

Revisiting the Model of Criminal Prosecution in the Context of Social Crises: A Comparative Study of International and Regional Human Rights Instruments and Practices

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Social crises are defined as exceptional and unstable situations in which public order is seriously disrupted and the normal functioning of governance institutions is challenged. These situations are typically identifiable through indicators such as widespread unrest, threats to public security, disruption of essential services, and increased governmental intervention. Under such circumstances, the criminal justice system faces a fundamental tension between the necessity of preserving public order and security on the one hand and safeguarding the fundamental rights of individuals—particularly the rights of suspects and defendants—on the other. Using a descriptive-analytical approach and a comparative research method, the present article revisits the model of criminal prosecution during crisis situations in light of international and regional human rights instruments and jurisprudence (European, Inter-American, and African systems). The findings demonstrate that despite structural differences among legal systems, a “common normative core” governs criminal prosecution during crises. This core can be conceptualized through indicators such as the clear legislative regulation of exceptional situations, temporal and substantive limitations on prosecutorial powers, guarantees of fair trial rights, effective judicial oversight, and the establishment of accountability and remedial mechanisms. Accordingly, principles such as legality, necessity, proportionality, non-discrimination, and effective judicial supervision emerge as the foundational pillars of this model. Within the Iranian criminal justice system, the absence of a statutory definition of crisis, the predominance of a security-oriented approach over a judicial one, and the weakness of ex post oversight mechanisms constitute the principal obstacles to conformity with this model. The article’s contribution lies in proposing a three-tiered reform framework—legislative, interpretive, and implementation-oriented—for redefining Iran’s criminal prosecution model through the incorporation of comparative experiences. Such an approach can simultaneously strengthen the legitimacy of the criminal justice system and enhance the protection of fundamental rights.

Keywords: *Criminal prosecution during crises; Social crises; Human rights guarantees in crisis situations; International instruments; Regional jurisprudence.*

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1. Introduction

Under normal circumstances, the criminal justice system is founded on a set of fundamental principles, such as the rule of law, the legality of crimes

and punishments, the equality of persons before the law, and the guarantee of the defensive rights of accused persons. However, the emergence of social crises, such as widespread unrest, collective protests, riots, and states



of emergency, exposes this system to increasing pressures that may lead to the redefinition or even weakening of some of these principles. Under such circumstances, criminal prosecution, as the initial point of the state's penal intervention, plays a decisive role in demarcating the boundary between the preservation of public security and the protection of individuals' fundamental rights and freedoms (Ashworth & Zedner, 2014). During social crises, states usually expand the scope of powers held by prosecuting authorities and judicial officers by invoking the necessity of maintaining public order and confronting security threats. Although such expansion of powers may help control the crisis in the short term, in the absence of clear rules and effective oversight, it may lead to widespread human rights violations, including violations of the right to personal liberty, the presumption of innocence, the right of access to counsel, and the prohibition of arbitrary detention (Human Rights, 2001). Therefore, criminal prosecution during crises requires, more than ever, precise legal frameworks grounded in human rights standards.

International human rights instruments, particularly the International Covenant on Civil and Political Rights, while recognizing the possibility of adopting exceptional measures in states of emergency, have established strict limitations on the restriction of rights and freedoms. The practice of supervisory bodies, particularly the United Nations Human Rights Committee, demonstrates that any derogation from or restriction of rights must be subject to fundamental human rights principles and placed under effective judicial supervision. At the regional level, the European Court of Human Rights and other regional human rights bodies have also emphasized in numerous judgments that crisis situations cannot be regarded as a license to set aside fair trial guarantees and the rights of the accused altogether. The jurisprudence of these bodies indicates that even in states of emergency, the rule of law and judicial control over the actions of prosecuting authorities must be preserved.

In the Iranian legal system, although various laws have implicitly or explicitly addressed special and crisis situations, the model of criminal prosecution under such circumstances lacks theoretical coherence and full conformity with human rights standards. Ambiguity regarding the scope of prosecutorial powers, the role of judicial officers, and the manner in which judicial

supervision is exercised constitutes one of the challenges that may create the grounds for violations of individuals' fundamental rights during social crises. Accordingly, with the aim of revisiting the model of criminal prosecution during social crises through a comparative study of international and regional human rights instruments and jurisprudence, the present article seeks to answer the following questions: What is the model of criminal prosecution during social crises in the Iranian criminal justice system and in international and regional human rights instruments and practice? What is the approach of the Iranian criminal justice system, as well as the approach of international and regional human rights instruments and practice, regarding the model of criminal prosecution during social crises? What are the solutions for overcoming the challenges arising from non-compliance with an appropriate model of criminal prosecution when confronting social crises in the Iranian criminal justice system? In addition, the researcher seeks, by explaining the human rights criteria governing criminal prosecution, to provide the basis for proposing a reform-oriented and balanced model for the Iranian legal system.

2. Conceptualizing Social Crises and Criminal Prosecution

2.1. The Concept of Social Crises

The concept of "social crisis" in legal and social science literature is a fluid and multidimensional concept for which no single and comprehensive definition has been provided. Nevertheless, most theorists regard a social crisis as a situation in which the normal order of society is seriously disrupted and the ordinary capacities of governance institutions for managing the situation become insufficient or ineffective (Habermas, 1976). Such a situation may emerge in the form of widespread protests, collective unrest, riots, or other forms of social tension. In human rights instruments, social crisis is usually addressed under concepts such as "state of emergency," "exceptional situation," or "threat to the life of the nation." For example, Article 4 of the International Covenant on Civil and Political Rights defines a state of emergency as a situation that "threatens the life of the nation" and requires the adoption of exceptional measures (Joseph & Castan, 2013). However, the interpretive practice of the United Nations Human Rights

Committee indicates that the mere occurrence of unrest or a security disturbance does not necessarily amount to a state of emergency in its human rights sense. From the perspective of criminal law, the importance of the concept of social crisis lies in the fact that such a situation often provides a pretext for expanding the state's penal intervention and for broader recourse to repressive tools. Consequently, the distinction between a "real social crisis" and "security-driven crisis construction" is of fundamental importance in assessing the legitimacy of penal measures, particularly at the prosecution stage (Zedner, 2009).

