

## **Procedural Rules for the Intervention of Public Prosecution in the Nationality Original Cases**

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### **Abstract:**

Nationality is deemed among personality right of the individual, and this right may be the subject of a judicial dispute whether it is approved or not. The legislator has stipulated that this lawsuit be filed by the Public Prosecution or against it, as the case may be.

Although it is legally recognized that the Public Prosecution has inherent jurisdiction over criminal matters, the legislator provided this judicial body the procedural ability to intervene in civil proceedings, either as a principal opponent or as a joined opponent.

And the Public Prosecution's intervention in nationality proceedings aims to achieve the public interest and ensure the proper administration of justice, due to the legal and political significance that nationality represents at both the individual and collective levels.

In this research, we will investigate the procedural aspects related to the public institution intervention in nationality proceedings. We will

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also highlight the forms of this intervention and determine the rights granted out of it, as well as the legal consequences of violating it .**key words:** Intervention, entry, public prosecution, civil suit, litigation.

**Introduction :**

It is presumed that the public prosecution is an organ of state that belongs to the jurisdiction. It has its own forms, its different tasks, and is considered as the principle basis of the judicial system. And besides the public prosecution function in the penal article, its original realm where it performs extended powers, most of legislations have established a special system for the Public Prosecution's intervention in civil cases when it is necessary to defend certain legal entities that needs such protection, particularly when the dispute relates to the public or when its intervention seeks to achieve public interest.

Nationality cases are among the sensitive civil cases that can be subject of a judicial dispute. And this legal-political link, may not be fixed, and requires proof or denial of the evidence estimated by the court based on a lawsuit.

There are several forms of nationality cases including those that aim to determine nationality. A controversy arose among jurisprudence and judiciary about the extent to which the principle lawsuit of nationality intended to prove or deny national nationality is accepted before the national judiciary, particularly given that such legal actions are based on a prospective interest.

Another debate has also arisen in comparative judiciary about who has the competent authority in considering nationality cases between administrative judiciary and ordinary judiciary. However; the Algerian legislator has settled this debate regarding the initial case and decided on the competent authority to consider nationality cases, through texts or articles 37 and 38 of the Nationality Law enacted by Order No. 70-86 on December 15, 1970, amended and supplemented by Order No. 05-01 on February 27, 2005 which assigned the competence to consider the principle case to determine the nationality to the ordinary judiciary and not the

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administrative one as stipulated in article 37: "Courts are solely competent to consider disputes over Algerian nationality."

As well as the second paragraph that states: "The public prosecution is considered a principle party in all the proceedings that aim to implement the provisions of this law"

And as the first paragraph of article 38 of Nationality law states: "Every individual has the right to file a lawsuit mainly and directly to obtain a judgment about whether or not s/he enjoys the Algerian nationality. And the concerned files the lawsuit against the public prosecution without prejudice to the right of a third party intervention.

And the public prosecution has solely the right to file a lawsuit against any person mainly and directly to prove whether the defendant enjoys the Algerian nationality or not. And it must file a lawsuit in the case where one of the public administrations requests it.

Therefore, every person -including foreigners- may file a lawsuit with the Algerian civil court, requesting evidence whether they enjoy the Algerian nationality or not, and in this case it is required that they prove their quality in the lawsuit, otherwise the judge will order the inadmissibility of their lawsuit in the form for lack of capacity.

The Public prosecution is also given the same authority and is even forced to do so if a public administration requested it to prove whether a person enjoys or does not enjoy the Algerian nationality. For instance; if the Ministry of National Defense requests it with the aim of conducting statistics for those charged with national service obligations and pursuing those who evade its performance, or the Ministry of the Interior with the aim of forming the candidates files Parliament or to occupy higher positions.

If someone tries to evade performing their national service obligations, it is in the interest of society to file a lawsuit in his name to prove that person's Algerian nationality, or to deny it with the aim of preventing him from being eligible to run for representative office.

The legislator emphasized the role of the Public Prosecution in the last amendment of the Nationality Law, but did not specify the legal penalty for not including it.

Pursuant to the aforementioned section (Article 37 of Nationality Law) it is not permitted for anyone other than the concerned or the Public Prosecution to file a principle lawsuit, whether it contains a positive request to prove the Algerian nationality, or a negative request to deny this nationality. And this is applicable whether the applicant is Algerian or foreigner, with single, dual or multiple nationalities.

