

The Investigating Judge in Algeria

EL JUEZ DE INSTRUCCIÓN EN ARGELIA

Ghellab, Oussama Belaradj

Faculty of Law, Sfax University, Tunisia; Facultad de Derecho, Universidad de Sfax, Túnez

Email: ghellabossama93@gmail.com

Abstract

The investigating judge possesses a system and characteristics distinct from those of other members of the judicial body, entirely different from those of public prosecution, and these attributes are unique to the investigative authority. The purpose of the preliminary investigation is to seek evidence and clarify the facts presented before the investigating judge to identify all those who participated in their commission, to classify them, and to make the final decision in light thereof.

This differs from the preliminary or initial inquiry conducted by the judicial police. The preliminary investigation is carried out by the investigative authorities either as a complement to the preliminary or initial inquiry undertaken by the judicial police or after the investigating judge has been seized by an opening request or based on a complaint accompanied by a civil claim.

The Code of Criminal Procedure provides for judicial investigation in two degrees: the first degree by the investigating judge under Articles 66–175 of the Code of Criminal Procedure, and the second degree by the Indictment Chamber as a higher degree under Articles 176–211 of the same code, under the provisions of Article 66. Accordingly, investigation in two degrees is mandatory in felonies in general and certain misdemeanours by explicit statutory provisions. In other misdemeanours who do not expressly require investigation, and in contraventions in general, investigation is optional or discretionary according to the opinion of the public prosecutor.

The independence of the investigating judge in his work vis-à-vis the public prosecution clearly appears. However, he may not investigate without a request from the public prosecutor under Articles 38 and 67 of the Code of Criminal Procedure.

The latter is legally empowered to designate, for each case, the investigating judge he deems appropriate from among those operating at the level of the court, by Article 70 of the Code of Criminal Procedure.

Keywords: Investigating judge; judiciary; public prosecution; felonies; Supreme Court.

Resumen

El juez de instrucción cuenta con un régimen y unas características propios que lo distinguen de los demás integrantes del poder judicial y, en particular, del Ministerio Público. Estas particularidades son inherentes a la función instructora. La instrucción judicial tiene por objeto recabar pruebas y esclarecer los hechos sometidos al conocimiento del juez de instrucción, identificar a todas las personas que hayan participado en su comisión, determinar su calificación jurídica y adoptar la resolución correspondiente a la luz de los resultados obtenidos. Esta fase se diferencia de las diligencias preliminares practicadas por la policía judicial. La instrucción judicial puede desarrollarse como complemento de dichas diligencias o iniciarse cuando el juez de instrucción conoce del asunto mediante un requerimiento de apertura de instrucción o una denuncia acompañada de constitución como parte civil. El Código de Procedimiento Penal establece una instrucción judicial en dos grados: el primero corresponde al juez de instrucción, conforme a los artículos 66–175; el segundo compete a la Cámara de Acusación, como instancia superior, de acuerdo con los artículos 176–211 del mismo Código. En virtud de lo dispuesto en el artículo 66, la instrucción en dos grados resulta obligatoria, con carácter general, para los delitos graves y para determinados delitos menos graves cuando así lo establece expresamente la ley. En los demás delitos menos graves y, en general, en las contravenciones, la instrucción es facultativa y queda sujeta al criterio del fiscal.

La independencia del juez de instrucción respecto del Ministerio Público se manifiesta claramente en el ejercicio de sus funciones. Sin embargo, conforme a los artículos 38 y 67 del Código de Procedimiento Penal, no puede proceder a la instrucción sin un requerimiento del fiscal. Asimismo, el artículo 70 faculta al fiscal para designar, en cada asunto, al juez de instrucción que considere adecuado entre los que ejercen sus funciones en el tribunal.

Palabras clave: juez de instrucción; poder judicial; Ministerio Público; delitos graves; Tribunal Supremo.

Introduction

The investigating judge constitutes a central figure in the Algerian judicial system, having been entrusted by the legislature with a delicate and sensitive task: the search for truth at the preliminary investigation stage. This is accomplished through the collection and confrontation of evidence, whether in favour of or against the suspect, to prepare the case file for submission to the trial authority.

Accordingly, defining the investigating judge begins with determining his position within the judicial system as an independent magistrate, appointed to conduct investigations by procedures and conditions prescribed by law.

