1979

*Law No. 5 of 1987 (First Amendment to the Public Prosecutor Law No. 159 of 1979)

*Law No. 15 of 1988 (Second Amendment to the Public Prosecutor Law No. 159 of 1979) of 2 August 1988

*Law No. 19 of 2000 (Amendment to the Public Prosecutor Law)

*Law No. 70 of 2001 (Amendment to the Public Prosecutor Law)

*Instruction 2 of 2001 issued by the Minister of Justice published in the Official Gazette issue 3870 of 19 March 2001

*CPA Order 35: Re-establishing the Council of Judges, signed 15 September 2003, published in the Official Gazette, issue 3980 of March 2004 which at Section 6(1) states “The Council shall perform its duties and responsibilities independently of any control, oversight, or supervision by the Ministry of Justice. To the extent that provisions of Iraqi law, specifically the Law of Judicial Organization (Law No. 160 of 1979) and the Law of Public Prosecution (Law No. 159 of 1979) conflict with the provisions of this Order, those provisions of Iraqi law are suspended.”

*CPA Memorandum 12: Administration of Independent Judiciary, signed 8 May 2004, published in the Official Gazette, issue 3985 of July 2004

*Law No. 10 of 2006 (Amendment to the Public Prosecutor Law)

CHAPTER ONE: FUNDAMENTAL PRINCIPLES

Article 1:

This law aims to organize the Public Prosecution service to achieve the following:

First: The protection of order, security and institutions of the state,

concern for democracy and the supreme interests of people and to maintain state assets.

Second: To support the federal democratic system and protect its foundations and concepts within the frame of respecting the legitimacy and application of the law.

Third: To participate with the judiciary and other competent parties for quick discovery of criminal acts, work on resolving cases quickly and to avoid unreasonable delay of trials especially in crimes that touch the security of the state and its federal democratic system.

Fourth: Monitoring the enforcement of rules, decisions and penalties according to the law.

Fifth: Contributing to the evaluation of legislation enforced to match its conformity with evolving reality.

Sixth: Participating in monitoring criminal and conflict trends and to propose practical suggestions in order to solve and minimize them

Seventh: To contribute to the protection of family and childhood.

CHAPTER TWO: DUTIES OF PUBLIC PROSECUTION

SECTION ONE: INQUIRY, GATHERING EVIDENCE AND INVESTIGATION

Article 2:

The Public Prosecution, in addition to other parties defined by the law, may:
First: Lodge suits of general rights, unless a complaint or permission from a competent authority is required to lodge them.

Clause (First) was amended by Article 4 of Law No. 10 of 2006 (law amending the public Prosecution Law no. 159 for year 1979). The original text reads

“First: The protection of order, security and institutions of the state, concern for people’ s democracy , defend the achievement of the revolution and maintain the assets of the state and the socialist sector”

Clause (Second) was amended by Article 5 of Law No. 10 of 2006 (Law Amending the Public Prosecution Law No. 159 of 1979). The original text reads “ To support the socialist system, and to protect its principles and concepts within the framework of monitoring legitimacy and respect for the application of the law”

Clause (Third) had been amended by the provision of Article 6 the afore mentioned Amending Law No. 10 of 2006. The original text reads “Third: to participate with the judiciary and other competent parties in quick discovery of criminal acts, work on resolving cases quickly and to avoid unreasonable delay of trials especially in crimes that impede socialist transformations”

This is a reference to the driving force behind the law reforms which followed the Law of Legal System Reform No. 35 of 1977.

Second: Monitor criminal inquiries, gather required evidence for investigation and take all action needed to discover elements of crimes.

Article 3:

Members of the Public Prosecution shall exercise the power of an investigative judge, in his absence at the crime scene, but this power shall be removed upon the arrival of the competent investigative judge, unless he is asked to continue in part or whole the investigation he has started.

Article 4:

A Public Prosecutor must express his opinion, prior to issuance of orders, on the following:

First: Transfer of suits through the phases of investigation and trial.

Second: Forcing the accused or the victim, in a misdemeanour or a felony, to participate in inspecting his body, taking his photo, his finger prints, and small amount of his blood, hair, nails or other things that may benefit the investigation.

Third: Seizure of the assets of a fugitive accused or assets under his control.

Fourth: Seizure of the assets of the accused in a felony related to movable or immovable assets.

Article 5:

The Public Prosecution may supervise the work of police detectives and judicial investigators in a way that guarantees the execution and quick accomplishment of the orders of the investigative judge. Also, the Public Prosecution may access investigation papers and submit relevant requests and the investigative judge must decide on them within a period not to exceed 3 days from the date of delivery.

Article 6:

First: A member of the Public Prosecution must attend investigations into misdemeanours or felonies to give his opinions and submit his legal requests.

Second: The investigative judge must call on the appointed or assigned member of the Public Prosecution to attend when taking any steps during investigation.

Third: The investigative judge must brief the appointed or assigned member of the Public Prosecution on his decisions within 3 days of the date of issuance.

Article 7:

The Public Prosecution must exercise the following powers:

First: Review and follow up on cases lodged with it by citizens, or referred to it from competent parties.

with reference to Article 130 of the Criminal Procedure Code No. 23 of 1971.

with reference to Article 70 of the Criminal Procedure Code No. 23 of 1971.

with reference to Articles 121 to 122 of the Criminal Procedure Code No. 23 of 1971.

with reference to Articles 183 to 186 of the Criminal Procedure Code No. 23 of 1971.

with reference to Article 130 of the Criminal Procedure Code No. 23 of 1971.