The Algerian legislator has also emphasized in its last amendment of the article 37 of the Nationality Law the necessity of integrating the public prosecution in all nationality lawsuits in the quality of a principle opponent rather than a joined or volunteer opponent and this legal status has procedural effects in the judicial litigation.

And this particular text in fact, does not prevent the implementation of the general rules of any such thing namely the text of article 260 of Civil and Administrative Procedures that entailed informing the public prosecution about all the cases in relation to the status of persons. As in the case of nationality which is one of the personality-related rights that never ages, regardless of how much time has gone.

In addition; nationality cases are unquestionably considered matters of public system which require the judicial body before which the litigation was filed to inform the public prosecution about all the procedures taken in the file in order to

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enable it to express its legal opinion before the judgment is rendered considering that the Public Prosecution is a principle party in this type of cases.

We will demonstrate in this research the legal status of the Public Prosecution as a principle party in the nationality litigation, as well as the procedural rights granted to the Public Prosecution, the purpose of this procedure, and the legal consequences of violating this it.

## **First Chapter**

### **Procedural rules of the public prosecution intervention in original nationality cases**

It is clear that the general legislation in litigation cases and the Civil Court procedures is the Civil and Administrative Law or Procedural Law as it is called in some states or Code of Civil Procedure as it is referred to in other states. This law applies primarily to all nationality cases, unless there is a procedural provision that opposes that in the Nationality Law, the rule here is that "the private restricts the public."

However, some provisions do not comply with the Civil and Administrative Procedures Law. Comparative judiciary argued that nationality cases, whether for the aim of proving it or deny it, cannot be assigned to urgent judiciary due to their objective nature and their resolution may affect the right's origin.

Considering the text of Article 38 of the Nationality Law, we find that the Algerian legislator has granted every person the right to file a principle lawsuit before the Algerian judiciary in order to prove their Algerian nationality or to deny it depending on the moral and material benefits they perceive to be associated with it.

There is no need to say that the nationality case is filed against the Public Prosecution, which represents the public right, that is to say, it represents the state, and this latter grants its nationality only to patriots or residing individuals of foreign

origin, provided that they meet the conditions for granting Algerian nationality or the conditions for acquiring it.

And this is followed in the majority of comparative legislation in which nationality laws (which are objective laws) incorporated a set of particular procedural rules, including the matter of the Public Prosecution's intervention,

**First: the aim of integrating the public prosecution as a principle party**

When the legislator sets a law, it aims to achieve a particular goal. The jurist and the court must try to make that goal clear since the existence or absence of the legislator's desired goal lies at the core of every text.

While the law stipulated to consider the Public Prosecution as a principle party in nationality cases, family and civil status cases, and those relating to rights of state, it certainly seeks to achieve a particular goal through which it does not deviate from public interest even if it will achieve at the same time individual interests.

In order to better comprehend the role of Public Prosecution as an opponent before the court, it is possible to refer to general rules, since the Public Prosecution acts as a plaintiff or a defendant as the case maybe, within the circumstances explicitly set forth by the law. And its procedural position may be a principle and primary opponent or a secondary joined opponent.

In fact, we cannot assume that considering the Public Prosecution as a principle party makes it join one of the litigation parties; because it does not join neither the plaintiff nor the defendant in their requests or defenses but instead adheres to the application of law only, and the Public Prosecution's position may be contrary to the interests of the litigant parties. It also represents the public interest (Abu Al-Wafa, Civil and Commercial Procedures., 1991) and is not acting as a lawyer for the litigants. Therefore, it is not bound by the opponents' assertions.

The rule or legal text stipulated by the legislator, that requires the prosecution to be a principle party in nationality cases, family affairs, and civil status is

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obviously intended to advance the public interest and protect the safety of both society and individual citizens. (Al Khatib, 1st ed, 1961)

The function of the Public Prosecution is to represent the society. This function is not limited solely on the procedural aspect. It also includes the civil aspect. And lots of civil cases are in fact linked to criminal lawsuits, and vice versa, and the resolution of some criminal cases needs the use of civil cases.