Doctrine has defined the investigating judge as the magistrate legally entrusted with investigating felonies and complex misdemeanours, vested with the authority to undertake all the measures deemed necessary to uncover the truth while respecting the guarantees established for the parties. The Algerian legislature has organised the provisions governing the investigating judge in the Code of Criminal Procedure, setting forth the conditions for his appointment, his powers, and the judicial oversight of his acts to preserve the balance between prosecutorial authority and the rights of the defence.

The importance of defining the investigating judge lies in distinguishing him from other actors in criminal proceedings. He is not a party to the case, as is the public prosecution, nor an adversary, as is the civil claimant or the accused. Instead, he is a neutral judicial authority whose objective is to attain the truth with complete objectivity.

Moreover, he differs from officers of the judicial police, who conduct search and inquiry activities under the supervision of the prosecution, since his decisions carry greater legal force and are accompanied by broader safeguards.

The study of the investigating judge from the perspective of definition and function reveals his legal nature as an independent magistrate subject only to the law. It further highlights the legislature's philosophy in entrusting this task to a judge endowed with experience, competence, and impartiality to guarantee respect for human rights and the protection of individual liberty.

Accordingly, the definition of the investigating judge is not confined to the theoretical dimension alone; rather, it constitutes a fundamental entry point for understanding his practical role in criminal justice and for assessing the extent of his effectiveness in achieving a balance between society's right to punishment and the individual's right to a fair trial.

Problematic

The investigating judge is considered one of the most prominent actors in criminal justice, as the legislature has entrusted him with the task of investigating complex cases to uncover the truth. However, accurately determining his legal nature raises numerous questions. On the one hand, he is an independent judge subject only to the law; on the other hand, he exercises procedural functions that resemble those of public prosecution and judicial police officers. This gives rise to a fundamental problem, namely:

What is the legal nature of the investigating judge, and how can his concept be precisely defined in light of the overlap of his powers with those of the other investigative and prosecutorial authorities?

The Conceptual Framework of Investigating Judgement

The preliminary investigation constitutes a stage aimed at uncovering the truth concerning public prosecution cases and at examining the various forms of evidence that assist in determining the appropriateness of submitting the case to the courts. This stage requires the undertaking of measures designed to identify evidence that contributes to the discovery of the legal truth of the facts.

For the preliminary investigation to be valid and for its procedures to be deemed lawful and legitimate, it must be surrounded by a framework of safeguards. Among these safeguards is that the investigation be conducted by an authority granted investigative powers by law, namely, the investigating judge.¹ This section addresses the investigating judge by considering his or her definition, the methods of his or her appointment, and his or her distinguishing features.

Definition of the Investigating Judgement and Methods of Appointment

Article 68, paragraph 1, of the Code of Criminal Procedure empowers the investigating judge, by law, to carry out all measures of inquiry, investigation, collection of evidence, and search therefor. His mission is thus the pursuit of truth, which must be undertaken objectively. This entails examining the facts upon which the crime was committed, the circumstances under which it occurred, and the relationship of the accused persons to the criminal act.

Accordingly, the investigation does not concern a particular individual but rather the evidence collected, which has formed the investigator's conviction that the crime was indeed committed as alleged and that the accused persons are directly or indirectly connected to it. From the context of the investigation, it is evident that it encompasses both incrimination and exoneration, under Article 68, paragraph 1.²

The judiciary, being a public function exercised by the state through the courts, is naturally entrusted to the executive authority, which appoints those who occupy public functions, including the judicial office that constitutes one of the state's institutions. However, the executive authority does not exercise an absolute monopoly in the appointment of judges. Instead, its participation in such appointments cannot be denied, but this participation occurs through the mechanism of consultation.³

Definition of the Investigating Judge

The investigating judge is a member of the judicial body and belongs to the judiciary of the courts of appeal, similar to trial judges in nature and status. At the same time, he combines the functions of officers of the judicial police, such as investigation, inquiry, and the search for truth. In his capacity as an investigating judge, he issues a series of orders that bear a judicial character.⁴ Furthermore, the evaluation of judges is undertaken by the president of the judicial council, whose territorial jurisdiction they serve, following consultation with the presidents of chambers or the presidents of courts, by Article 52 of Organic Law No. 04--11 of 6 September 2004, constituting the Statute of the Judiciary.⁵

What distinguishes the investigative function exercised by the investigating judge under the Organic Law on the Judiciary is that it is regarded as one of the contentious judicial functions, under Articles 48 and 50 of the Statute of the Judiciary.⁶ Moreover, he may also act as a substitute for the trial judge, who is ordinarily called upon to replace a trial judge who is absent for any reason. In such cases, he presides over trial hearings and renders various judgments, except for cases in which he has conducted the investigation. In

¹ Ali Shamlal, *Al-Jadid fi Sharh Qanun al-Ijra'at al-Jaza'iyya: al-Kitab al-Thani li-l-Tahqiq wa-l-Muhakama* [The New Explanation of Criminal Procedure Law: Vol. 2, Investigation and Trial], 3rd ed. (Dar al-Houma, 2017), 13.