Second: Inspect detention centers, departments of the adult rehabilitation

directorate and juvenile rehabilitation directorate and submit monthly reports to the relevant parties.

Article 8:

First: Parties in charge of investigations must inform the Public Prosecution on misdemeanours and felonies immediately after being informed, and all directorates and institutions must inform it immediately on any misdemeanour or felony related to the public interest.

Second: Competent parties, except those exempted by a special text, must inform the Public Prosecution on the formation of committees, commissions and councils in charge of investigation and trial and the cases they are reviewing not less than eight days prior to trial, and deliver copies of its decisions within fifteen days of the date of issuance.

SECTION TWO: TRIAL AND APPEAL

Article 9:

First: Public Prosecution must attend sessions of criminal courts, except the Court of Cassation, and may have the right to examine witnesses, request the assignment of experts, travel to the crime scene, question the accused, submit a request for conviction or release or irresponsibility or innocence or impose measures and other requests stipulated in the law.

Second: Sessions of Criminal Courts defined in clause (First) of this article shall not convene without the attendance of an appointed or assigned member of the Public Prosecution before the court.

Third: The Public Prosecution may appear before any Criminal Court in its cassation function to express his opinion on decisions, rules or measures under his consideration.

Article 10:

The Public Prosecution may:

First: Express his opinion on the secrecy of the session before the court decides on it.

Second: Initiate cases on crimes committed inside the court room even if the initiation requires a complaint.

Third: Request trying the witness if he refrains from swearing the oath or testifying in cases other than those permitted by law.

Fourth: Discuss the excuses of the accused or witnesses given to justify absences during court proceedings.

Article 11:

The court must inform the Public Prosecution on its decisions without trials, within a period not to exceed three days from the day of issuance, on issues related to arrest, detention and release with or without bail.

Article 12:

First: The Public Prosecution must appear before Labour Courts, the Committee on Judge's Affairs, Committee on Public Prosecution Affairs, the Council on Public Discipline, Discipline and Costumes Committee, Committee for

Scrutinizing Income Taxes or any other commission, committee or council of a penal judicial nature.

Second: Sessions of the parties referred to in clause (First) shall lose their legitimacy in the absence of the appointed or assigned member of the Public Prosecution caused by not calling on him to attend.

Third: Parties stated in clause (First) of this article must inform the Public Prosecution with the decisions they may take within a period not to exceed three days from the day of issuance.

Article 13:

First: The Public Prosecution may appear before Personal Status Courts or Civil Courts on cases related to minors, incapacitated persons, absentees, missing persons, divorce, separation, permission for polygamy, family abandonment and child homelessness, and any other cases that the Public Prosecution deems it necessary to intervene in order to protect family and childhood.

Second: The Public Prosecution may issue statement and express opinion on the cases stated in clause (First) of this article, review and follow on methods of appeal orders and decisions issued on these cases.

Article 14:

First: The Public Prosecution may attend and follow up civil cases, to which the state is a party, or those related to civil rights resulting for the state from criminal cases, to make statements, express views, review and follow up means of appealing orders and decisions issued in these cases.

Second: The court must inform the Public Prosecution in the district about the cases defined in clause (First) of this article at least three days prior to trial and supply him with copies of its memo and documents.

Third: Public Prosecution shall be exempted from any fees for his input in the matters defined in this article and the previous one.

Article 15:

The Public Prosecution shall exercise his powers to submit requests and express opinions in cases of commitment to peace-keeping, good conduct, retrial, judiciary delegation, extradition or other cases in accordance with the provisions of the law provided that the Public Prosecution shall take into account the instructions issued by the Minister of Justice in this regard.

Article 16:

First: The Felony Court shall directly send to the Public Prosecution resolved cases on crimes where the lawful punishment is (death or life imprisonment). The words "Minister of Justice" are replaced with the appropriate judicial body in accordance with CPA Memorandum 12, section 7.

Second: The Juvenile Court shall directly send resolved criminal cases to the Public Prosecutor in the Court of Cassation.

Third: The Penal Courts shall directly send to the Public Prosecutor in the Court of Cassation cases appealed before the Court of Cassation by the Accused, the Claimant, the civil plaintiff or the authorized civilian, except for the cases stipulated in clause (First) of this article.

Article 17

First: The Public Prosecution shall retain the right to appeal, under provisions of laws, rules, decisions and procedures issued by investigative judges, courts, committees, commissions, and the councils mentioned in this law.

Second: the duration of appeal for the Public Prosecution, in case of his attendance, shall apply from the day that follows the sentence with these rules, decisions and procedures, and from the day that follows the day of notifying him in case of issuance in his absence, or from the date of considering it sentenced in the presence of the parties.

Third: The duration for the request to correct a cassation decision shall commence from the day that follows the date of informing the Public Prosecution

SECTION THREE: THE IMPLEMENTATION OF SENTENCES

Article 18

First: The court, on ruling on a prison sentence or procedure, shall provide the Public Prosecutor in the State Institution for Social Reform with a copy of the conviction and the verdict with a memo from the prison or the detention centre, and a copy of any rules issued by the court.

Second: The Public Prosecution must follow on the enforcement of the rules, decisions and procedures defined in clause (First) of this article.