From the perspective of criminal law, the distinction between a "real social crisis" and "security-driven crisis construction" is not merely a conceptual distinction, but a decisive criterion for assessing the legitimacy and limits of the state's penal intervention. The importance of this distinction becomes more evident when one enters the stage of criminal prosecution, where decisions regarding the initiation, continuation, or termination of prosecution directly affect individuals' rights and freedoms. In real crises, criminal prosecution may be strengthened with the aim of controlling the situation, but only within the limits of the law and under effective supervision. By contrast, in conditions of crisis construction, the risk of "inflation of criminal prosecution" increases, such that the tool of prosecution is transformed from a justice-oriented mechanism into an instrument for the political or security management of the situation. Among the criteria for distinguishing and assessing legitimacy in order to differentiate these two situations in practice are the existence or absence of an official declaration of a state of emergency in accordance with law, reliance on independent and verifiable data, observance of the principle of proportionality in prosecutorial measures, and the continuation of effective judicial oversight. The greater the distance between objective reality and penal measures, the greater the likelihood that the situation falls within security-driven crisis construction.

2.2. Indicators of Social Crisis

One of the indicators of crisis is disruption of the social order, in which laws, norms, and social structures are seriously affected, leading to increased crime rates, public unrest, and the collapse of social institutions. Such disruption may occur at the local, national, or global

level. Social crises have a broad scope of impact. In other words, a social crisis usually does not affect only one particular group, but also involves various social, economic, and political groups. These impacts may include increased social inequality, unemployment, and poverty. Under such conditions, criminal justice systems play an important role in managing ordinary crises and preventing their transformation into extraordinary crises. Resolving a social crisis requires planning and intervention by the state, judicial institutions, and social organizations. A social crisis requires systemic intervention, meaning that resolving such crises is not possible merely through individual or local measures and requires planning and coordination among various governmental and non-governmental institutions. Social crises may create fundamental changes in social and cultural structures. Social crises usually have long-term consequences that may produce fundamental changes in social and cultural structures. These consequences may include changes in norms, values, individuals' social identities, and even macro-level policies. For example, cultural crises may lead to the weakening of traditional values and the emergence of new values. Under such circumstances, criminal justice systems face challenges such as increased crime and public dissatisfaction, and the need for reform measures in economic and social domains becomes evident.

2.3. Operational Definition of Social Crisis

In this study, "social crisis" is operationally defined as follows: "An objective, widespread, and ascertainable situation in which a serious disruption occurs in public order or the essential functions of society, and this disruption is such that its continuation may create a real threat to the fundamental rights of persons or to public security, thereby making a state response necessary, including in the form of penal intervention at the prosecution stage; provided that such intervention is carried out within the framework of the principles of legality, necessity, proportionality, non-discrimination, and effective judicial oversight." This definition is based on a synthesis of indicators extracted from international human rights instruments and the jurisprudence of regional bodies, which assess "exceptional situations" not merely on the basis of formal declaration, but according to the severity of the threat, the scope of

impact, and the necessity of intervention (Habermas, 1976; Zedner, 2009).

In the Iranian criminal justice system, unlike international instruments, there is no “explicit and statutory definition of social crisis.” This conceptual gap has important consequences at the stage of criminal prosecution, since it allows broad interpretation by judicial officers and prosecuting authorities in the absence of a clear definition, and prosecutorial bodies may expand the scope of prosecution through an expansive interpretation of “threats to security.”

Accordingly, the operational definition of social crisis in this study is not merely a theoretical definition, but an instrument for assessing the legitimacy of criminal prosecution. Analysis of the provisions of the Criminal Procedure Code shows that, at the level of the “text of the law,” the Iranian legal system has the capacity to conform to international indicators. Principles such as the legality of prosecution, proportionality in pretrial security orders, and the provision of judicial oversight have all been anticipated in the law. However, during social crises, three fundamental challenges arise: first, an expansive interpretation of the legal requirements of prosecution, which leads to the excessive expansion of prosecution; second, the predominance of a security-oriented approach in the exercise of the investigating judge’s powers; and third, the practical weakening of effective judicial oversight. This gap between “law in the books” and “law in action” is precisely the point at which slippage from a “real social crisis” into “security-driven crisis construction” becomes possible.

From the standpoint of domestic law, the question arises whether the definition provided can be used as a reliable criterion for identifying situations subject to exceptional measures and, consequently, for preventing the extension of expansive interpretations to limited unrest. In other words, can the mere occurrence of temporary unrest, without establishing the threefold conditions of effective disruption of public order, the existence of a threat that disrupts the functioning of criminal justice institutions, and the inadequacy of ordinary criminal responses, be regarded as a crisis situation and justify the suspension or restriction of fair trial guarantees?

2.4. *The Distinction Between Social Crisis and State of Emergency*

One of the key points in this section is the distinction between “social crisis” and “state of emergency.” A social crisis is an objective and real situation that can be identified on the basis of the above indicators and may exist even without an official declaration. A state of emergency, however, is a formal-legal situation declared by the state and usually permits the state to temporarily derogate from certain human rights obligations, as in Article 4 of the International Covenant on Civil and Political Rights. In other words, every state of emergency must be based on a real crisis, but not every social crisis necessarily leads to the declaration of a state of emergency. This distinction is of fundamental importance for preventing the “abuse of emergency mechanisms.”

2.5. *The Concept and Position of Criminal Prosecution*

Criminal prosecution, as the initial stage of the criminal adjudication process, constitutes the point of connection between the state’s penal power and individual rights and freedoms. At this stage, the prosecuting authority, by deciding whether or not to initiate the criminal process, plays a decisive role in the fate of the suspected person (Ashworth, 2002). For this reason, criminal prosecution always requires strict observance of principles such as legality, impartiality, proportionality, and accountability. Under normal circumstances, criminal prosecution is subject to specific procedural and substantive rules, the purpose of which is to prevent arbitrary exercise of penal power. However, during social crises, this stage is more exposed than other stages of adjudication to transformation, because states usually expand the scope of prosecution and lower the threshold of penal intervention in response to crisis (Duff et al., 2007). This situation entails the risk of “crisis-oriented punitiveness,” a condition in which criminal prosecution is used not as an instrument for realizing justice, but as a means for the security management of crisis. In such a model, the fundamental principles of fair trial are marginalized and criminal prosecution acquires a preventive-repressive function (Ashworth & Zedner, 2014).

3. Human Rights Standards Governing Criminal Prosecution During Social Crises

3.1. *The Principle of the Rule of Law and the Prohibition of Unregulated Suspension of Criminal Prosecution*

The principle of the rule of law, as the foundation of modern legal systems, requires that all penal actions of the state, including criminal prosecution, be carried out, even during social crises, on the basis of predetermined, transparent, and predictable rules. According to this principle, a social crisis cannot be regarded as a license for removing criminal prosecution from the framework of law or for exercising unlimited and discretionary powers by the prosecuting authority (Dicey, 1982). In human rights instruments, particularly the International Covenant on Civil and Political Rights, the principle of the rule of law has been emphasized both implicitly and explicitly. In General Comment No. 29, the United Nations Human Rights Committee states that even in states of emergency, the measures adopted must be “in accordance with law” and subject to effective control by judicial institutions (Human Rights, 2001). This approach means that criminal prosecution during crises is not only not removed from the scope of law, but also requires stricter oversight and more precise criteria. The jurisprudence of the European Court of Human Rights also confirms that the suspension or restriction of rights in exceptional circumstances must not lead to the weakening of the essence of the rule of law. In numerous judgments, this Court has emphasized that the actions of prosecuting authorities must continue to remain subject to the principles of transparency, accountability, and judicial review (Gross & Ní Aoláin, 2006).