² Malika Driyat, *Sultat Qadi al-Tahqiq wa-l-Raqaba 'Alayha* [The Powers of the Investigating Judge and Their Oversight] (University Publications Office, Algeria, n.d.), 23.

³ Khalil Badis and Zohir Bournan, *Marja' Sabiq* [Previously Cited Work], 3.

⁴ Abd al-Rahman Khalfi, *Muhadarat fi al-Ijra'at al-Qanun al-Jaza'iyya* [Lectures on Criminal Procedure Law], delivered to second-year LMD students, Faculty of Law and Political Science, University of Bejaia, 2016–2017, 216.

⁵ Fawzi 'Ammar, *Muhadarat al-Tahqiq al-Jina'i* [Lectures on Criminal Investigation], delivered to first-year Master's students, Faculty of Law, University of Constantine, 2019–2020, 2.

⁶ Khalil Badis and Zohir Bournan, *Marja' Sabiq* [Previously Cited Work], 5.

those instances, he is prohibited from adjudicating, and any judgement rendered by him therein would be null and void.⁷

The jurisdiction of the investigating judge may be territorial, *ratione materiae*, or *ratione personae*. His competence may also extend beyond the territorial jurisdiction of the court in which he serves and, in certain instances, may even acquire an international dimension.⁸ As his title indicates, the investigating judge within the judicial corps is primarily entrusted with the conduct of preliminary investigations, a function of considerable importance in criminal proceedings.⁹

Nevertheless, the investigating judge did not assume the role he holds today except by the Law of 17 July 1856. That law consolidated in the hands of the investigating judge the powers previously exercised by the Chamber of Counsel, whereby he came to perform a dual function: both as an investigator and as an investigating magistrate.¹⁰

Appointment of the Investigating Judgement

The investigating judge was formerly appointed by the decision of the Minister of Justice. This arrangement was amended by Law No. 08-01 of 26 June 2001, whereby appointment became effective by a presidential decree under Article 39 of the Algerian Code of Criminal Procedure.¹¹ Under such a decree, issued by the President of the Republic as the first magistrate of the nation, the appointment was made by Article 50 of the Statute of the Judiciary, following consultation with the High Council of the Judiciary, to specific judicial posts, including those of an investigating judge.¹²

However, even though this provision was subsequently repealed by Law 06--22 of 20 December 2006, restoring the system whereby an appointment is made by the decision of the Minister of Justice, after consultation with the High Council of the Judiciary, from among the judges of the Republic. This reversion to Article 50 of the Statute of the Judiciary prescribes a three-year term of appointment, with the functions of the investigating judge terminating in the same manner as they are conferred, that is, by decision of the Minister of Justice.¹³

Concerning juvenile investigating judges, Article 449 of the Code of Criminal Procedure provides that each court shall appoint a juvenile judge from among the judges of the Republic. The appointment of the juvenile judge in the court situated at the seat of the judicial council is affected by the decision of the Minister of Justice for a term of three years, whereas those judges serving in courts outside the seat of the judicial councils are appointed by the order of the president of the judicial council.¹⁴

Where several investigating judges are present in the court, the public prosecutor designates, for each investigation, the judge entrusted with its conduct. If the seriousness of the case or its follow-up so requires, the public prosecutor may assign, alongside the judge charged initially with the investigation, one

⁷ Umar Khalfi, *al-Ijra'at al-Jaza'iyya fi al-Tashri' al-Jaza'iri wa-l-Muqaran* [Criminal Procedure in Algerian and Comparative Legislation], 4th ed. (Dar Belqis, 2018–2019), 280.

⁸ Hussein al-'Isawi, *Muhadarat fi Miqyas al-Tahqiq al-Qada'i* [Lectures on the Course of Judicial Investigation], delivered to first-year Master's students in Criminal Law, Faculty of Law and Political Science, University of Mohamed Boudiaf, M'sila, 2017–2018, 24.