Third: The adult rehabilitation directorate and the juvenile rehabilitation directorates shall inform, in writing, the Public Prosecutor upon the completion of implementation of penalties and procedures against the convict.

Article 19:

If a female convict is found to be pregnant, the adult rehabilitation directorate must, upon the receipt of the order to implement the sentence, refer it to the Public Prosecutor in the State Institution for Social Reform to express his opinion to the Chief Prosecutor, and the Chief Prosecutor must present it to the Minister of Justice substantiated by his opinion providing reasons for delaying or changing the sentence in accordance with procedures stipulated in the law.

Article 20:

The words "Minister of Justice" are replaced with judicial body in accordance to CPA memorandum 12, section 7.

The competent court shall explore the opinion of the Public Prosecution in the State Institution for Social Reform before deciding on the request for pardoning that is submitted to it.

Article 21:

It is permissible to pay the fine decided or a proportional part of it to the Public Prosecution directorate in the foundation for social reform, and then the convict shall be released

Article 22:

The Public Prosecution in the State Institution for Social Reform shall perform the following:

First: Express opinions on requests for discharge on probation, monitor the extent of implementation of conditions and commitments imposed by court, and inform it with any violations to these conditions, and may request the assistance of people's councils and social organizations to achieve that.

Second: Provide the court with information that requires reconsidering its order on discharge on probation, in part or as a whole, or delay what it decides to implement, or implement the delayed charges and sub-charges.

Article 23:

The court must hear the statement of the Public Prosecution before it decides on nullifying its rule on discharge on probation due to violation to the conditions, or due to sentence of imprisonment.

Article 24:

The Public Prosecutor in the State Institution for Social Reform must attend the execution as a member of the implementation body, and may designate one of his deputies for that.

CHAPTER THREE: THE PUBLIC PROSECUTION SERVICE

SECTION ONE: MEMBERS OF PUBLIC PROSECUTION

Article 25:

First: The Public Prosecution is composed of:

- a. The Chief Prosecutor
- b. Two deputies for the Chief Prosecutor
- c. A Public Prosecutor in each of:
 1. The Court of Cassation
 2. The Supreme Court of labor
 3. Each appellate district
 4. The Court of Felonies
 5. The State Institution for Social Reform
- d. Deputies of Public Prosecutor

Second: The head quarters for the Chief Prosecutor shall be in Baghdad, and its competencies shall cover all of the Republic of Iraq.

Article 26:

The Chief Prosecutor shall be attached to the Minister of Justice who shall have the right to oversee and supervise all members of the Public Prosecution.

SECTION TWO: COMPETENCIES OF A MEMBER OF THE PUBLIC PROSECUTION

Article 27:

The Chief Prosecutor shall assume oversight and direct administrative supervision over the Public Prosecution service and in order to do that he may

issue circulars and instructions related to organizing business and better performance.

Article 28:

First: The Chief Prosecutor shall perform the following competencies:

- a. The powers conferred upon him by provisions of laws.
- b. Express opinions on criminal legislation and the legislation relevant to the nature of the work of Public Prosecution, evaluate them and state their compatibility with the evolving reality.
- c. Scrutinize cases referred from the Court of Felony, in felonies where the lawful penalty is execution or imprisonment for life, and submit his statements and requests to the Court of Cassation within fifteen days from the date of receipt.

Second: The Chief Prosecutor may form a commission, or more, from three members of the Public Prosecution, chaired by one of his deputies, to present recommendations and studies on the competencies assigned to him, according to clause (First) of this article.

Article 29:

The Chief Prosecutor shall submit:

First: A general annual report to the Minister of Justice and the justice council on the progress of work in the Public Prosecution with the difficulties facing it, substantiated with recommendations and

In practice, a separate system has operated since 1992 in the Kurdistan Region of Iraq

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suggestions to remove obstacles and avoid difficulties in a way to achieve the goals of Public Prosecution.

Second: Annual classified reports to the Minister of Justice concerning the conduct and efficiency of members of the Public Prosecution

Third: Reports on criminal and conflict trends in light of information referred to him by the directorate of Public Prosecutor in the State Institution for Social Reform and competent bodies, substantiated with notes and practical suggestions to avoid the occurrence of the crime and to fight it.

Article 30:

The Chief Prosecutor, within the limits provided by laws and regulations, shall bring attention to breaches and violations in the application of penal provisions and texts, or may request or take measures to ensure the avoidance of these violations, correct them and not repeat them.

Article 31:

The Deputy Chief Prosecutor shall assume the following:

First: Preside over the Public Prosecution in the absence of the Chief

Prosecutor.

Second: Inspect directorates of Public Prosecution and report results to the Chief Prosecutor.

Third: Represent the Public Prosecution before the Judges Affairs Committee and the Public Prosecution Affairs Committee in charges against the judiciary or members of the Public Prosecution.

Fourth: Perform tasks and businesses as assigned by the Chief Prosecutor in accordance with the provisions of this law.

Article 32:

The Public Prosecutor, assisted by a sufficient number of Deputy Prosecutors, shall exercise the following competencies before the Court of Cassation:

First: Appeal by cassation at the Court of Cassation in criminal orders and decisions when deemed necessary.

