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Abstract

A systematic examination of the legal and political regimes in 57 democratic states around the world indicates that the most prevalent configuration with respect to the functions of the state prosecution and those of the office of the attorney general entails institutional separation between the legal counsel to the government (or the executive branch) and the public prosecution. For the most part – that is, in roughly two thirds of the democratic states surveyed – an institutionally separate and independent branch handles criminal prosecution, while the state attorney's office, which is generally part of the Ministry of Justice, is responsible for providing legal advice to the government (or the executive branch) and representing the state in civil matters (as both respondent and plaintiff). In only 37% of the democracies surveyed in this comparative study is the attorney general also directly responsible for the state prosecutor's office, usually under the aegis of the Ministry of Justice.

In democratic countries that lack formal institutional separation between the offices of the attorney general and the state prosecutor, there is generally functional separation. Despite the absence of institutional separation, the attorney general does not intervene in the decisions of the state prosecutor.

* Translated by Karen Gold.

Thus, the current situation in Israel in which there is no institutional separation – and the attorney general (who is generally not an expert in criminal law) takes precedence over the state prosecutor and can veto his or her decisions – is quite unusual from a comparative perspective.

This study analyzes aspects of the situation in Israel through a comparative examination of scenarios in which the functions of the attorney general and those of the state prosecutor are institutionally separate. It also examines various institutional components that may indicate whether such a separation would in fact weaken the office of the attorney general as an institution that guides and advises the entire civil administration in Israel. Similarly, it explores the effects of institutional separation on the status of the public prosecutor – currently, the office of the state attorney. The key recommendation that is presented in detail is to institutionally separate the office of the attorney general and the state prosecution. This move would constitute a major reform in one of the most prominent and crucial aspects of governance, which would noticeably strengthen the office of the state prosecutor in Israel and possibly that of the attorney general as well.

The first chapter of the study offers a comparative analysis of global institutional trends with regard to combining or separating the roles of legal counsel and civil representation, on one hand, and criminal prosecution, on the other. This analysis is based largely on primary source material that enabled a comparison of the legal systems in 57 democratic states around the world, encompassing various legal traditions and cultures.

This is followed by a chapter that analyzes the development of the office of attorney general in Israel, in particular, and the historical changes that have affected it over time, with an emphasis on its institutional and legal genealogy in a political and cultural context.

The third chapter explains why institutional separation between the attorney general and the public prosecutor would be preferable in Israel, based on primary sources and personal interviews, as well as other empirical data.

The fourth and fifth chapters elucidate why institutional separation would not weaken the office of the attorney general and might even strengthen it, and explicate the factors that would ensure its strength and that of the state

prosecution in the event of such a separation, as compared with the current situation.

The sixth and final chapter of this work clarifies that the proposed reform would establish a general, institutionally independent prosecutorial office through the separation of the office of the attorney general and the state prosecution.