⁹ Fawzi 'Ammar, *Marja' Sabiq* [Previously Cited Work], 13.

¹⁰ *Ibid.*, 5.

¹¹ Abd al-Rahman Khalfi, *Muhadarat fi Qanun al-Ijra'at al-Jaza'iyya* [Lectures on Criminal Procedure Law], *Marja' Sabiq* [Previously Cited Work], 218.

¹² Abd Allah Wahabiya, *Marja' Sabiq* [Previously Cited Work], 394.

¹³ Abd al-Rahman Khalfi, *Marja' Sabiq* [Previously Cited Work], 218.

¹⁴ Mohamed Hazit, *Mudhakira fi Qanun al-Ijra'at al-Jaza'iyya al-Jaza'iriyya* [Memoir on Algerian Criminal Procedure Law] (Dar al-Houma, 2011), 247.

or several additional investigating judges, whether at the opening of the preliminary investigation or during the proceedings.¹⁵

Characteristics of the Investigating Judgement

The investigating judge possesses a system and characteristics that enable him to perform his duties in the pursuit of truth and in clarifying the facts. This requires him to embody particular qualities related to his morals, disposition, and conduct, which are directly connected to the responsibilities placed upon him during the preliminary investigation.¹⁶

Entrusting the investigating judge with the authority of preliminary investigation represents the embodiment of the principle of procedural legality. For the results of the investigation to be deemed worthy of the trust of society and the parties to the proceedings, the Algerian legislature considered it appropriate to place this task in the hands of a judge, in whom individuals naturally repose confidence and from whom they expect safeguards. This eliminates any fear of deviation from the proper aims of investigation.

The personal and continuous involvement of the investigating judge constitutes a fundamental guarantee of the preliminary investigation, owing to his capacity for sound judgment and his demonstration of rigorous organisation. This ensures that the accused can exercise his right of defence. Moreover, for the investigating judge not to lose his essential role as a safeguard within the preliminary investigation, he must remain independent and subject to no subordination.¹⁷

The characteristics of the investigated judge may be summarised as follows:

Nonliability of the Judge (Immunity of the Investigating Judge)

The investigating judge may not be held liable, whether civilly or criminally, for the acts he performs or the orders he issues about the accused, provided that he does not exceed the bounds of his duties. An example is pretrial detention, which is an investigative measure that may be ordered solely by the investigating judge. It constitutes the gravest of investigative measures, as it affects the liberty of the accused, who is presumed innocent until a final and binding judgment establishes his conviction.¹⁸

In this respect, the investigating judge is comparable to the public prosecutor and other members of the prosecution service in that he is not held liable for errors he may commit, for instance, where an accused remains in pretrial detention for the full legal term despite a lack of evidence and is later released on grounds of no further proceedings. However, fraudulent acts or acts of deceit are exceptions, as they give rise to judicial liability.¹⁹

The prevailing opinion in doctrine, which the Algerian legislature has also adopted, is that members of the public prosecution are not to be held liable for their acts, insofar as such acts fall within the scope of their statutory powers. Consequently, they cannot be held responsible for damages arising from the initiation of public proceedings or the bringing of charges if the accused is later acquitted, unless professional misconduct is established. In such cases, the member of the prosecution is subject to disciplinary liability. Furthermore, under Law No. 01-08 of 26 July 2001, the Algerian legislature created a compensation committee seated at the Supreme Court, entrusted with compensating individuals wrongfully convicted, under Articles 531 bis and 531 bis 1 of the Code of Criminal Procedure.²⁰

¹⁵ Umar Khuri, *Marja' Sabiq* [Previously Cited Work], 68.

¹⁶ Khalil Badis and Zohir Bournan, *Marja' Sabiq* [Previously Cited Work], 6.

¹⁷ Fawzi 'Ammar, *Qadi al-Tahqiq* [The Investigating Judge] (PhD diss., University of Frères Mentouri, Faculty of Law, Constantine, 2009), 15.

¹⁸ *Ibid.*, 69.

¹⁹ Hussein al-'Isawi, *Marja' Sabiq* [Previously Cited Work], 21.

²⁰ Jamal al-Din 'Inan, *Muhadarat fi Qanun al-ljra'at al-Jaza'iyya* [Lectures on Criminal Procedure Law], delivered to second-year undergraduate students, University of Mohamed Boudiaf, Faculty of Law and Political Science, 2019–2020, 24.