Second: Scrutinize cases referred from Juvenile Courts or appealed by the accused, claimant, civil complainant or the civil guardian, except cases related to crimes legally punishable (by execution or life imprisonment), and submit his statements and requests to the Court of Cassation within fifteen days from the date of receipt.

Third: Follow up on objections and appeals submitted by state agencies and the socialist sector to the Court of Cassation.

Fourth: Follow up on appeals presented to the Court of Cassation by people's organizations, unions or syndicates.

The words "Minister of justice" are replaced with judicial body in accordance to CPA memorandum 12, section 7.

Fifth: Clarify the opinion of general right before bodies of Court of Cassation in penal cases by submitting suitable requests before and during consideration of these cases.

Sixth: Appeal before the Court of Cassation in rules for favour of law, in spite of the elapse of the legal term for the appeal, provided that the rule had violated the law and both parties did not appeal. The decision in favor of the appeal shall be limited to correction of legal error without prejudice to the rights of litigants and the unearned rights, according to the appealed decision.

Article 33:

The Public Prosecutor, assisted by a sufficient number of Deputy Prosecutors subject to the provisions of this law, shall exercise the following competencies before the Supreme Labour Court and Labour Courts:

First: The powers of a member of Public Prosecution as stipulated in this law, the Labour law and other laws. He may assign one of his deputies for this purpose.

Second: Administrative supervision over the work of his Deputy Prosecutors.

Article 34:

The Public Prosecutor in the appellant district, assisted by sufficient number

of Public Prosecutors and their deputies, shall exercise the following competencies:

First: Competencies of Chief Prosecutor in supervising the work of Public Prosecutors and their deputies within the appellant district, distributing work among them and monitoring their sound accomplishment of their legal and vocational duties.

Second: Consider misdemeanour or felony cases that have special importance due to its circumstances or perpetrators, during both phases of investigation and trial, and to distribute the rest to the Public Prosecutors and their deputies according to his directions.

Third: Supervise the work of investigators and members of law enforcement during investigation, and may request taking disciplinary or criminal measures against those who violate their legal duties.

Fourth:

A. Propose pardoning the accused during the investigation phase, with the consent of the Criminal Court for reasons he states in case record, in serious crimes with no or very limited evidence, with the intent to get his confession against other complicit in the crime, provided that the accused submits correct and full statements on the crime and perpetrators.

B. Request the annulment of pardoning the accused provided that he does not submit the statements stated in the previous sub-article.

c. Request irrevocable halt of Criminal Court's procedures if it is proven that his statements are full and correct.

Fifth: Submit quarterly reports to the Chief Prosecutor on his department, deputies and members of law enforcement.

Article 35:

The Public Prosecutor, assisted by sufficient number of Deputy Prosecutors, shall exercise the following competencies before the Criminal Court:

First: Competencies legally stated for a member of Public Prosecution before the Criminal Court, and he may assign one of his deputies as a substitute.

Second: Distribution of work and administrative supervision over Deputy Prosecutors in his district.

Third: Powers assigned to him by provisions of the law before investigative judges, misdemeanor judges, councils or official bodies where laws provide the appearance of a Public Prosecution.

Article 36:

A Public Prosecution Directorate shall be established in the State Institution for Social reform. Its headquarters shall be in the Department of Social Reform in (Abu Ghraib). It shall be presided with a Public Prosecutor assisted by a sufficient number of Deputy Prosecutors to perform the following:

First: Develop quarterly reports and infield studies about criminal trends, express opinion and practical proposals to avoid and minimize the occurrence of crimes, and reduce and limit the problem of juvenile delinquency.

Second: Exercise the competencies of a Public Prosecutor in the appellant district stated in this law in matters of concern to his directorate.

Article 37:

The Deputy Public Prosecutor, as a fundamental element in the Public Prosecution Service and in order to achieve the goals set forth in this law, shall exercise the following competencies:

First: supervise the work of detectives and members of law enforcement during investigations. He may request imposing disciplinary or penal measures against those who violate his legal duties.

Second: Exercise the powers granted or assigned to the Public Prosecution, according to the provisions of this law and other laws, except what is delegated in a special text to other members of public Prosecution.

Article 38:

First: Administratively, Deputy Public Prosecutors shall be directly attached to the Public Prosecutors in their provinces. The Public Prosecutors in provinces shall be directly attached to the Public Prosecutors in the appellant district.

Second: The Deputy Chief Prosecutor, the Public Prosecutors before the Court of Cassation, Supreme Labor Court and appellant districts, and the State institution for Social Reform shall be directly attached to the Chief Prosecutor.

SECTION THREE: DUTIES OF MEMBERS OF PUBLIC PROSECUTION

Article 39:

A member of public Prosecution shall:

First: Maintain the dignity of his position and act with honesty and integrity.

Second: Act with perfect neutrality not permitting for any interference with the course of justice.

Third: Retain undisclosed matters, information and documents to which he has access because of his position or the term there of, if so be classified or entail concerns that if they became known to the public would affect the state or persons. This obligation shall survive even after the end of his services.

Fourth: Not to engage in trade or any other business that is inconsistent with the function of Public Prosecution.

Fifth: Wear the special uniform during proceedings in accordance with the instructions issued by the Minister of Justice .

Sixth: Reside at the center of the same administrative district as the headquarters of his work, unless the Minister of Justice approves residing elsewhere for reasons determined by the Minister.

Article 40:

Member of the Public Prosecution may not exercise his duties before a judge related to him up to the fourth level of kinship.