If we deprive the Public Prosecution of the civil claim right, interests to which public system rules are related will not be met. Since the aim of binding the prosecution with cases related to the nationality of individuals and their personal and civil status is not a stipulated procedure for an underlying purpose in itself. However; it is for the sake of regarding it as a representative of the public right that protects the national interest. Nevertheless, the case is filed to the public prosecution by the court clerk in order to enable it to express its requests and defenses. The public prosecution more often strives to apply the law in real life, which is sufficient from a procedural viewpoint. (Talba, 1995)

A debate has arisen in jurisprudence about adapting the public prosecution role in civil cases and the significance of integrating it between supporters and opponents of that intervention. And it is assumed that the presence of the public prosecution next to the judge who considers the case reveals a lack of confidence in the judicial system and that the state has its representatives and individuals as well who can represent them in the litigation and that the presence of the prosecution violates the principle of equality between opponents (Ben Ammar M. ..)

due to the Public Prosecution representative's superior position in relation to the opponents, his access to resources, and the legal and procedural options accessible to him.

However; these critics did not impact the role of public prosecution in the civil case. In fact, the majority of contemporary laws, using various strategies, accept the public prosecution's ability to intervene in both criminal and civil actions.

Indeed, the opposition to the Public Prosecution's intervention in the civil case stems particularly from a lack of knowledge of the nature of its function and the aim that the legislator hopes to accomplish by this procedural intervention.

When the opponent applies to the court, he seeks to achieve a particular interest, and that interest is the legitimate practical benefit that accrues to the applicant. In this way, it represents the clerk to ensure the seriousness of the case and not to stray from the legal system's intended goal of protecting the right.

However; when the public prosecution intervenes in civil cases, it does not seek to achieve a personal interest or a material benefits. It rather aims to attain social defense in terms of law and legitimacy. It is the trusted organ that is responsible to protect the public interests and the tool that guarantees the proper application of the law (Ben Abida, 2005). In other words; it only aims to attain the public interest, and it is for this reason that the French jurisprudence calls it the “lawyer of law”. And its position does not grant it any extra procedural privileges, because it complies with the same dates and procedural rules, especially the dates of assignments and notifications, and the dates of prescriptions and limitations.

Accordingly, it seems obvious that the general function of the public prosecution, as the society representative, is to know the truth and achieve a proper course of justice. From this point of view, it is said that the public prosecution does not win or lose cases (Saad, Analytical Research in the New Civil Procedure Law., 2012) and that its relation with the civil case, through judicial request or intervention or involvement, does not make it a real opponent. But rather a merely formal opponent in contrary to what is being implemented in penal articles, and that its representative does not have any personal interest in the litigation. Thus; it acts



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in the case as a neutral opponent whose sole aim is to say the truth and grant people's right in accordance with what the law permits.

The judge is always interested to hear the point of view of a competent neutral body whose only interest in the litigation is to apply the law in the appropriate way, and it is for the court interest that a legal authority be involved in the consideration of justice and equality achievement and help it to ensure the proper course of justice.

It may also be in the favor of some opponents, particularly the "weak opponents," for the Public Prosecution to intervene in their cases. It will undoubtedly be on the side of truth, so there is no fear for the right holder that it will intervene in the civil litigation as it will not harm his interests but instead will stand up for the truth. It will also seek to achieve the truth and call for a proper application of law in order to bring about justice and equality in society.

As for the opponent in the objective bound, he seeks to attain a personal interest through his requests that he alone will practically benefit from. Meanwhile, the member of the Public Prosecution, acting as a party to the dispute, does not have any interest in the litigation but rather acts in accordance with the requirements of the public interest (Ghali El-Dahabi). Therefore, the public prosecution is involved in civil cases except for public order considerations.

In light of the aforementioned, it can be said that the public prosecution authority, when it is associated with a civil case through a judicial request, performs the same role as the opponent in the procedural association, with the aim to achieve the public interest of society and protect the state's public rights (law.) and the social system through participating in the defense of some people's rights, especially those who are mentally disabled, missing or presumed absent, and other vulnerable people, as the social system is concerned with defending the rights of these opponents and is also concerned with the procedural care of these social groups (The Supreme Court ruled: "The Public Prosecutor reviews cases that involve

people's legal status and some cases set forth in Article 141 of the Civil Procedure Law).

On the other hand, the opponent in the objective association seeks to achieve a particular purpose that benefits them personally. Here, the Public Prosecution's role in the civil case as an opponent in the procedural association, or what is sometimes referred to as the formal opponent (Zouda O. , The Role of the Public Prosecution in the Civil Case), differs from that role in the objective association. This leads us to say that the Public Prosecution is not a party to the objective association. As a result of these peculiarities defining the public prosecution in the civil case, it has a number of effects. It cannot conclude conciliation, or request arbitration or waive the case.