3.2. *The Principle of Non-Discrimination and the Prohibition of Selective Criminal Prosecution*

The principle of non-discrimination, as one of the most fundamental norms of international human rights law, enshrined in Article 2 of the Universal Declaration of Human Rights and Article 2 of the International Covenant on Civil and Political Rights, acquires heightened significance during social crises. This is because historical experiences and reports by supervisory bodies show that crisis junctures provide a favorable context for the emergence of systematic discrimination against minority groups, political opponents, and residents of specific geographical areas.

The phenomenon of “selective criminal prosecution,” which emerges from this context, produces multilayered consequences at the individual, institutional, and social levels: at the individual level, it deprives persons of the right to equality before the law and fair trial; at the institutional level, it transforms the prosecuting authority from a “law-oriented” institution into an “expediency-oriented” institution and institutionalizes double standards in the administration of justice; and at the macro level, by eroding public trust, it empties the criminal justice system of its norm-generating function and ultimately leads to a “crisis of legitimacy.”

In this regard, international instruments, particularly Article 4 of the International Covenant on Civil and Political Rights and General Comment No. 29 of the United Nations Human Rights Committee, have placed the principle of non-discrimination among non-derogable norms that must be fully observed even in the most severe states of emergency (Human Rights, 2001). From a normative perspective, observance of this principle in criminal prosecution requires four essential obligations: the legality and predictability of prosecution based on general and pre-announced rules; the objectivity and transparency of criteria for selecting cases based on legal indicators rather than identity-based characteristics; the observance of proportionality and equality in penal responses to similar crimes regardless of the identity of perpetrators; and the guarantee of effective and impartial judicial oversight over prosecutorial decisions. Accordingly, any criminal prosecution based on discriminatory criteria, even with reference to necessities arising from crisis, is contrary to the fundamental human rights obligations of states and may entail their international responsibility.

3.3. *Guaranteeing Effective Judicial Oversight over Criminal Prosecution During Crisis*

Effective judicial oversight during social crises is not a matter of choice, but a fundamental requirement for preserving the legitimacy of the criminal justice system. This is because, to the extent that the powers of the prosecutorial apparatus are expanded under the pretext of security necessities, the corresponding need to strengthen oversight mechanisms also increases in order to prevent the prosecution institution from becoming an instrument of repression. The jurisprudence of the European Court of Human Rights also emphasizes this

central doctrine: the supervising judicial authority must have the power to conduct a “substantive” review of prosecutorial decisions and must not be satisfied with merely formal confirmation of the actions of security authorities (Gross & Ní Aoláin, 2006). The realization of such oversight requires two inseparable preconditions: first, comprehensive judicial independence in both external terms, meaning non-interference by the executive branch, and internal terms, meaning non-subordination to organizational hierarchy; and second, citizens’ effective access to remedial bodies, including the right to object to pretrial security orders, access to the case file, and benefit from independent counsel. Four essential indicators may also be identified for objectively measuring the effectiveness of this oversight: the immediacy of judicial intervention, the comprehensiveness of review of all dimensions of the prosecutorial decision, the reasoned and documented nature of decisions in a manner that makes them open to criticism before a higher authority, and the availability of effective enforcement guarantees. Ultimately, the legitimate model of criminal prosecution during crises is one in which the expansion of powers is restrained by the corresponding strengthening of judicial oversight; otherwise, the criminal justice apparatus is emptied of its inherent function and reduced to an arm of repression.

4. A Comparative Study of the Model of Criminal Prosecution in International and Regional Instruments and Practices During Social Crises

4.1. International Instruments and Practice

At the global level, the International Covenant on Civil and Political Rights is the most important binding instrument regulating the relationship between public security and fundamental rights in crisis situations. Article 4 of the Covenant makes exceptional measures conditional upon strict necessity, temporariness, and freedom from discrimination; and General Comment No. 29 of the Human Rights Committee states that certain fair trial guarantees, including the principle of legality of crimes, the presumption of innocence, the right to be tried by an impartial tribunal, and the prohibition of double jeopardy, are peremptory norms even in a state of emergency and are not subject to derogation (Human Rights, 2001). The Universal Declaration of Human Rights, by lacking a derogation clause, is also regarded as

placing its provisions, including the right to a fair hearing by an independent court under Article 10, among the “hard core” of human rights that cannot be suspended under any circumstances. The Convention against Torture, with an even stricter approach, does not accept any derogation and obliges states, under all circumstances including social crises, to criminalize torture, observe the absolute principle of non-refoulement, and implement the obligation to “extradite or prosecute”; an obligation that has been regarded as erga omnes in the context of international human rights law (Nowak, 2005).

4.2. Regional Instruments and Practice

A comparative examination of the three regional human rights systems in confronting criminal prosecution during crises shows normative convergence despite differences in the intensity of obligations and enforcement mechanisms. The European system, relying on Article 15 of the Convention, permits limited derogation from obligations; however, the European Court of Human Rights has emphasized in numerous judgments that a state of emergency cannot justify prolonged detentions, prosecution without individual assessment, or violations of fair trial requirements, and that any derogation must be interpreted narrowly and proportionately. The Inter-American system, with a stricter approach, has, through the doctrine of the “inseparability of human rights,” regarded certain fair trial guarantees as non-derogable even where they are not expressly listed among non-derogable rights, because of their existential connection with peremptory rights. It has prohibited any military or special courts for civilians and has imposed a “positive obligation” on states to effectively guarantee fair trial during crises. The African system, by lacking a derogation clause in the Charter, has in practice treated all rights as non-derogable and, through an innovative development-oriented approach, has established a structural link between security, development, and human rights. This approach regards criminal prosecution not as an instrument of repression, but as a mechanism for rebuilding public trust, and places restorative justice alongside retributive justice (Viljoen, 2021); although institutional weakness and the absence of a court with broad binding jurisdiction have meant that the decisions of the African Commission have often had a more

recommendatory than binding character (Ankumah, 2018).