CHAPTER FOUR: SERVICE IN PUBLIC PROSECUTION

SECTION ONE: APPOINTMENT

Article 41:

First: After the enforcement of this law, the appointee to the Public Prosecution Service must be Iraqi by birth, married and a graduate of the Judicial Institute.

Second: The monthly salary of a Judicial Institute graduate shall be seventy dinars if he has accomplished the minimum term of service required by the Judicial Institute. Any excessive term shall be considered for the purpose of raise and promotion. Salaries of the Judicial Institute graduates prior to the enforcement of this law shall be adjusted accordingly.

Article 42:

First: The Minister of Justice , after the issuance of a presidential decree for appointment, shall define the work place for a member of Public Prosecution.

Second: A member of Public Prosecution shall assume his duties after taking the following oath: (I swear by God the almighty to better perform my duties, to judge among people with justice and to apply the law with integrity and neutrality, and may God be my witness)

Third: The Chief Prosecutor shall take the oath before the President of the Republic in the presence of the Minister of Justice . Other members of public Prosecution shall take the oath before the Council of Justice formed by the Law of Ministry of Justice No. 101 of 1977.

Article 43:

First: The grades, salaries, annual raises and terms for promotion of members of Public Prosecution shall be:

Grade Salary Limit Raise Term for Promotion

A 165-200 7-

B 135-155 65

C 100-125 55

D 70-95 45

Second: The monthly salary for the Chief Prosecutor shall be (220.00) Dinar, and for the Deputy Chief Prosecutor shall be (200.00) Dinar.

Third: Members of Public Prosecution are entitled to the same cost of living allowances as members of the civil service.

Fourth:

A. Members of Public Prosecution are entitled to judicial allowances as follows:

Salary Districts and sub districts except Baghdad Centers of provinces except Baghdad

70-125 100% of base salary 90% of base salary

135-155 90% of base salary 80% of base salary

165-200 80% of base salary 70% of base salary

B. Members of Public Prosecution working in Baghdad are entitled to judicial allowances of 60% of base salary.

C. Percentages defined in clause (A) are provided that the entitled person is

residing inside his working area, otherwise he is entitled to the lowest percentage.

Fifth:

A. Members of Public Prosecution working outside Baghdad shall be granted fixed monthly accommodation allowances of thirty Dinars.

B. Accommodation allowances shall not be granted to the member of Public Prosecution occupying a state owned house for a rent not exceeding thirty Dinars paid by his directorate. If the rent exceeds the above mentioned cost, the member of Public Prosecution shall cover the difference.

C. One who owns a house in the same district of his place of work or does not reside in the center of the district of his work.

Sixth: Judicial and accommodation allowances granted by this article shall be exempted from provisions of Law of Allowances of State Employees and Civil Servants No. 93 of 1967 as amended or any other law replacing it.

Seven: A member of the Public Prosecution shall be granted an annual raise from the lowest limit to the upper limit of each grade as stated in Clause (First) of this article.

SECTION TWO: PAY GRADE INCREASE

Article 44:

First: Members of the Public Prosecution shall be promoted to a higher level by a decision from the Council of Justice after the passage of the term defined for his grade as stated by Clause (First) of Article (43) of this law.

Second: The Council of Justice when considering the pay grade increase of a member of Public Prosecution shall take into consideration the reports of his superiors as well as reports of Justice Inspection regarding his efficiency, better execution of his tasks and the opinion of the Ministry of Justice regarding his ethics.

Third: The Council of Justice shall make a decision to promote a member of the Public Prosecution if it is satisfied that he is entitled to the pay grade increase and the Ministry of Justice shall issue an order in this regard from the date of entitlement.

Fourth: The Justice Council may, by a decision with cause, postpone several times the pay grade increase of a member of Public Prosecution for a period not less than three months and not to exceed one year if he is found to be unqualified.

Fifth: Services of a member of Public Prosecution may be terminated or transferred to a civilian position by a presidential decree based on a decision from the Council of Justice and by a proposal from the Minister of Justice if his pay grade increase is postponed more than two successive times.

SECTION THREE: PROMOTION

Article 45:

First: Grades for members of the Public Prosecution and the salary limit for

each grade shall be:

GradeSalary

First165-200

Second135-200

Third100-200

Fourth 70-200

Second: A member of the Public Prosecution shall be promoted from one grade to another by a decision from the Council of Justice based on a request he submits to the Ministry of Justice , Provided that:

a. His salary has reached the lowest limit for the new grade

b. He has submitted research on a subject related to judiciary or justice.

Holders of an MA degree shall be exempted once from the submission of research for promotion. Holders of a PHD degrees shall be exempted from the submission of a research for two successive promotions.

Article 46:

First: On submission of a request for promotion, the Ministry of Justice shall survey the opinion of the presidency of Public Prosecution and the presidency of Commission on Judicial Oversight for the efficiency and qualification of the member seeking the promotion.

Second: The Ministry of Justice shall submit the request with the statements stated in Clause (First) of this article, accompanied by his opinion, to the Council of Justice for consideration.

Third: The Council of Justice shall take into consideration the statements stated in Clauses (First) and (Second) of this article, annual reports of his superiors, reports of Judicial Inspectors, the legal research he submitted to support following up on jurisprudent and judicial activities. The council shall decide on upgrading the member if found qualified, otherwise Promotion shall be postponed for not less than six months by a decision with cause.