These peculiarities that characterize the role of the Public Prosecution in the civil case, may have different impacts, it cannot conclude conciliation, request arbitration, or waive the case. Because interests in which the public prosecution intervenes, is related to the public order, because it has not a personal right that it can act upon according to its own will. And this also applies when it acts as a principle party or a joined party.

Therefore; the issue of considering the public prosecution as a principle party in nationality cases is tied to the concept of public order in the society. It performs this role for this purpose. Prosecution does not aim to bring material benefit, but rather seeks to achieve social defense by protecting the law and its legitimacy. Its mission is to attain the truth and guarantee the proper course of justice. Based on that, it is claimed that the public prosecution does not win neither lose the civil case. (Zouda O. , The Role of the Public Prosecution in the Civil Case)

**Second: the difference between the prosecution position as a principle  
opponent and as a joined opponent**

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The law stipulates the intervention of the prosecution in some cases between its parties in order to guarantee the application of the law in a way that achieves the public interest targeted by this legal rule and this intervention helps the judge to reach that aim.

The Public Prosecution, as a public procedural body, represents the interests of the social body, and its functions are no longer restricted to the traditional procedures known in the public lawsuit and in the injunctive aspect, but instead include active involvement in civil cases, which are seen as a part of the public affairs of society.

The Public Prosecution's role in civil cases is primarily that of an opponent, not a judge, and its goal is to ensure that the law is applied properly, even if doing so conflicts with the interests being defended by either party. Additionally, it does not support either the plaintiff or the defendant or both, but rather promotes and defends the law and insists on its proper application.

And the Algerian legislator stressed in its last amendment of article 37 of the nationality law (law<sup>79</sup>.) the necessity of involving the public prosecution as a legal representative of the state in every nationality case. It intervenes as a principle party and not merely a joined or a volunteer party. And intervention in both cases is different, from the procedural aspect, in terms of powers and charges and has distinctive adversarial effects.

In general, regardless of the judicial body before which the nationality case was filed, the Public Prosecution intervenes in all nationality cases and litigation even if the case was brought in the form of an incidental request or a sub-case.

The majority of nationality legislations have integrated the notion of obligatory representation by the Public Prosecution in nationality cases. This is the case, for instance, in Moroccan (Alshawabkeh) and Tunisian laws (Alshawabkeh)

The French legislation, on the other hand, in accordance with the article 421 and what follows in the Procedural Law, allowed the Public Prosecution to participate in civil cases as a principle party or as a joined party, depending on the circumstances, including, of course, nationality cases, as the Public Prosecution in these cases relates to the lawsuit by intervening in a litigation between its parties, with the intention of expressing its opinion on legal issues for the sake of public interest.

However; there is an essential procedural distinction between the Public Prosecution's participation as a principle party in the civil case and its intervention as a joined party in terms of the roles it performs in each case (Yassine C. , (2020))

It is claimed that the Public Prosecution's interaction with the civil case through the prosecution is an exceptional way to perform its role in the civil case, while its interaction with the civil case to express opinion is the natural way to carry out its role in the civil case.

### **1- Public prosecution as a joined party in civil cases:**

In civil cases, the public prosecution must act as a joined party, unless the legislator makes it a principle party. And the joined party means that the Public Prosecution acts in a neutral way and does not adopt the position of either parties or defend their claim, but rather presents the findings and observations independently, in light of what is required for the proper application of the law.

This is why we find in judicial judgments the phrase "the prosecution has sought the application of the law", which denotes that the prosecution has given an independent view that is in accordance the law and has not taken a side with either parties. Therefore, when it performs its duties, it is more likely a body that offers guidance or preliminary views to the presiding judge and such opinions may be logical and reasonable which influences the result of the case.

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When the case is filed by the opponent and the lawsuit arises between its parties, the Public Prosecution may therefore intervene and act as a joined party. This intervention does not mean that the public prosecution joins one of the parties and defends them, but rather to ensure the proper application of the law.

Jurisprudence considers the Public Prosecution's position when it acts before civil courts as a joined party. Additionally, its intervention in this quality may be obligated when the law imposes this role, as it may be voluntary i.e.; free to decide about the type of its intervention in the case.

