



Legal Assessment of Legal Guarantees Regarding Judicial Oversight of Prosecution and Investigation in Iran and Syria

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Abstract

The failure or neglect of the legislature in terms of legal guarantees as the fundamental steps of favorable judicial supervision leads to weak judicial supervision, decreased quality of supervision, and violation of individual rights and freedoms. Legal guarantees are a set of essential legal requirements and prerequisites that the legislator must consider in the law and its practical procedure regarding judicial supervision of prosecution and investigation and take into account the executive guarantee for it. The prediction of the institution of judicial supervision over the prosecutor's office is more compatible with adversarial systems than inquisitorial systems. The more we move towards liberal model systems, the issue of judicial supervision over prosecution and investigation orders that conflict with individual rights and freedoms becomes more visible. In general, the prediction of the institution of judicial supervision over the prosecutor's office is more compatible with adversarial systems than inquisitorial systems; In other words, the issue of judicial supervision shows its place in adversarial systems and is one of the principles of maintaining the rule of law, which is emphasized in the constitutions of some countries. There are two models in the judicial supervision of the investigation stage regarding actions that conflict with individual rights and freedoms; The model lacks or hinders judicial supervision based on the absence of supervisory institutions or individuals from the characteristics that judges enjoy and the model has judicial supervision or has an obstacle, the model of Iran and Syria is based on the model without judicial supervision. We can also refer to the open model and the closed model; In the open model the trustees of the prosecution and investigation have the authority to make decisions that contain judicial aspects or contradict individual rights and freedoms but in the closed model the trustees of the prosecution and investigation do not have such jurisdiction. It is possible to obtain fundamental legal guarantees regarding the supervision of prosecution and investigation from the language and experience of the prosecution and Investigation officials themselves because they



deal more with the issue of supervision and are more aware of this issue. The present study focuses on the experimental (qualitative) method while using the tools of in-depth interview and document analysis, simply by examining the fundamental legal guarantees to promote and strengthen judicial oversight of the actions of the prosecution and investigation authorities in Iran and Syria. The best way to investigate the matter is to choose a qualitative research method because the majority of the literature in this field has only explained the legal material and its description, but what is happening behind the scenes of the courts is neglected, so people in charge of monitoring the prosecution and investigation decisions in Iran and Syria have been approached and interviewed in depth. Research questions from interviewees revolve around how to apply supervision of individual rights and freedom exposure appointments in practical procedures, characteristics of the supervision body, type of supervision, guarantees, and mechanisms to strengthen supervision, evaluation of supervision in current procedures, how to strengthen and effectiveness supervision to ensure individual rights and freedom, which are designed and examined from the belly of the answers provided by the interviewees to the questions mentioned, the basic question of the research. However, the prerequisite is to guarantee individual rights, including human dignity, to anticipate it in law, and then to monitor its observance. Legal guarantees are a set of essential legal requirements and prerequisites that the legislator must consider in the law and its practical procedure regarding judicial supervision of prosecution and investigation and take into account the executive guarantee for it. In Syria and Iran, the laws of criminal procedure as well as other special laws have adopted several positions regarding the issue of judicial supervision of bailiffs, prosecutors, investigators, investigating judges, and other custodians of the criminal pre-trial stage by establishing direct or indirect supervisory institutions; But by comparing the legal articles or the principles contained in the constitution, a fundamental research question will be raised: "how is it possible to strengthen the legal guarantees of the supervision provided for in the Constitution and other criminal laws on the preliminary criminal proceedings that are contrary to individual rights and freedoms?". The research hypothesizes that the institution of judicial supervision in Iran and Syria needs to apply and comply with a set of legal guarantees in the matter of supervision. The findings of the research indicate the necessity of applying some of the legal guarantees by the legislator in the judicial supervision of investigative and prosecution measures in the criminal justice system of Iran and Syria, and these legal guarantees include the legal provision of judicial supervision over preliminary investigations (detection of crimes), especially Judicial officers, respecting the separation of prosecution from the investigation, determining the position of the prosecutor's office in terms of judicial or executive, acknowledging and identifying the role of public institutions in monitoring prosecution and investigation, predicting automatic prior judicial supervision of prosecution and investigation, explaining the objective and qualitative criteria. It is for monitoring the decisions against the rights and freedoms of people and absolute supervision of the decisions of the prosecutor's office.

Keywords: legal guarantees, prosecution, investigation, judicial supervision, Criminal procedure.

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