Fourth: The Council of Justice shall consider matters of promotion during January and July of each year, and its decisions shall be final and non-appealable.

Article 47:

First: The Public Prosecutor before the Court of Felonies and the Public Prosecutor before the State Institution for Social Reform shall be appointed from among Public Prosecutors of First, Second or Third grade.

Second: The Public Prosecutor before the Court of Cassation, the Public Prosecutor for the appellant district, and the Public Prosecutor before the Supreme Labour Court shall be appointed from among Public Prosecutors or Deputy Public Prosecutors of First or Second grade.

Third: The Deputy Chief Prosecutor shall be appointed from among Public Prosecutors of First or Second grade.

Fourth: The Chief Prosecutor shall be appointed from among Deputy Chief Prosecutors or Public Prosecutors of First grade.

Article 48:

Seniority of members of Public Prosecution shall depend on grade and date of appointment. In case of equality, seniority shall be decided by the Minister of Justice .

SECTION FOUR: TRANSFER AND ASSIGNMENT

Article 49:

First: Member of Public Prosecution may not be transferred to any position outside the Public Prosecution Service without his written approval.

Second: A Deputy Chief Prosecutor or a Public Prosecutor, with his written approval and by order of the Minister of Justice , may be assigned the position of a Legal Councillor at the Revolution Command Council, headquarters of Divan of Presidency of the Republic, the headquarters of any directorate within the centre of the Ministry of Justice , its services, or to teach in a university or in the Judicial Institute provided that he shall retain his status and all rights stipulated in this law.

Third: A member of Public Prosecution, with his written approval and by order of the Minister of Justice , may be assigned to any directorate within the center of the Ministry of Justice and its services except courts, provided that he shall retain the rights stipulated in this law together with the allowances he was entitled to before his assignment, taking into consideration the compatibility of the assignment with his grade.

Fourth: The Minister of Justice may assign a member of Public Prosecution graduate of the Judicial Institute to the position of Investigative Judge, Misdemeanour Judge or as a member of the Court of Felony, taking into consideration the compatibility of the assignment with his grade.

Fifth:

a. The Minister of Justice may assign the Chief Prosecutor or Public Prosecutor to work as consultant in the State Shura Council as stipulated in the State Shura Council Law No. 65 of 1979 if they fulfilled the requirements stated in the mentioned law and provided that each shall retain all his rights stipulated in this law.

b. It is permissible to assign a Public Prosecutor of First or Second Grade having legal and administrative qualifications to the post of Justice Supervisor to supervise justice services except the courts, provided that he shall retain all his rights stipulated in this law. The assignment shall be by a decision from the Justice Council based on a proposal from the Minister of Justice .

Sixth: (Cancelled)

Seventh: The duration for the assignment, stipulated in this article, may not exceed three years renewable for one year.

Article 50:

First: After the enforcement of this law, it is not permissible to:

a. Appoint a member of Public Prosecution of Grade (Four) except in districts and sub districts.

b. Transfer a member of Public Prosecution of Grade (Three) to Baghdad.

Second: A member of Public Prosecution may not be transferred before serving three years in one place. The Justice Council may transfer him by a decision with cause provided that his health reports the official medical committee endorses that his health condition requires so, or if the employment conditions do not allow for full performance of his duties and that staying in his work place may affect the course of justice.

Third: It is not permissible for a member of Public Prosecution of Grades (Four, Three or Two) to stay for more than (five years) with out being transferred, exempted those who work in Baghdad Province.

Fourth: The Minister of Justice may exempt from the provisions of Clause (First) of this article the female graduates and the first three graduates from the Judicial Institute each year, before or after the enforcement of this law, to work anywhere including Baghdad Province.

Fifth: The Justice Council, based on a proposal with cause from the Chief Prosecutor, may decide on the transfer or appointment of a Deputy Public Prosecutor of Grade (Four) in the centers of provinces except Baghdad Province if the public interest deems it necessary and to fill the unoccupied positions of Public Prosecution, exempted the provisions of Clause (First-a) of this article.

Sixth: It is permissible to assign a member of Public Prosecution to work in a place other than his working place, when the public interest deems it necessary, by an order from the Chief Prosecutor, provided that the duration for the assignment does not exceed (four months).

Article 51:

The transfer of members of Public Prosecution shall be in July each year. It is permissible to transfer them in other than the stated month when the public interest deems it necessary. The transfer shall be by approval of the Justice Council based on a proposal from the Minister of Justice .

SECTION FIVE: VACATIONS

Article 52:

First: A member of Public Prosecution is entitled for a paid regular leave of one day for every eight days of service.

Second: A member of Public Prosecution must enjoy at least thirty days of his entitled annual leave, otherwise only what exceeds the thirty days shall be rotated.

Third: It is permissible to accumulate the rotated regular leaves, according to Clause Second of this article, to no more than 180 days.

Fourth: Leave days entitled for a member of Public Prosecution for his previous services shall be rotated.

Article 53:

First: The Minister of Justice may grant a member of Public Prosecution, who has served more than three years in Public Prosecution positions, a fully paid two years study leave inside or outside Iraq, to specialize in a subject

related to judicial and justice competencies, for MA or PHD degree. He may extend this leave for another year.

