

## THE HISTORY OF THE PROSECUTOR AND THE STRUCTURING OF THE PROSECUTOR TODAY (Republic of Turkey)

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### Annotation

This article reveals the origin and historical development of the Prosecutor's Office of the Republic of Turkey. In addition, today, the importance of prosecutor's offices in criminal activity and their role have been shown.

**Keywords:** prosecutor's office, criminal procedure, historical process, public order, law, representative, policy, society, public.

## ИСТОРИЯ ПРОКУРАТУРЫ И СТРУКТУРА ПРОКУРАТУРЫ СЕГОДНЯ (Турецкая Республика)

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### Аннотация

В данной статье раскрывается зарождение и историческое развитие прокуратуры Турецкой Республики. Кроме того, сегодня показано значение органов прокуратуры в преступной деятельности и их роль.

**Ключевые слова:** прокуратура, уголовный процесс, исторический процесс, общественный порядок, закон, представитель, политика, общество, общественность.

In our opinion, examining the issues related to the emergence and historical development of the prosecutor's office in criminal procedure will facilitate our understanding of the current function of the prosecutor's office. In the historical process, prosecutors have emerged as officials who accuse people suspected of committing crimes, the guardian of public order and the representative of the law, and the representative of the executive before the judicial authorities.

The political movements and the development of scientific understanding in the 19th century are important for the prosecution. The policy has influenced the emergence and development

of the prosecutor's office. For example, during the reign of nationalism, the powers of prosecutors were increased, the mechanisms controlling their activities were reduced, and the way for the executive's intervention in the alleged activity was paved.

The emergence of the prosecutor's office in criminal procedure is new.

Prosecution emerged not with legislation, but with practice. The prosecutor's office has developed in parallel with the historical development of criminal procedure. Parallel to the centralized administration of society, criminal prosecution has become a public duty and one of the duties of the king. The investigation will be carried out through the officers appointed by the king. Institutionally, the prosecution was a structure created in the 14th century to protect the financial interests of kings and nobles in civil and criminal cases. The French Revolution laws are important in terms of the emergence of the prosecutor's office in the modern sense.

The individual accusation gave its place to the public claim, and the individual accuser gave its place to a state official. The state's execution of this task is a result of the popular justice system. In times when a citizen could initiate proceedings against another, this situation created serious abuses, so the need for the accusation to be made by an official body arose. The prosecutor's office emerged as an official body, and the monopoly of filing a public lawsuit was given to the prosecutor.

Another important factor in the emergence of the prosecutor's office as an institution is the change in the role of the state in social life. As the state became stronger, it became more dominant and active in social life, and regulating common life and imposing sanctions against norm violations began to be seen as the duties of the state. If the order of the society is disturbed when a crime is committed, the society will react to this through the strengthened state. The strengthened state has become a monopoly in criminal proceedings. The monopoly of claims ensures that the state has the right to carry out criminal investigations and prosecutions, as well as the obligation to do so. The state fulfills its duty *ex officio* when the suspicion of a crime arises.

The development of the idea of the rule of law is another factor that triggers the changes in the role of the prosecutor in criminal procedure. The thoughts specific to the police state have changed, the prosecutor's office has ceased to be seen as an organ representing the power of the state, and has become the representative of the state of law, the rule of law and the state's purpose of ensuring justice.

In the shaping of the modern prosecutor's office, the disadvantages of the inquisition system began to be seen. Understanding the problems created by the inquisition system brought along the separation of the judicial process into investigation and prosecution phases, and the administration of these phases to different authorities. This situation reveals a procedural separation of powers. In the 19th century reforms and discussions on the subject, it was revealed that the claimant should be a different subject from the judge. The important thing is

that a different authority than the independent judge fulfills the claim. In this way, the material truth, which is the purpose of criminal procedure, is achieved. Otherwise, it will not be possible for the court to be independent and impartial, and to carry out its duties without being influenced. This is the underlying reason for the emergence of prosecutors. When the duties of claiming and adjudicating are separated from each other, the judiciary will be freed from the influence of the executive.

The prosecutor's office was first established in France with the laws of the Imperial period, and with the French Criminal Procedure Code of 1810, the prosecutor's office in today's sense was established. In this Law, the prosecutor's office is an organ equipped with the monopoly of claims brought by the liberal state understanding. In addition to these developments, the Prosecutor's Office was designed to monitor the police force, which is described as fraudulent. The views that the prosecutor's office was created with the aim of limiting the unlimited and unquestioned power of the judges in those years, preventing the judges from being the prosecution in the investigation and limiting the police power are also parallel to each other. What is advocated in both views is the elimination of excesses of authority that may occur while ensuring that the prosecutor's duties are fulfilled by other judicial bodies.