This designation of the Public Prosecution was met with a sharp criticism by jurisprudence. They argue that the Public Prosecution in this form is not considered a party to the lawsuit because the party, even if it is a joined party, always seeks to realize a personal interest through that lawsuit. Besides; the Public Prosecution is neither a plaintiff nor a defendant, but seeks to achieve an objective interest, which is the proper application of the law and legitimacy fulfillment.

In fact, the concept of joined party is merely a metaphorical expression recognized by jurisprudence and procedural court, and the Public Prosecution is not considered a party by its intervention. It represents however the public interest in a lawsuit arising between its two parties. It is merely a “formal opponent” that gives an independent opinion in the right and fair way, and also seeks by its intervention to respect the law and nothing more. In other words; it does not join one of the litigants, but rather joins the justice system, and on this basis its powers are determined and limited to expressing its legal opinion in the case, in a way that achieves the integrity of the application of texts and guarantees the validity of procedures (Zouda A.-Q. O., 2005).

If the Public Prosecution is in the position of the joined party, its link with the case may be through a notice by one of the parties to the case or by the court clerk or based on an obligatory court order as it may be based on its automatic voluntary

intervention where its role is limited to providing objective and procedural advice and expressing the legal opinion to the judge. This intervention is permissible to the court and to the Judicial Council as well (It is noteworthy that the previous Civil Procedural Law stipulated cases of the Public Prosecution intervention before the court only).

Additionally, this joined intervention of the public prosecution may take the form of a voluntary intervention if it finds interest in that (instance & intervention in a case related to litigations of work accidents or professional diseases and all social security cases. The legislator here does not obligate its intervention. Yet it may see benefit in intervening in a permissive way). It may also take the form of obligatory intervention if the legislator stipulates it, like in cases of minors and other cases affecting public order (See for example articles 99)

The public prosecution may automatically intervene in the case as soon as it is notified about it. This intervention may be based on the judge's request in order to get its opinion or upon request of one or both of the parties. In all cases, voluntary intervention cannot be restricted under any circumstances since they are primarily connected to the presence of the public interest.

The joining intervention of the Public Prosecution in the civil case is deemed the natural method in which it intervenes in the civil case. Whereas it may, initially, intervene in any cases before the court or the Judicial Council to represent its legal point of view in the litigation. The litigants cannot oppose its intervention, nor can the judge prevent it from expressing its opinion, because it is him who will give the final word in the case, and not the Public Prosecution.

It is noted that all cases of principle intervention by the Public Prosecution are obligatory and not voluntary, unlike cases of joined intervention.

This principle intervention may take place at both the court level and the judicial council level (شالمي). It is evident that it takes place at the court level as long as this intervention is regarded an obligatory intervention in all cases, because the

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Public Prosecution is represented by the Attorney General at the Supreme Court (Law n° 11-12). This customary formation is derived from the French jurisprudence and law. (Fundamental)

It is remarkable that the cases in which the Public Prosecution is joined are not solely determined by the legislator. Nevertheless, despite their legal and practical significance, the civil courts rarely turn to the Public Prosecution for advice.

It should be noted that some comparative laws, like those of Egypt and Jordan, for instance, gave the administrative judiciary qualitative authority to consider nationality cases, whether to approve or deny, and these cases must be brought against the Minister of Interior (and not the Minister of Justice). However, this does not deny the necessity of integrating the Public Prosecution as a party in the nationality case (Ben Ammar M. , 2015).

However, when it acts as a joined party, the Public Prosecution has limited procedural rights and powers. It is only permitted to make observations and nothing else. It is not allowed to make requests or observations after the case file is closed and neither the parties (Law S. a.). Unless the Public Prosecution believes that it is necessary to dismiss the case and bring it back to the table, which would then allow the litigants to make related requests and defenses.

### **2: Public Prosecution as a principle party in the civil case:**

The Algerian legislator has tried to limit the cases in which the public prosecution must intervene through the article 260 of Civil and Administrative Law. However; if we examine other texts such as the Family Law, Civil Status Law, Nationality Law, etc. we tend to adopt the notion of not limiting it.

Depending on the circumstance, the Public Prosecution may act as either a plaintiff or a defendant in a civil case, provided that the general rules and guidelines for filing lawsuits are followed in this respect.

However, this litigation on the part of the Public Prosecution as a principle party can be divided into two aspects:

A- **Mandatory litigation:** in cases determined by the legislator explicitly in the Procedural Law (article 260) or in any law, even in a non procedural field. In this case, the public prosecution does not have discretionary power, and the Public Prosecution cannot refrain from intervening and fulfilling its legal role. And any neglect from any side may result in objective and procedural effects towards the litigants, and may result in disciplinary action for breach of legal duties.