Second: It is permissible to grant another study leave of two years for those who finished their first study leave and get their MA degree in order to get the PHD degree in the competencies stated in Clause (First) of this article, after a year from starting his duties. The Minister of Justice may extend this leave for another year.

Third: Study leave may not be granted to those who completed forty years of age to get an MA degree, and forty five years of age to get the PHD degree.

Fourth: The study leave shall be considered a service for the purposes of this law. PHD holders shall be granted two years seniority for the purpose of promotion and Promotion. The MA holders shall be granted only one year seniority.

SECTION SIX: SABBATICAL

Article 54:

First: A member of Public Prosecution may enjoy one year sabbatical, inside or outside Iraq, for a research or study on a subject relevant to legal and judicial competencies, by a proposal from the Minister of Justice and decision of the Justice Council based on a request submitted by the member of Public Prosecution defining the place and the subject of his research or study.

Second: It is required for granting one year sabbatical to be of Grade (First or Second).

Third: It is permissible to enjoy another one year sabbatical five years after the end of the first.

Article 55:

A sabbatical member of Public Prosecution:

First: Shall not change the subject of sabbatical except by approval of the Minister of Justice , provided that he submits a request within three months from the starting date.

Second: Shall not change the place except by approval of the Minister of Justice . This shall not include temporary movement required for the research or the study.

Third: Shall not enjoy regular vacations during sabbatical except legally recognized sick leaves.

Fourth: Shall submit three copies of his research or study to the Ministry of Justice within a period not to exceed three months from the date of ending sabbatical.

Fifth: Shall continue to serve in the Public Prosecution Service for a duration equals that of the sabbatical.

Article 56:

A member of Public Prosecution shall return all salaries, benefits, grants and aids, without the need for a warning, in the following cases:

First: If he does not submit the research or the study within the duration

required by Clause (Four) of Article (55) of this law, or left the sabbatical for any reason except in sickness supplied by legally recognized medical reports.

Second: if he had left his position prior to the end of the term defined by Clause (Fifth) of Article (55) of this law.

SECTION SEVEN: RETIREMENT RIGHTS

Article 57:

First: A member of Public Prosecution may not be referred to retirement unless he completes sixty three years of age. It is permissible to refer him to retirement before that on his request in accordance with provisions of Service and Retirement Laws.

Second: A member of Public Prosecution shall be granted the full salaries for his entitlement of regular leaves, based on his total monthly emoluments prior to retirement, provided that it does not exceed 180 days.

Article 58:

First: Cases on the rights arising from this law shall be instituted in the Committee on Public Prosecution Affairs which the Justice Council composes of three members at the beginning of each year.

Second: Decisions of the committee can be appealed within thirty days from the date of notification, before the Broad Commission in the Court of Cassation, by the Minister of Justice or the member of Public Prosecution against which the decision has been issued. Decisions of the Broad Commission in this regard shall be final.

Article 59:

Provisions of Civil Service Law and Civil Retirement Law shall be applicable to matters not stipulated in this law in a way that is not contradicting with its provisions.

CHAPTER FIVE: SUPERVISION AND DISCIPLINARY MATTERS

SECTION ONE: SUPERVISION

Article 60:

First: The Minister of Justice has the right to supervise the Public Prosecution Service, monitor the proper execution of competencies assigned to its members by this law, their behaviour and personal conduct, regularity of their work, and oversee the commitment of members of Public Prosecution to their duties as stated in Article (39) of this law.

Second:

a. The Minister of Justice, in performing supervising and monitoring duties stated in Clause (First) of this article, may inspect the Public Prosecution Service with all its formations, or delegate for this purpose the Chief of the Justice Supervision Commission, one of the judges, or Public Prosecutors assigned to Justice Supervision.

b. The Presidency of Public Prosecution shall not be inspected except by the Chief of the Justice Supervision Commission.

Article 61:

First: The Minister of Justice may warn a member of Public Prosecution on violations to duties and requirements of his job.

Second: The Chief Prosecutor may warn a member of Public Prosecution on violations to his duties and the same goes for the Public Prosecutor in the appellant district regarding members of Public Prosecution within his district.

SECTION TWO: DISCIPLINARY MATTERS

Article 62:

First: The Committee on Public Prosecution Affairs, composed in accordance with the provisions of Clause (First) of Article (58) of this law, shall undertake the trial of a member of Public Prosecution referred to it on the charges against him.

Second: The Committee on Public Prosecution Affairs, in Disciplinary cases against a member of Public Prosecution, shall decide on one of the following Disciplinary charges:

a. Warning: the consequent is to delay promotion and upgrading for six months.

b. Delaying the Promotion, the promotion or both of them for not less than a year and no more than three years from the date of decision provided that he has completed the required term for the Promotion, otherwise from the date of completing it.

c. Termination of services: This penalty is imposed on a member of Public Prosecution when a final decision is issued against him from a competent court for an act inconsistent with the honor of his position, or it is proved to the committee during trial that he is unqualified to continue his services.

Article 63:

First: The Justice Council may terminate the services of a Deputy Public Prosecutor of Grade (Four) or transfer him to a civilian position based on a decision with cause on his being unqualified to continue serving in the Public Prosecution. This shall be done by a presidential decree.

Second: One whose services are terminated according to the provisions of this law shall not be returned to serve in Public Prosecution. This shall not preclude his appointment in a civilian position.