Laying the foundations of the prosecutor's office during the Ottoman Empire can be evaluated within the Europeanization movements. During the Ottoman Empire, there was a process of adaptation to the western system since the 19th century, and the judicial system began to transform under the influence of these developments. Legal Basis of 1876, m. 91 deals with the so-called "müddeiumumi" civil servants. According to this; In matters of criminal law, there would be provisions to protect the public interest and the duties and degrees of these persons would be regulated by law. The second chapter of the "Mehakim-i Nizamiyenin" Organization Law dated 1870, article 56, regulates that prosecutors' offices will be established in all courts of the Ottoman Empire. In the post – "Tanzimat" period in the Ottoman Empire, while the institution of attorneyship developed in its European form, the prosecutor's office, an institution of the acquired French law, was also included in the legal system.

When secular courts were first established in the Ottoman Empire, we cannot talk about the existence of a permanent prosecutor's office. At that time, it is seen that some members of the court were also given the duty of prosecutor. Although it was suggested that these people should be called "hasm-ı mansup" at the beginning, the term "müddeiumumi" was used to mean the person who made a claim on behalf of the public. As it is known today, the term prosecution is used. The expression used when calling the public prosecutor is not related to the form of government in the country, but is a description used in the sense of "belonging to the republic".

5235 p. According to the Law, the institution called the Public Prosecutor's Office in Turkish law could be divided into three classes: those next to the court; which they do all kinds of claims; secondly, prosecutors who are on the side of the court; their difference from other

prosecutors is that they are not present at the hearings; third and lastly, the prosecutors who are counted before the court as the top prosecutor's office, they can take legal action against the decisions of the court they are counted with and they have the authority of supervision and control over other prosecutor's offices.

Another issue that has been discussed a lot about the structure of the prosecutor's office; Whether it is necessary to establish the Office of the Chief Public Prosecutor of Turkey. According to one view, the prosecution's escape from political debates can only be possible through the establishment of a fully independent prosecutor's office, which has a hierarchical structure within itself. If such a system is implemented, coordination will be ensured in terms of prosecution activities. It was also stated that in terms of collecting information on terrorism and organized crimes that concern the whole or a part of the country in one center, it can provide more success in the fight against crime, the efficiency and speed of investigations will increase, the proceedings will be concluded within a reasonable time, and more positive results will be obtained in terms of the protection of justice, security and freedoms.

In Belgium, the reasons for the creation of the Council of Prosecutors are similar to these. In Belgium, the Office of the Prosecutor General consists of the chief prosecutors of the five districts of appeal. The Board is responsible for ensuring uniformity in the country in the fight against crime and criminal prosecution, the prosecutor's office. In Belgium, the reasons for the creation of the Council of Prosecutors are similar to these. In Belgium, the Office of the Prosecutor General consists of the chief prosecutors of the five districts of appeal. The Board is committed to ensuring uniformity in the country in the fight against crime and tracking crime, the integrity and coordinated work of the prosecutor's office, and the Ministry of Justice with its fields of work.

empowered to make relevant recommendations. This Board, together with the entire prosecutor's office, is subordinate to the Minister of Justice and is under the obligation to act in accordance with the minister's instructions.

In our opinion, instead of establishing a Turkish Attorney General's Office, a Board of Prosecutors can be established, similar to the examples of the Netherlands and Belgium. The Board, which will consist of the chief prosecutors of the regional courts of appeal, will be authorized in matters such as ensuring coordination among prosecutors' offices, developing uniformity in practice, and conducting relations with the Ministry of Justice. In fact, it is also possible for the Board to contribute to ensuring uniformity in practice by issuing principles similar to the principles to be observed in the allegation of crime (prosecuting guidelines), as in the case of the UK and Australia. A Council of Chief Prosecutors to be established, such as the Office of the General Prosecutor at the top of the Finnish prosecutor's office; It can work in a way that will serve all prosecutors to fulfill their duties in an impartial manner in accordance with the state of law and the public interest, and can carry out the negotiations with

the Ministry of Justice regarding the budget of the prosecutor's office and to evaluate the effectiveness of the prosecutor's office.

It should be emphasized that the Board of Attorneys General should not be allowed to give orders to the Attorney General's Offices. The work of the board should not go beyond the evaluation of effectiveness and recommendations for increasing effectiveness. Management authority in the Finnish model should not be given to the Council of Prosecutors General in Turkey. The Council of Chief Prosecutors should be considered as a structure that makes recommendations and ensures coordination between prosecutors' offices, and should not be accepted as having the authority to rule by holding a place in the hierarchy of the prosecutor's office.