As a rule, members of the public prosecution are not held liable for their conduct or the measures taken by them in public proceedings. For example, where they have issued a decision leading to the acquittal of the accused, the latter may not claim compensation from the prosecution because charges were brought against him, since this falls within the scope of public policy functions.

However, this rule is not absolute. Where a member of the prosecution commits fraud, deceit, or gross professional misconduct, such conduct does not preclude the establishment of liability of every kind, criminal, disciplinary, and civil.²¹

Non-Subordination of the Investigating Judge to Hierarchical Authority

Unlike members of public prosecution, investigating judges is not subject to the oral, written, or criminal instructions of their superiors. While the Indictment Chamber may order the investigating judge to carry out supplementary investigations or return the file to it, it has no authority to order the release or detention of an accused person; such powers, when exercised, are exercised directly by the chamber itself in the context of reviewing an appeal against one of the investigating judge's orders.²²

Once the investigating judge has received the written opening request, he commences investigative proceedings and is not subordinate to any authority. The public prosecutor may submit additional requests to the investigating judge, asking him to undertake specific measures. However, the investigating judge is not obliged to comply; he may issue a reasoned order that rejects the request. In such a case, the public prosecutor may appeal that order before the Indictment Chamber. Thus, the investigating judge is bound only by his conscience and by the law, under Article 69 of the Code of Criminal Procedure.²³

In the performance of their duties, investigating judges is not subject to hierarchical, sequential, or supervisory subordination. Like trial judges, they are subject only to the law. Consequently, they are not instructed to adopt or refrain from adopting a particular measure or to direct the investigation along a particular course. At first glance, an apparent contradiction may arise: how can one speak of the nonsubordination of the investigating judge while on the other hand, he is appointed by the Minister of Justice? The answer is that the appointment system is merely an administrative process falling within the organisation of the judicial body, and it bears no relation to the legal jurisdiction of trial judges.²⁴

Noncombination of the Powers of Adjudication and Investigation

The Algerian legal system is founded upon the principle of separation of functions. The prosecutorial function is entrusted to the public prosecution; the investigative function, at first, is to the investigating judge and, at second, to the Indictment Chamber; and the adjudicative function is entrusted to trial judges. This principle constitutes one of the safeguards ensuring the proper conduct of proceedings.

It is particularly in the preliminary investigation stage that this principle finds its logical justification: it would be contradictory for the investigating judge to sit in judgment of a case in which he had previously conducted the investigation.²⁵ Accordingly, under Article 38, paragraph 1, of the Code of Criminal Procedure, the investigating judge may not undertake preliminary investigative measures in a public prosecution case brought before him or her and subsequently sit in judgment of it. Conversely, the investigating judge may investigate one case and adjudicate another in which he has not conducted the investigation.²⁶

²¹ Aqila Khalaf et al., *Muhadarat fi Qanun al-Ijra 'at al-Jaza 'iyya* [Lectures on Criminal Procedure Law], delivered to second-year undergraduate students, University of Algiers, Faculty of Law and Political Science, 2020–2021, 4.

²² Hussein al-'Isawi, *Marja 'Sabiq* [Previously Cited Work], 22.

²³ Umar Khuri, *Marja 'Sabiq* [Previously Cited Work], 68.

²⁴ Khalil Badis and Zohir Bournan, *Marja 'Sabiq* [Previously Cited Work], 6.

²⁵ Fawzi 'Ammar, *Marja 'Sabiq* [Previously Cited Work], 17.

²⁶ Umar Khuri, *Marja 'Sabiq* [Previously Cited Work], 69.

The incompatibility between the functions of investigation and adjudication, as provided in Articles 38 and 260 of the Code of Criminal Procedure, has a narrow scope that cannot be extended by analogy. It does not preclude the investigating judge from participating, in the capacity of representative of the public prosecution, before the trial courts in a case in which he has previously conducted the investigation.²⁷

Independence of the Investigating Judgement

The independence of the investigating judge is an established and longstanding general principle. Although the Algerian Code of Criminal Procedure has introduced specific mechanisms in the form of constraints that grant the public prosecution and other parties to the proceedings the right to exercise oversight over the acts of the investigating judge through access to files, appeals, and direct notification, such powers do not in reality constitute restrictions. Instead, they are means of giving effect to the principle of balance by the requirements of justice. To carry out his functions, the investigating judge must enjoy full independence, perform his duties with complete freedom and, by his sound and free conviction, without interference in his affairs. However, such independence does not signify arbitrariness or despotism.²⁸