A comparative review of international instruments and the practices of the three regional human rights systems, European, Inter-American, and African, shows that despite structural, normative, and cultural differences, one may speak of the emergence of a common and convergent model in dealing with criminal prosecution during social crises. After examining the three regional

human rights systems, it is now possible to provide a comprehensive comparison of these systems in confronting criminal prosecution during social crises. This comparison is carried out along several basic axes: the possibility and conditions of derogation from obligations; the scope of non-derogable rights; the approach to fair trial during crisis; the supervisory institution and enforcement guarantees; and theoretical innovations.

Table 1

Comparative Table of Regional Systems

Criterion	European System	Inter-American System	African System
Derogation clause	Article 15: to the extent strictly required by necessity	Article 27: subject to the principle of necessity	No derogation clause
Non-derogable rights	Three rights: life, prohibition of torture, legality of crimes	Broad list: eleven rights	Practically all rights
Approach to fair trial	Margin of appreciation with limited supervision	Norm-oriented and strict	Development-oriented and linked to development
Guiding principle	Proportionality and necessity	Absolute necessity and intensified judicial oversight	Non-derogation: absolute prohibition
Supervisory body	European Court: strong binding jurisdiction	Inter-American Court: moderate binding jurisdiction	African Commission and Court: limited jurisdiction
Theoretical innovation	Doctrine of margin of appreciation	Doctrine of inseparability of human rights	Link between security, development, and human rights
Enforcement guarantee	Strong: Committee of Ministers	Moderate	Weak: recommendatory
Key judgment	A. and Others v. UK (2009)	Zamora v. Argentina (2009)	APDF and IHRDA v. Mali (2020)

The comparative analysis of the three systems shows that the European model, through the doctrine of the margin of appreciation, gives states greater flexibility, but restrains it through relatively effective judicial oversight; the Inter-American model, through a norm-oriented and strict approach, recognizes the highest level of protection for fair trial during crises and prohibits exceptional courts for civilians even in states of emergency; and the African model, by establishing a structural link between security, development, and human rights, opens a new horizon in which the response to crisis is connected to its social roots and restorative justice is prioritized over retributive justice.

5. Evaluation of the Model of Criminal Prosecution in the Iranian Legal System During Social Crises

After explaining international and regional standards, it is necessary to assess the conformity of the Iranian legal system with these criteria, particularly because international human rights law states that even during crises, prosecutorial powers must be exercised within

the framework of necessity, proportionality, and the rule of law, and the prosecution stage cannot be transformed into an area beyond judicial control. In the Iranian legal system, this necessity is doubled because neither has a clear statutory definition of “social crisis” been provided, nor are crimes against security immune from expansive interpretations. Therefore, the evaluation of the model of criminal prosecution in Iran is a normative-critical analysis at three legislative, institutional, and practical levels, which, by using indicators such as the transparency and legality of prosecutorial decisions, observance of the principle of non-discrimination, guarantee of effective judicial oversight, and limitation of penal intervention to necessity and proportionality, pursues the central question: Does the Iranian system of criminal prosecution during crises preserve the balance between security necessities and fundamental rights requirements, or have legislative gaps and institutional challenges created the grounds for the predominance of the logic of exception over the rule of law?

“In order to avoid generalization and achieve a practical analysis, the evaluation of the model of criminal

prosecution in this section is conducted on the basis of the three stages of the prosecution process in Iranian law.”

5.1. The Stage of Initiating Criminal Prosecution During Crisis: From Crime Reporting to Prosecutorial Intervention (Analysis of the Scope of Power and the Risk of Securitization)

The initiation of criminal prosecution during a social crisis is the most important bottleneck at which ordinary procedural norms are exposed to erosion. The provisions of the 2013 Criminal Procedure Code at this stage have established a set of institutions that, despite facilitating the prosecution process, provide a suitable ground for the securitization of the criminal process because of the absence of sufficient controlling guarantees.

5.1.1. Legal Foundations: From the Presumption of Innocence to the Initiation of Prosecution

The stage of initiating criminal prosecution in Iranian law is formed on the basis of several provisions of the Criminal Procedure Code. Article 4 declares the presumption of innocence and makes any measure restricting liberty conditional upon legal authorization and the supervision of a judicial authority; Article 64 enumerates the grounds for initiating prosecution; and Article 2 emphasizes the legality of proceedings and equality of arms (Noubahar, 2017). At first glance, this framework appears advanced, but the main weakness lies in paragraph “th” of Article 64, which, through the ambiguous phrase “other legal methods,” permits the prosecutor to initiate prosecution on the basis of intelligence reports or assessments lacking effective oversight. In addition, the broad definition of “flagrant crime” in Article 45 grants judicial officers extensive authority to act without a prior order from a judicial authority. Although a 24-hour limit is provided in Article 46, this limit faces serious practical challenges during crises because of the accumulation of detainees. During social crises, this structure undergoes three concerning transformations: first, sources of information about crimes shift from reports by victims to reports by security officers, which entails the risk of replacing “security analyses” with “legal evidence”; second, the scope of interpretation of security crimes expands, and ordinary conduct or civil protests are prosecuted under security-related titles, leading to a “lowering of the

threshold of penal intervention”; third, the “preemptive action of judicial officers” in shaping criminal cases causes the framework of accusation to be determined before the effective involvement of the judicial authority, thereby blurring the boundary between initial suspicion and sufficient evidence for prosecution (Khaleghi, 2021). These factors expose the stage of initiating prosecution more than any other stage to “securitization” and make the preservation of the balance between crisis necessities and legal requirements dependent on the transparency of criteria, the documented nature of decisions, and the active and independent role of the judicial authority in the preliminary filtering of cases.

5.1.2. Institutions for Initiating Prosecution Under Critique: Analysis of Crisis Practices

Article 65 of the Criminal Procedure Code provides that the statement of a person who introduces himself or herself as a witness to the occurrence of a crime is sufficient to initiate prosecution, “even if there are no other indications and circumstantial evidence for prosecution.” This article permits individuals to report the occurrence of a crime to the prosecutor. Under ordinary circumstances, this article is an instrument for citizens’ participation in crime detection. However, during crises, it may become a platform for “reports based on emotional and security-driven atmospheres,” especially where reports are filed against specific groups or protesters. In non-compoundable crimes, this rule grants enormous power to individuals who, through a simple statement, may initiate a criminal process against a third person. In such a situation, there is a risk that crime reporting may be based not on objective reality, but on political or security perceptions, and that the prosecuting authority may also enter the prosecution process without careful filtering (Mirmohammad Sadeghi, 2015). During social crises, when the atmosphere of accusation intensifies, this article can easily become an instrument for eliminating political opponents. Article 66 of the aforementioned law permits non-governmental organizations to report crimes in specific fields, including the protection of citizenship rights, and to participate in all stages of proceedings. In some respects, this article constitutes a positive step toward civil participation in the criminal process. However, Note 4 of this article, which provides that “in crimes against chastity, non-governmental organizations

... shall only report the crime and submit their evidence to judicial authorities and shall not have the right to participate in hearings,” is a noteworthy exception, particularly during social crises in which accusations concerning crimes against chastity may be widely used against individuals, thereby limiting civil participation (Habibzadeh et al., 2021). Although Article 66 was drafted to strengthen social oversight over criminalization, during crises its role is practically diminished and replaced by reports from official and security institutions. This displacement indirectly reduces the diversity of sources of information about crime and strengthens the dominance of a security-oriented perspective over the initiation of prosecution (Ashouri, 2015).