Article 64:

First: A Disciplinary case shall be filed against a member of the Public Prosecution based on the decision of the Minister of Justice to refer him to the Committee on Public Prosecution Affairs. The decision should include a statement on the incident attributed to him and the supporting evidence. Both the member of Public Prosecution and the presidency of Public Prosecution shall be informed with this decision.

Second:

a. The Committee on Public Prosecution Affairs shall set a date for

consideration of the case, and shall inform, the Minister of Justice , the presidency of Public Prosecution and the referred member of Public prosecution, on that.

b. The trial shall be closed, and the decision shall be public.

c. The trial shall proceed with the attendance of a representative of the Minister of Justice and the Chief Prosecutor or his deputy. The member of the Public prosecution must attend him self and may bring an attorney.

d. The Committee itself may investigate what it deems necessary.

e. The Committee shall decide on the case after finishing investigations and hearing statements of the representative of the Minister of Justice , the chief Prosecutor or his deputy and the defense of the member of Public Prosecution. The committee shall inform the Minister of Justice , the Chief Prosecutor and the member of Public Prosecution with its decision.

f. The committee shall follow in its procedure the rules stated in the Criminal Procedures Law.

Article 65:

First: During the consideration of the case, if the committee finds that the act attributed to the member of Public Prosecution is a felony or a misdemeanor, it shall decide on referring him to the competent court, and shall send all documents to the court, after the Minister withdraws hands of the member of Public Prosecution in accordance to what is stated in the Disciplinary of State Employees Law.

Second: If the court decides innocence of the member of Public Prosecution, release him or issued a decision to close the criminal case, the committee shall continue consideration of the disciplinary case in accordance with provisions of this law.

Third: If the court decides to condemn the member of Public Prosecution, the committee must impose disciplinary sanctions proportional to the act attributed to him in accordance with the provisions of Article (62) of this law.

Article 66:

The Minister of Justice , Chief Prosecutor or the member of Public Prosecution whom a decision is issued against him may appeal the decision of the Committee on Public Prosecution Affairs before the Broad Commission in the Court of Cassation according to the provisions of this section, within thirty days from the day of notification. The Broad Commission, if necessary, may call for the representative of the Minister of Justice , representative of the Chief Prosecutor and the member of Public Prosecution to testify, then it shall issue its decision on ratifying, cancel or amend the decision of committee and it shall be final.

CHAPTER SIX: FINAL PROVISIONS

Article 67:

First: Recusal is applied to members of Public Prosecution as it applies to judges. A request for recusal shall be submitted to the Chief Prosecutor to decide on it.

Second: If a reason for recusal is aroused or a feeling of embarrassment, a member of Public Prosecution must request to step down and his superior must decide on his request.

Third: The decision on a request for a recusal or a step down shall be final.
Article 68:

It is not permissible to arrest a member of Public Prosecution or take criminal measures against him without the permission of the Minister of Justice except in case of committing a flagrant felony.

Article 69:

Upon the enforcement of this law, members of Public prosecution in service and their deputies shall be considered appointed according to its provisions taking into consideration in defining their grades their term in practice of law or one of the judicial or legal positions after graduation. A minimum salary of seventy Dinars, the lower level for Grade Four shall be considered a base for first time appointees to positions in Public Prosecution for the purpose of defining their grades.

Article 70:

Regulations and instructions may be issued to facilitate execution of provisions of this law.

Article 71:

First: Articles 30 to 38, of the Criminal Procedure Code No. 23 of 1971 as amended, shall be cancelled.

Second: Any text contradicting provisions of this law shall not be applied.

Article 72:

This law shall come into enforcement after thirty days from the date of publication in the Official Gazette.

JUSTIFYING REASONS

Based on the reality of political, social and economic development in the country; aims of revolution's authority on the necessity of supporting the social system and maintain its foundations, concepts and protection of state security and integrity, concern for people's democracy, educating citizens on the essence of respecting rules for the new common life; and based on the central duty of Public Prosecution in protecting the social texture and achieving justice by participating with the judiciary and other competent parties in quick discovery of criminal acts and to impose the relevant penalties; It is imperative to highlight the role of Public Prosecution basically as a service for monitoring legitimacy and respect for the application of law.

Since, texts related to Public Prosecution within the Criminal Procedure Code were short of achieving the intended purposes, and indeed an obstacle in the way of its progress and occupation of proper site to contribute to building a new society; therefore, implementation as provided for in the interim

constitution on the organization of the Public Prosecution Service, and for the first time in the history of the country, this special law for Public Prosecution is drafted to determine its goals and duties, composition, duties and term of reference of its members, and management of services affairs similar to the services affair in the judiciary.

In addition to its competencies in criminal matters, this law is bringing new principles for Public Prosecution, extending its legal competencies to include defending public right in civil cases where the state is a party, to protect family and childhood in personal status suits.

Also, the law has initiated new positions to ensure better implementation of its tasks and organization of its work.

With respect to service, the law has distinguished between promotion of member of Public Prosecution and his pay grade increase, envisaging development of his legal and cultural level by linking his promotion to reaching a certain level in this regard.

And, in order to contribute to the development of Public Prosecution Service, the law adopted the principle of sabbatical for a member of Public Prosecution for studies related to legal and judicial specialties, setting fair rules for selecting its members for leadership position, as well as rules that connect between the transfer of a member and his grade; For all these reasons, this law was enacted.