B- **Volunteer litigation:** in cases determined by law, or to defend the public interest, in accordance with the article 261 of Procedural and Administrative Law. This litigation is automatic whenever the public prosecution assumes the presence of a case that relates to the public order. It can also be based on the court's request when it assumes the presence of that principle that calls for its intervention.

And when there is no legal text that grants the Public Prosecution the right to claim as a principle party, and when the case is not related to public order, there is a lack of legal evidence and then it is not possible for the representative of the Public Prosecution to file an initial case against the litigants.

For instance, the public prosecution cannot file a case to claim one of the parties' personal debts and protect them from squandering. The public prosecution has nothing to do with this. On the other hand; its role becomes obligatory if it has to do with claiming the money of a minor person and protecting it from all forms of squandering.

It is noted that the concept of public order, despite its broad and unrestricted nature, may be a reason for the Public Prosecution to automatically intervene in many cases that initially only concern individuals. This is especially true given that



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the Public Prosecution has the authority to estimate this intervention without making any comments as it may abuse this legal authorization.

It is agreed that the court cannot refuse a case filed by the Public Prosecution if it performed its right of bringing a given case against a person claiming that it harms or is related to public order. Thus; the case will always be admissible in this respect. But, the judge is free and not restricted to the claims of the Public Prosecution, because in terms of subject matter, this claim may be inadmissible for lack of evidence or lack of foundation

This can be illustrated by the example of a seizure lawsuit filed by the prosecution against a person. However; the medical forensic report, and it is an obligatory procedure in this kind of cases, showed that he has complete mental capabilities and is physically and mentally healthy. Thus, it is obvious that the judge in this case refuse the seizure lawsuit filed by the Public Prosecution.

On this basis, comparative jurisprudence did not agree with this point, and was split into two groups; a group that supports the automatic intervention of the Public Prosecution, and a group that opposes it (Bakir N. , 1974).

The disagreement over how to define the idea of public order continues to be one of the legal terms that still cause controversy between jurists. This is because it is a relative concept that differs from era to era and from state to state, and only serves to accentuate this divergence. This concept is more challenging when it comes to cases involving persons' status, eligibility, and nationality. This is due to the religious and ideological peculiarities of these notions as well as the fact that they relate to the individual and his family.

Generally speaking, public order refers to a set of laws that are intended to advance the public interest, whether from a security, political, economic, or social point of view, which is related to the material and moral entirety of an organized society and which takes precedence over the interests of individuals.

Besides the cases determined in Article 260 of the Civil and Administrative Procedures Law or on which a special provision is stipulated, such as family, nationality, civil status, and bankruptcy cases, the Public Prosecution may intervene in a civil case as a principal party whenever it seemed necessary, for the aim of achieving the public interest and the rules of fairness and justice.

The Public Prosecution may also automatically rule public order cases and request access to the case file submitted to the court in order to draw its findings therein in compliance to what the proper application of the law requires without having to join one of the disputing parties,.

In this case, it acts as a principle party and has the power to sue the original plaintiffs if they make demands that are illegal and against the law or violate the rules of both objective and procedural law.

Besides, whenever it becomes apparent to the court that a case is of a special nature or that it is connected to the public interest and concerns public order, in its substantive or procedural aspect, the court may, based on its discretion, order that the file be communicated to the Public Prosecution in order to give its conclusions. However, the Public Prosecution in this case shall compel to the court's wishes and does not have the option of refusing the request to intervene, because it overlaps with it in function and purpose.

The actual reality affirms and attests not to notify the Public Prosecution in this manner for multiple reasons. It can be due to negligence from the court taking into consideration the huge quantity of files submitted to the court, or a failure of the referral system to the Public Prosecution which is a no longer effective method, when all of its petitions turned into requests for the law to be applied (Saad, Analytical Research in the New Civil Procedure Law, 2012), and possibly as a result of a third factor, which is the Public Prosecution's intervention in the criminal justice system and the variety of fields in which it may do so. This made the public prosecution intervention deliberate out of solidarity between judges for the

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intention of reducing its workload and limiting its task to only intervene in cases in which the legislator stipulates its intervention without including other issues of little importance.