Article 67 of the Criminal Procedure Code, by stating that “reports and letters whose reporters and writers are unidentified cannot serve as the basis for initiating prosecution,” apparently creates a barrier against anonymous reports. However, the important exception contained in this article, which states “unless they indicate the occurrence of an important matter that causes disruption of public order and security or are accompanied by indications that, in the prosecutor’s view, are sufficient to initiate prosecution,” practically renders this limitation ineffective. In practice, almost any social event during a crisis can be classified under the ambiguous concept of “disruption of public order and security” (Nourizadeh & Mohseni, 2021). This gives the prosecutor unlimited discretion to initiate prosecution on the basis of anonymous information.

On the other hand, Article 68, which emphasizes the need to register and document complaints and reports, constitutes, from a legal perspective, a guarantee of transparency in the initiation of prosecution. However, during crises, this requirement is sometimes implemented formally, and the registration of a report replaces its substantive assessment. In other words, “registration of the report” takes the place of “analysis of the report,” which may lead to the entry of weak cases or cases lacking sufficient basis into the prosecution cycle (Khaleghi, 2021).

5.1.3. Crisis as an Exceptional Situation: The Theory of the Collapse of Criminal Procedure

One of the most important theoretical frameworks for analyzing the state of criminal prosecution during social

crises is the theory of the “collapse of fair criminal procedure in confrontation with crisis.” This theory shows that under social and political emergencies, ordinary and fair procedural rules are suspended and replaced by a security-oriented “extraordinary procedure.” In the Iranian legal system, although “state of emergency” has not been expressly provided for, in practice, through an expansive interpretation of concepts such as “public security” and recourse to the broad powers of prosecuting authorities, the fundamental rights of accused persons, such as the right of access to chosen counsel under Article 48, are disregarded. This implicit approach is more dangerous than express legal recognition because it is carried out without defining limits and without effective judicial oversight. During social crises, the stage of “initiating criminal prosecution” is more exposed than other stages to securitization: first, “sources of information about crime” change significantly. Under normal circumstances, crime reporting by the victim or third persons plays a central role, but in crisis situations, reports by judicial officers, especially security officers, become the main source for initiating prosecution (Zargar et al., 2018). Although this change may be justified by security requirements, it entails the risk of replacing “security analyses” with “legal evidence,” which may weaken the principle of objectivity and impartiality in initiating prosecution. Second, in certain categories of crimes, particularly crimes against internal and external security, criminal prosecution does not require a complaint by a private complainant, and the prosecutor may act ex officio under Articles 65 and 66 of the Criminal Procedure Code. During crises, the scope of interpretation of these crimes may expand, and conduct that under ordinary circumstances would fall within ordinary crimes or even non-criminal acts may be prosecuted under security-related titles. This situation entails the risk of “lowering the threshold of penal intervention,” such that the mere occurrence of limited unrest or social protests may be regarded as a basis for initiating prosecution, without establishing the actual conditions of crisis or a serious threat to public order (Mirmohammad Sadeghi, 2015). From a human rights perspective, these developments become more concerning when they lead to the weakening of the principle of “necessity and proportionality” in initiating prosecution. According to international standards, even

in emergency situations, penal intervention must be limited to cases where it is truly necessary for preserving public order and where milder instruments cannot be used (Human Rights, 2001). As a result, initiating criminal prosecution on the basis of general, undocumented, or security-perception-based reports may be regarded as a violation of this principle.

5.2. *The Stage of Directing and Expanding Prosecution: Powers of the Prosecuting Authority in Collecting Evidence and Adopting Restrictive Decisions*

At the second stage of criminal prosecution, namely the direction and expansion of prosecution, the prosecuting authority uses its legal powers to collect evidence and adopt restrictive decisions against the accused. During social crises, these powers expand significantly and endanger the defensive rights of the accused. According to Article 98 of the Criminal Procedure Code, the principle is the direct action of the investigating judge and judicial supervision over judicial officers in order to prevent their arbitrariness (Khaleghi, 2021). However, during crisis, because of the urgency and scope of events, the “practical precedence of judicial officers over the judicial authority” effectively emerges, and judicial officers become the “initial designers of the case.” This weakens the independence of the prosecuting authority and turns criminal prosecution into an extension of security policies (Khaleghi, 2021). Moreover, in crimes against internal and external security, prosecution does not require a private complainant, and an expansive interpretation of these crimes during crisis extends the scope of prosecution to non-security conduct and violates the principle that “penal intervention must be limited to necessary cases.”

5.2.1. *The Right of Access to Counsel in the Balance of Crisis: Analysis of Article 48 and Its Note*

One of the most sensitive provisions of the Criminal Procedure Code regarding the balance between security and individual liberties is Article 48. This article recognizes the accused person’s right to have counsel during the period of being held under supervision and states: “Upon the beginning of being held under supervision, the accused may request the presence of a lawyer. The lawyer shall, while respecting and observing the confidentiality of investigations and negotiations, meet with the person held under supervision.”

Compared with the former law adopted in 1999, which had severely restricted the right of access to counsel at the stage of preliminary investigations, this article is considered a relatively forward-looking step (Mirmohammad Sadeghi, 2015). Nevertheless, the note to Article 48 of this law renders this right completely ineffective in the most important crimes from the standpoint of crisis-oriented adjudication. This note provides: “In crimes against internal or external security, as well as organized crimes whose punishment falls within Article 302 of this Law, at the stage of preliminary investigations the parties shall choose their lawyer or lawyers from among official attorneys at law approved by the Head of the Judiciary. The names of such lawyers shall be announced by the Head of the Judiciary.” This note conflicts with international human rights standards in several respects:

First, the freedom to choose counsel, recognized in international instruments, including Article 14(3)(d) of the International Covenant on Civil and Political Rights, is violated. Reports by international bodies have shown that the Iranian judiciary, by adopting and implementing the note to Article 48 of the Criminal Procedure Code, has deprived accused persons of the basic right of access to counsel and placed its determination in the hands of the judicial authority and the judiciary. In numerous reports, including reports concerning 2023, international human rights bodies have condemned restrictions on access to counsel in Iran and considered them contrary to international fair trial standards (Rice, 2023).