Although the investigating judge may not commence the investigation of a case file except upon request from the public prosecutor, this does not imply his subordination to the prosecution. Once he is seized of the file, he exercises complete freedom concerning the case before his inquiry and investigation are carried out, and no authority may compel him to pursue a particular course in the investigation. Moreover, the request of the public prosecutor to the investigating judge does not constitute an order or a directive. However, it is merely a legal means of seising him of the file. Unlike members of the prosecution, the investigating judge is not subject to hierarchical subordination; he is bound only by the law and by his judicial conscience.²⁹

Under the principle of separation of the three functions, i.e., prosecution, investigation, and adjudication, the investigating judge enjoys absolute freedom to undertake all the measures necessary about the case brought before him. He is independent of public prosecution.³⁰

According to the Algerian legislature, the investigating judge enjoys a notable degree of independence, both in terms of his appointment, which is affected by the presidential decree, and with respect to the nature of his office, which the legislature has designated a special post removed from any form of interference. He also exercises impartiality, seeking to establish innocence just as he seeks to establish guilt. He is not bound by the submissions of the public prosecution, which may consult the case file at any time; however, whatever access is available to the prosecution must equally be available to the parties.³¹ The Algerian Constitution has established an independent judiciary that exercises its functions within the framework of the law.³²

Ultimately, the independence of the investigating judge signifies the emancipation of judicial authority from any interference or administrative subordination and the rejection of any parallel authority empowered to exert pressure upon his work or to control it, for example, by allowing the public prosecution to designate the judge who will conduct the investigation or to remove him from a case at will. All such measures are

²⁷ Fawzi 'Ammar, *Marja' Sabiq* [Previously Cited Work], 18.

²⁸ Fawzi 'Ammar, *Marja' Sabiq* [Previously Cited Work], 15.

²⁹ Abd al-Rahman Khalfi, *Muhadarat fi Qanun al-Ijra'at al-Jaza'iyya* [Lectures on Criminal Procedure Law], *Marja' Sabiq* [Previously Cited Work], 219.

³⁰ Umar Khuri, *Marja' Sabiq* [Previously Cited Work], 68.

³¹ Abd al-Rahman Khalfi, *al-Ijra'at al-Jaza'iyya al-Jaza'iriyya* [Criminal Procedure, Algerian], *Marja' Sabiq* [Previously Cited Work], 275.

³² Malika Driyat, *Marja' Sabiq* [Previously Cited Work], 57.

designed to provide greater guarantees for the conduct of investigations. This legislative approach adopted by the Algerian legislature contributes to the effective separation of powers within the state.³³

Impartiality of the Investigating Judgement

The task of the investigating judge is to adjudicate the dispute between the prosecuting authority and the accused, and this adjudication must be carried out impartially concerning the parties. This impartiality constitutes one of the most important guarantees in the investigative process. One of its consequences is that the investigation is conducted both in favour of the accused and in favour of the prosecuting authorities, as provided by Article 68 of the Code of Criminal Procedure.³⁴

The principles of justice require that the trial judge be free of any preconceived opinion. Accordingly, impartiality is one of the most essential and serious qualities of the investigating judge, who must enjoy absolute impartiality founded upon the *presumption of innocence*. This principle must be embraced by the investigating judge, who must treat the accused on this basis, regardless of appearance. The impartiality of the investigating judge must not remain a mere obligation upon him; it must also extend to the parties to the proceedings, who must themselves be made to perceive it.³⁵

Recusal or Removal of the Investigating Judgement

Under Article 71 of the Code of Criminal Procedure, any party to criminal proceedings, including public prosecution, may request the removal of the investigating judge. The public prosecutor, the accused, or the civil party may, in the interest of the proper administration of justice, request that a case file be withdrawn from one investigating judge and reassigned to another. Jurisdiction to decide upon such a request lies with the Indictment Chamber, provided that grounds for recusal are established.³⁶

The procedure is initiated via a reasoned petition submitted to the Indictment Chamber, which is then notified to the judge concerned, who may present written observations. In practice, the removal of an investigating judge from a case and its reassignment to another judge is most often grounded in personal reasons or other considerations, such as kinship.³⁷