There is no doubt that assigning the Public Prosecution with more civil cases requires physical and intellectual effort, and the Public Prosecution judge needs then to investigate and research in areas related to civil law, family law, commercial law, banking law, insurance law, and other areas of private law (especially if he only handles criminal cases). This will significantly drain him, especially the lack of Public Prosecution judges in comparison to the volume of cases being filed.

The Public Prosecution rarely intervenes in civil cases or brings original litigation in that role in legally constrained situations that should not be enlarged, such as nationality cases, family cases, civil status proceedings (chami), and bankruptcy (See for instance Articles 40) cases and every matter that affects public order is added by the legislature. In the latter case, the intervention acquires an original and necessary character and is no longer a joined or a volunteer intervention.

The legislator did not broaden the Public Prosecution's ability to intervene in people's cases and determine their eligibility so that it could control their personal affairs and oversee all their cases. But the aim was to protect people and provide legal guidance. It will not of course stand in the way of the right holder when he seeks to obtain his right, but it will rather stand up for him and win the case for him.

The Public Prosecution, in its capacity as the public protector may act to respect this latter. According to established law, even in the absence of clear legislation that grants it this authority, wherever there is public order, there is a representative of the public right.

The Public Prosecution cannot refuse or object the court's decision when it requires its intervention, claiming that the case does not relate to the public order.

Because the estimation of the extent to which the filled case relates to public order or not, is a matter for the judicial authority. And the Public Prosecution shall respond to the court's request (Ghali Edahabi E. ..) and accordingly provide its clarifications and defenses in writing, and it must convince the court authority about its legal view in the litigation.

It is concluded from what was already mentioned that the legislator gave the Public Prosecution a dual role. It allowed it to act in both capacities together and at the same time gave it the authority to decide in which capacity it wanted to intervene in the case, voluntarily or involuntarily.

It is noteworthy that just being required by the law to notify the Public Prosecution of the file or to order that the court must examine the file does not grant it any more quality than that of the joined party.

### **Thirdly: The results of differentiating between the role of the Public Prosecution in the two cases:**

The difference between the role of the Public Prosecution as a principle party and as a joined party in a civil case involves specific procedural outcomes. These outcomes consist of whether the Public Prosecution fulfills its tasks as a principle party or is just a joined party. This may be summarized as follows (Bakir N. T.):

- If the Public Prosecution is a principle party, the court authority shall not adjudge in its absence, because the court is not fully formed without the presence of the representative of the public interest. As a result, the name of the Public Prosecution representative must be mentioned in the judgment or judicial decision.

- If the Public Prosecution acts in the position of the principle party in the case, it shall notify the litigant of the papers and announce them. However, if it acts as a joined party, it does not have to notify the litigant about these papers or announce them. It is the court clerk who is responsible to do so.

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Whereas, if it acts as a joined party, it does not announce the papers to the litigants, nor is notified about these documents, but it is the court clerk who is responsible to notify it of the case, and send it the documents thereof.

-If the Public Prosecution acts as a principle party, it speaks as the ordinary party does. In other words it is the first to speak if it acts as a plaintiff and the last to speak if it acts as a defendant. However, if it acts as a joined party, it performs then its intervention by presenting requests and defenses but it is the last to speak, i.e., after the litigants or their lawyers finish presenting their requests and defenses.

- If the Public Prosecution acts as the principle party in the case, it accepts the opponent's decision and may thus make any requests or assert any defenses (Abu Al-Wafa, Civil and Commercial Procedures, 1991). Because the law grants it the right to seek and express what, in its opinion, are the proper aspects of defense in the case like any other ordinary opponent. However, it is committed to organize the litigants and comments on their requests, answers, and responses just like every other litigant.

However, if it acts in a joined party capacity, it is not supposed to express its point of view on the claims and defenses made by the original litigants. It is only required to express its opinion in accordance with the law and the professional conscience; it is not permitted to broaden the case's scope or to make additional demands or draw conclusions that are not followed.

This means that the Public Prosecution assumes a role similar to the work of the technical or legal counselor of the judge, and it must express its opinion, in accordance with the proper application of the law, without targeting the interest of one of the opposing parties. Therefore, the role of the Public Prosecution, when it is litigated as a joined party, is limited to expressing its opinion in terms of legal opinion, and it stops at this point. Regardless how significant, objective, and accurate such opinions may be, the court is not bound by them.