Second, entrusting the determination of approved lawyers to the Head of the Judiciary effectively weakens the independence and impartiality of the legal profession. The experience of nationwide protests in 2022-2023 showed that many security-related accused persons either had no access to counsel at all, or the appointed lawyers lacked sufficient independence for effective defense, or, because of the limited number of special lawyers, substantial financial costs were imposed on accused persons (Rice, 2023).

Third, this restriction is applied while the securitized rights of the accused during the period of being held under supervision, under Articles 49-53, are not guaranteed in practice. In some cases, accused persons may be held under supervision for a long time and, during this period, may not be allowed to meet with counsel (Nasrollahi, 2023). The right of access to counsel

as soon as possible after arrest is one of the most fundamental fair trial guarantees in advanced legal systems and international instruments. By adopting the note to Article 48, Iranian law has violated this right in the most sensitive cases.

5.2.2. *Expansion of Measures at the Prosecution Stage: From Procedural Guarantees to the Risk of Expanding Penal Intervention*

In the Iranian system of criminal procedure, two key principles, namely “confidentiality” and “speed,” have been designed and form the general framework of this stage under Articles 91 and 94 of the Criminal Procedure Code. According to Article 91, preliminary investigations are, in principle, conducted non-publicly and confidentially, and their disclosure, except in legally permitted cases, is prohibited and punishable. Article 94 also emphasizes the need to conduct investigations continuously and promptly. Under ordinary circumstances, these two principles are justified as guarantees for protecting the dignity of the accused, preventing disruption of the process of discovering the truth, and ensuring the efficiency of the criminal justice system (Ashouri, 2018). During social crises, these two principles may undergo a kind of “functional shift.” Confidentiality, which under ordinary circumstances is an instrument for protecting the accused, may during crisis become an instrument for limiting public, media, and even counsel oversight. Particularly where access to case information is restricted, the possibility of external assessment of the legitimacy of prosecutorial measures is reduced, and the investigation process proceeds in a “closed and non-transparent space.” On the other hand, emphasis on speed, if applied without regard to the principle of accuracy and proportionality, may lead to “judicial haste,” a situation in which the collection of evidence and important decisions are made without sufficient examination and merely in response to pressures arising from the crisis (Khaleghi, 2021).

In continuation of this situation, Articles 95 and 97 of the Criminal Procedure Code define the scope of the prosecuting authority’s powers in carrying out investigative measures. Article 95 emphasizes the need to take urgent measures to prevent the destruction of traces and evidence of the crime, and Article 97 authorizes the investigating judge to take any necessary measure to discover the crime. Under ordinary

circumstances, these provisions are necessary to ensure the efficiency of investigations and prevent the loss of evidence. However, during crisis, concepts such as “urgency” and “necessary measure” are susceptible to expansive interpretation, such that the scope of investigative measures goes beyond a specific crime and extends to a broader range of persons, places, and communications. In such a situation, the boundary between “targeted judicial investigation” and “broad intervention in social life” gradually fades (Ashouri, 2015). The consequence of this functional expansion is that preliminary investigations, instead of focusing on discovering the truth in a specific case, may become an instrument for “social monitoring and management.” Particularly when social crises are accompanied by concerns, the prosecuting authority may use existing legal capacities for broader surveillance of individuals and groups. Although this may help control the situation in the short term, in the long term it conflicts with fundamental principles such as proportionality, necessity, and respect for privacy, and may call into question the legitimacy of penal measures. From a human rights perspective, such developments are also seriously questionable. According to international standards, even in emergency situations, measures restricting rights must be limited, necessary, and proportionate, and exceptional instruments must not be allowed to become ordinary practices (Human Rights, 2001). Accordingly, it may be said that the main challenge at this stage is not the absence of legal rules, but rather the “manner of interpreting and implementing” them during crisis. If the principles of confidentiality and speed, as well as powers relating to urgent and necessary measures, are applied without effective oversight and precise criteria, there is a risk that preliminary investigations will depart from their legal path and become a mechanism for expanding penal intervention into unnecessary domains.

5.2.3. *Surveillance of Communications and Access to Information: Broad Powers Under the Cover of Necessity*

Articles 150 to 152 of the law grant judicial authorities broad powers to monitor telecommunications and access individuals’ financial and postal information. Article 150 permits the monitoring of individuals’ telecommunications only in two areas: cases related to the internal and external security of the country, and

crimes covered by paragraphs (a), (b), (p), and (t) of Article 302 of the law, which are mostly serious and grave crimes. In these cases, monitoring is permitted with “the approval of the head of the provincial justice administration and with determination of the duration and frequency of monitoring.” Two fundamental objections may be raised against this article: first, the concept of “internal and external security of the country” has no clear definition in law and can potentially be interpreted very broadly. During a social crisis, when virtually any peaceful protest can be classified under the title of “disruption of security,” this article becomes an instrument for comprehensive surveillance of all political critics (Alipour & Ahmadi, 2020). Second, approval by the head of the provincial justice administration, who is himself or herself a judge and part of the judiciary, cannot broadly substitute for independent judicial oversight over such measures. In advanced legal systems, authorization for interception of communications usually requires permission from an independent and competent judge (Alipour & Ahmadi, 2020).

What is more concerning is the note to Article 150, which makes the monitoring of convicted persons’ telecommunications subject merely to the discretion of the court or the judge for enforcement of judgments. This note does not provide any objective and predictable criterion for continuing surveillance of convicted persons, even after the completion of the sentence, and may easily become an instrument for continuous surveillance of political and civil activists. The United Nations Human Rights Committee has also expressed concern regarding the very broad nature of the Iranian state’s surveillance powers and the lack of independent judicial oversight over such measures.

Article 151 also permits the investigating judge, “in necessary cases, for the discovery of crime or access to evidence of the occurrence of crime,” to monitor persons’ bank accounts with the approval of the head of the judicial district. Similar to Article 150, this article is also faced with two basic ambiguities: first, the definition of “necessary cases” is left to the judicial authority, and no objective criterion has been established for determining necessity. Second, approval by the head of the judicial district, who is himself or herself a judge, cannot be regarded as independent and impartial oversight. Article 17 of the International Covenant on Civil and Political

Rights provides: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.” Certainly, monitoring bank accounts without effective judicial oversight and objective criteria constitutes “unlawful interference” in private affairs (Nowak, 2005).