The requirement of impartiality in the investigating judge is the reason why the legislature, on the one hand, has granted the parties the right to request his recusal when impartiality is lacking and, on the other hand, has allowed the investigating judge himself to request withdrawal from an investigation if he considers that he cannot remain impartial. The Algerian Code of Criminal Procedure has thus permitted the recusal of trial judges (Article 554), including investigating judges (Article 71, cited above), when the grounds provided for in Article 554 are established, whether invoked by the accused, the civil party, or the public prosecution.³⁸

Furthermore, under Article 69 bis of the Algerian Code of Criminal Procedure, the accused, his counsel, or the civil claimant, may, during the investigation, request that the investigating judge receive statements, hear a witness, or conduct an inspection to ascertain the truth. The investigating judge may issue a reasoned order rejecting such a request, but he must do so within twenty days. Suppose the investigating judge fails to rule within the statutory time limit. In that case, the concerned party or counsel may, within ten days, submit the request directly to the Indictment Chamber, which must decide upon it within thirty days

³³ Abd al-Rahman Khalfi, *Marja' Sabiq* [Previously Cited Work], 270.

³⁴ Hussein al-'Isawi, *Marja' Sabiq* [Previously Cited Work], 20.

³⁵ Fawzi 'Ammar, *Marja' Sabiq* [Previously Cited Work], 20.

³⁶ Abd al-Rahman Khalfi, *Muhadarat fi Qanun al-Ijra'at al-Jaza'iyya* [Lectures on Criminal Procedure Law], *Marja' Sabiq* [Previously Cited Work], 219.

³⁷ Khalil Badis and Zohir Bournan, *Marja' Sabiq* [Previously Cited Work], 7.

³⁸ Fawzi 'Ammar, *Marja' Sabiq* [Previously Cited Work], 20.

from the date of notification. The decision of the Indictment Chamber in this respect is final and not subject to appeal.³⁹

While recusal serves the interests of litigants by preventing judicial bias in favour of one party to the proceedings at the expense of the other, the measure also protects the judge himself from suspicions that may taint his adjudication. In this way, it preserves public confidence in the judiciary by safeguarding the appearance of impartiality in the judge.⁴⁰

Article 191 of the Code of Criminal Procedure refers to the situation in which the investigating judge is removed from the case by the Indictment Chamber. This occurs when the chamber, in reviewing the validity of the proceedings, annuls all or part of them. Article 191 requires the Indictment Chamber to examine the legality of the proceedings whenever the case file is submitted to it to review the various orders issued by the investigating judge, except those concerning pretrial detention. Should the Indictment Chamber identify a ground of nullity, it may declare the impugned measure void and, where necessary, annul the subsequent proceedings dependent upon it.⁴¹

Conclusion

It is clear from the foregoing that the investigating judge is not merely a judicial officer performing formal acts but rather an institution in its own right within the judicial system, entrusted by the legislature with a fundamental mission: the search for truth within a framework of impartiality and objectivity.

Whether defined in doctrine, legislation, or jurisprudence, the investigating judge emerges as an independent magistrate whose primary purpose is to ensure the integrity of the investigation and to prevent its deviation from its objectives, thereby achieving a balance between society's interest in combating crime and the protection of individual rights and liberties.

Highlighting the status of the investigating judge further reveals the philosophy of the legislature in adopting this system, which is essentially aimed at placing investigative authority in the hands of a neutral judge, removed from the logic of either prosecution or defence, so that his decisions are grounded in legal standards rather than personal or political considerations.

Accordingly, the definition of the investigating judge is not confined to his role in issuing orders and measures but rather extends to his function as a proper safeguard against any abuse that may affect individuals at a critical stage of criminal proceedings.

It may thus be said that defining the investigating judge constitutes the natural entry point for understanding his roles, powers, and guarantees, as he stands as a cornerstone of criminal justice and a central safeguard for the consolidation of the rule of law and the protection of rights and freedoms.

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³⁹ Fawzi 'Ammar, *Marja' Sabiq* [Previously Cited Work], 69.

⁴⁰ Mohand Amqran Bousheer, *al-Nizam al-Qada'i al-Jaza'iri* [The Algerian Judicial System], 3rd ed. (University Publications Office, Central Square, Ben Aknoun, Algiers, 2003), 84.

⁴¹ Ahsan Bousaqla, *al-Tahqiq al-Qada'i* [Judicial Investigation], 6th ed. (Dar al-Houma, Algiers, 2006), 57.

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