Article 152 of the law authorizes the search and inspection of the accused person’s postal correspondence where there is a “strong suspicion of discovering the crime, accessing evidence of the occurrence of the crime, or identifying the accused.” Although this article apparently establishes conditions for inspection, “strong suspicion” is also a completely subjective concept and practically grants the judicial authority extensive power of inspection. The presence of the accused or his or her lawyer during the examination of correspondence is a positive step, but this presence is effective only where the accused has access to an independent and trusted lawyer, something that the note to Article 48 makes practically impossible in security-related crimes (Ashouri, 2015).

5.2.4. *Pretrial Security Orders: An Instrument for Securing Appearance or Control? Unregulated Expansion in Light of Crisis*

In the Iranian system of criminal procedure, pretrial security orders under Articles 217 and following are, under ordinary circumstances, instruments for securing the accused person’s appearance and preventing disruption of the discovery of truth, with emphasis on the principle of proportionality and the selection of the least severe effective measure (Khaleghi, 2021). Pretrial detention, as the most severe order, is permissible only in exceptional cases and under conditions such as the risk of flight or disruption of public order (Khaleghi, 2021). However, during social crises, security concerns lead to expansive interpretations of concepts such as “disruption of public order” and “risk of collusion,” and pretrial detention is transformed from an exceptional instrument into a dominant practice (Nazarpour, 2021). Consequently, the function of these orders changes from “securing appearance” to “social control,” which conflicts with the presumption of innocence and the principle of proportionality (Ashouri, 2015).

The stepwise system of pretrial security orders under Articles 217-218 and the requirement of reasoning under Article 222 are weakened in practice during crisis.

Article 237, paragraph “p,” concerning crimes against security punishable by fifth-degree or higher penalties, provides a basis for widespread detention during social crises. Article 242, by setting a maximum of one year of pretrial detention for ordinary crimes and two years for crimes punishable by death, and without a limit in crimes where the minimum imprisonment penalty is unspecified, practically transforms pretrial detention into long-term detention and conflicts with the presumption of innocence, the principle of proportionality, and international standards (Nazarpour, 2021). Article 247, which provides the possibility of issuing judicial supervision orders instead of detention, is also used less frequently during crisis. The main challenge is not the absence of legal instruments, but the transformation of “exception into rule” in the context of crisis. The multilayered oversight anticipated in law, involving the investigating judge, prosecutor, and court, is reduced under conditions of urgency and case overload to rapid and minimal supervision, and pretrial detention and other restrictive orders gradually move outside their exceptional framework and become instruments for crisis management, thereby endangering the legitimacy of criminal prosecution and the international responsibility of the state.

5.3. The Final Stage of Prosecution: From Issuance of Orders to Judicial Oversight (Analysis of Control Guarantees During Crisis)

The final stage of criminal prosecution, which involves the prosecuting authority’s decision regarding the fate of the case, is vitally important for guaranteeing the rights of the accused and preventing arbitrary prosecutions. During social crises, this stage, like the previous stages, is affected by security and political pressures, and the control guarantees anticipated in law lose their effectiveness in practice.

5.3.1. Final Prosecution Orders: From the Order Committing the Accused to Trial to the Order Prohibiting Prosecution

Articles 265 to 269 of the law regulate the final decision-making process in the prosecutor’s office. Article 265 provides: “If the investigating judge finds that the committed act is criminal and that sufficient evidence exists for attributing the crime to the accused, he shall

issue an order committing the accused to trial, and if the committed act is not criminal or there is no sufficient evidence for attributing the crime to the accused, he shall issue an order prohibiting prosecution and immediately send the case to the prosecutor.” This article apparently presents a clear two-way choice for the investigating judge, but during crisis two main factors disrupt this process: first, an expansive interpretation of “sufficient evidence” in security cases. In practice, mere intelligence reports or the testimony of secret witnesses, together with the judge’s knowledge, may suffice to establish “sufficient evidence.” Second, the possibility of extra-legal pressure on the investigating judge to issue an order committing the accused to trial in sensitive cases. Article 266 permits the prosecutor, where he considers the investigating judge’s investigations incomplete, to request their completion. Although the note to this article regards any request to complete investigations that is not necessary for discovering the truth as subject to disciplinary sanction, during crisis prosecutors may, through repeated requests for supplementary investigations, practically delay proceedings and keep the accused in prolonged detention. This practice, known in legal literature as “strategic delay,” is in practice one of the effective methods for detaining accused persons for long periods without trial (Razini & Lotfi, 2020). Article 268 provides that where the prosecutor and the investigating judge agree on committing the accused to trial, the prosecutor shall issue an indictment within two days and send the case to the competent court. Article 269 also refers disputes between the prosecutor and the investigating judge to the competent court. The fundamental problem with this arrangement is that during crisis, there is practically no meaningful disagreement between the prosecutor and the investigating judge in security cases, and these two institutions act under the influence of a security-oriented criminal policy.

5.3.2. Judicial Oversight over Prosecutorial Decisions: An Examination of Articles 270 to 274

The Iranian Criminal Procedure Code adopted in 2013 provides, in Articles 270 to 274, a mechanism for judicial oversight over prosecutorial decisions. Article 270 of the law determines the appealable orders of the investigating judge, including orders prohibiting prosecution, discontinuing prosecution, staying

proceedings because of a preliminary issue, upon the complainant's request, pretrial detention orders, the maintenance and intensification of pretrial security orders upon the accused person's request, and orders securing claims upon the accused person's request. Article 271 also designates the competent court, namely, as applicable, the Revolutionary Court, Criminal Court One, or Criminal Court Two, as the authority for resolving disputes and hearing objections. Nevertheless, an examination of these articles shows that the supervisory mechanism anticipated in law faces noteworthy structural deficiencies that, during social crises, seriously call its effectiveness into question. What is important here is analysis of the relationship between the structure of the supervisory institution and the nature of the decisions under objection. When the institution hearing the objection, namely the court, and the institution issuing the decision, namely the prosecutor's office, both operate within the framework of a single criminal policy and with structural and functional coordination, judicial oversight may be reduced to a relatively formal procedure. This situation, particularly in sensitive cases, violates the accused person's fundamental right to benefit from an independent and impartial supervisory body.

Article 273 of the Criminal Procedure Code states that the court's decision in resolving disputes and hearing objections is final, "except with respect to orders prohibiting or discontinuing prosecution in crimes referred to in paragraphs (a), (b), (p), and (t) of Article 302 of this Law, which, if confirmed, shall be appealable in accordance with the regulations." This means that in ordinary crimes not covered by Article 302, the court is the final decision-maker at this stage and its decision is not subject to appeal before a higher authority. This restriction, particularly regarding pretrial detention orders, which are among the most important decisions restricting the liberty of the accused, conflicts with the fundamental principles of fair trial. The right to challenge judicial decisions at two levels, at least in relation to important decisions, is recognized as a fundamental principle in advanced legal systems. Adrian Zuckerman, one of the leading contemporary procedural law scholars, emphasizes in his analysis of the fair trial system that the possibility of effective and two-level challenge against restrictive judicial decisions is not a privilege, but part of the fundamental definition of "fair

trial" (Zuckerman, 2010). Removing this possibility in relation to the most important decisions restricting the accused person's liberty is regarded as a clear violation of the right to fair trial. Regarding the broad power of the court to overturn orders, Article 274 of the law permits the court, if it overturns an order prohibiting or discontinuing prosecution, to itself issue an order committing the accused to trial or request the prosecutor's office to complete investigations. This article gives the court the power to go beyond the role of supervisor and reviewer and, in practice, to replace the prosecuting authority and directly decide to commit the accused to trial. Under ordinary circumstances, this power may appear useful for remedying deficiencies in prosecutorial investigations. However, during crisis, it may become an instrument for overcoming possible resistance by the investigating judge to issuing an order committing the accused to trial. When the court can directly replace the prosecutor's office, the separation between prosecution and adjudication, one of the fundamental pillars of modern criminal procedure, is practically undermined (Rice, 2023). Under such conditions, Article 274, instead of serving as a mechanism for guaranteeing the rights of the accused, may become an instrument for shelving possible resistance by prosecuting authorities and accelerating the process of conviction.

5.3.3. *Res Judicata and the Possibility of Re-Prosecution: Analysis of Article 278*

Article 278 of the law is one of the most important and, at the same time, most challenging provisions concerning *res judicata*. This article distinguishes between two situations: first, if an order prohibiting prosecution is issued and becomes final because the committed act is not criminal, re-prosecution of the accused on the same charge is prohibited. Second, if an order prohibiting prosecution is issued and becomes final because of the absence or insufficiency of evidence, "the accused may not be prosecuted again on the same charge, unless new evidence is discovered, in which case, with the prosecutor's opinion, prosecution is permissible once; and if this order has become final in court, after the discovery of new evidence and at the prosecutor's request, the accused may be prosecuted once with the permission of the competent court for hearing the charge." This article conflicts with fundamental

principles of criminal law in two respects: first, the possibility of re-prosecuting the accused after the discovery of “new evidence,” although anticipated with severe restrictions in many advanced legal systems, is regulated in Article 278 in such broad terms that it practically weakens the immunity arising from *res judicata*. The concept of “new evidence” is not clearly defined in law and may include any new information, even fabricated testimonies or intelligence reports. Determining what evidence counts as “new” is left to the opinion of the prosecutor and the court, which during crisis may easily lead to repeated prosecution of acquitted accused persons (Zeraat, 2019). Second, where the order prohibiting prosecution has become final in court, re-prosecution requires the “permission of the competent court,” but this court is the same court that previously issued the order prohibiting prosecution and is practically confronted with its own decision. In advanced legal systems, requests for re-prosecution are submitted to a higher authority in order to guarantee independence and impartiality. For example, in England, a request for re-prosecution requires the approval of the Court of Appeal (Zuckerman, 2010). Iranian law has not provided such a guarantee.

5.3.4. *Judicial Oversight During Crisis: Theory and Reality*

The theory of separation of powers, as one of the foundations of public law thought, emphasizes the necessity of the institutional and functional independence of the judiciary; an independence whose purpose is to guarantee the rule of law, protect citizens' fundamental rights, and prevent the concentration of power in other branches of government. Within this framework, judicial oversight means not only the resolution of disputes, but also a mechanism for controlling the legitimacy of governmental actions, particularly in the sphere of executive performance. This role is highly important under ordinary circumstances, but in crisis situations, which are usually accompanied by restrictions on public rights and freedoms, it gains even greater significance. During social crises, this condition becomes more visible, because the boundary between judicial function and security considerations may sometimes become blurred, and the judiciary, instead of playing an impartial and supervisory role, may acquire a more active role in processes related to crisis

management. The realization of effective judicial oversight during crisis requires the provision of a set of legal and institutional requirements: guaranteeing the real independence of judges at various levels, strengthening accused persons' access to independent and chosen counsel, observing the principle of public hearings except in exceptional cases and with justified reasoning, and providing efficient mechanisms for appeal and higher-level supervision. Although the 2013 Criminal Procedure Code has taken steps toward improving some of these components, in practice the full realization of these goals still requires structural, legislative, and procedural reforms in order to reduce the gap between theoretical foundations and operational realities.

6. Conclusion

The analysis conducted shows that the issue of criminal prosecution during social crises is not merely an executive or legislative issue, but fundamentally a “theoretical-normative” issue at the boundary between sovereignty and liberty. What is of fundamental importance in this regard is not the principle of penal intervention, but rather “how the limits and quality of this intervention are formulated.” In other words, instead of serving as a justification for the unlimited expansion of prosecutorial power, social crisis should be regarded as a test for measuring the extent to which a legal system remains committed to its own fundamental principles. The findings of this study confirm that different legal systems, despite their structural differences, have moved toward accepting a common logic: a logic according to which criminal prosecution during crisis is legitimate only when placed within a narrow, temporary, and reviewable framework. Within this framework, principles such as necessity, proportionality, and non-discrimination acquire a doubled function and move from the level of general rules to practical criteria for controlling power. This means that the legitimacy of criminal prosecution arises not from the “existence of crisis,” but from the “quality of the legal response to crisis.” By contrast, analysis of the Iranian criminal justice system shows that the main challenge does not lie in the complete absence of rules, but in the “gap between the normative level and the executive level.” More precisely, although many fundamental principles have been anticipated in the text

of laws, during crisis these principles are exposed to expansive interpretations and security-oriented functions, and this very fact strengthens the risk of transforming criminal prosecution from a justice-oriented institution into an instrument of crisis management. In the long term, this situation may weaken public trust and produce a crisis of legitimacy in the criminal justice system. Accordingly, redefining the model of criminal prosecution during crisis requires a transition from a “reaction-oriented” approach to a “rule-oriented” approach, such that even in the most severe social conditions, prior legal frameworks determine the criteria for decision-making, not case-specific and contingent considerations. In this regard, the importance of effective judicial oversight, as the mediating link between power and accountability, becomes more prominent than ever, because without real oversight, none of the normative principles can be practically realized. Ultimately, it may be said that the future of the criminal justice system in confronting social crises will be determined not by the expansion of repressive instruments, but by the “institutionalization of limits on penal power.” A system that can remain faithful to its principles even under exceptional circumstances will be not only more effective, but also more legitimate; and this is precisely the point at which sustainable security and criminal justice converge.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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