In all of these cases, when the prosecution intervenes by filing a lawsuit, it is deemed a principle party because it is a party with full procedural rights and is thus entitled to appear in all case aspects, during investigations, when moving to locations related to the case, and all these procedures are written in its name, except procedures that does not relate to it like, for instance, assign the swear to it. (Yassine C. (-2.)

Nevertheless, it is established that the "joined" prosecution lacks the ability to confront or argue since it can never make demands in the form of litigation; instead, its job is neutral and determined by the law.

This does not, however, prevent it from holding on defenses relating to matters of public order, even if the parties to the dispute did not hold on them or agreed to waive them, such as the defense of lack of qualitative jurisdiction, the defense of plaintiff's incapacity,...etc

Practically speaking, it should be noted that the majority of public prosecution bodies are almost physically and formally present at the hearings, in addition to the fact that they prepare advance printed matters that they fill out briefly, requesting either to accept or reject the application or to assign the consideration to the judge, whether it is a principle party or a joined party, and that the least what it gives is a "request to apply the law" (Yassine C. (-2.)

- If the Public Prosecution is associated with the civil case through judicial request, it has then the right to appeal against the judgment rendered against it. Because considering the Public Prosecution a principle party in the case grants it the possibility to perform the methods of appeal if the judgment is not in its favor whether it acts as a plaintiff or a defendant.

- On the other hand, if the Public Prosecution is associated with the civil law through expressing its opinion, i.e.; as a joined party, it is then not permitted to appeal whether the judgment complies with its legal opinion or opposes it. (Alshawabkeh)

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The availability of the appeal does not necessarily require notifying the Public Prosecution of the judgment because it is always present, even if it is actually absent. The deadlines for appeals are therefore supposed to apply to it the date of their issuance, not the date of their notification, as applicable in the penal article.

When the Public Prosecution wins the case, the opposing party losing the case will be charged with the judicial expenses (1991). However; when the Public Prosecution is the losing party, it seems more obvious that the state will be the one charged with these expenses and also with the expenses of the winning party. Public Prosecution is a state representative anyway, and the state is discharged from registration fees and other judicial expenses. But, in fact, this is not a viable solution. Judicial jurisprudence decided that the state bears only its expenses, and the losing party is charged to pay its own fees (Kardaghli, 1982). It does not matter therefore his nature and position.

- Based on the general principle, if the Public Prosecution is the one who files the case, in its quality of a principle party in the case, its opposing party is not allowed to disqualify the Public Prosecution judge or request the recusal of its representative. The Public Prosecution judge takes the personality of the real opponent that the opposing party cannot recuse. The rule is that it is not permitted to reject the opponent.

On the other hand, when the Public Prosecution is a joined party in the case, its representative body can be recused by the litigants because the Public Prosecution's position in the case is close to that of the legal representative or the decision-maker, necessitating the expression of an objective opinion which can have a strong influence on the court decision. Thus, it is allowed to request its representative recusal taking into account that the Public Prosecution cannot be recused as an authority but rather as a party) Ghali Edahabi E(..

It is important to note that the Algerian legislator kept silent regarding ruling in this type of civil cases, but it is established that if the Public Prosecution acts in favor of the joined party, it is permitted to recuse it as a member. However, if it acts as a joining party itself, it is not permitted to ask for the recusal of judges. This is what Morocco's legislation specifically complies with) a(

It is believed that because the Public Prosecution acts as a joined party, it neither joins nor defends one of the litigants but is instead required to express its opinion on the matters brought before the judge in a way that achieves the proper application of the law, and as a result, its opinion influences the course of the court. It is therefore acceptable to request the Public Prosecution member's recusal and replacement with another if a circumstance arises that may have an impact on it. If it is established that the Public Prosecution will not express its opinion in the case in an abstract and objective way, which is in conflict with the principle for which the legislator obligated its intervention in the case) a(.

We shall draw attention to the fact that the Public Prosecution does not have the authority to participate in the judgment formation in the deliberation because doing so would render the decision void) Law(., regardless of whether it is a joining intervention or a principle main intervention in a civil case. It is still considered a defendant in court, and the general rule is that litigants may not carry out duties that are assigned to the tasks of presiding judges.

Additionally, if the Public Prosecution representative position is changed to the position of ruling judge, he is unable to participate in the judgment formation at the level of appeal in the same case in which he provided his opinion as a judge of the public prosecution. On two levels, this violates the rule of litigation.

It is essential to note that the Public Prosecution body, unlike ruling judges, is subject to progressive or presidential instructions. Because the Public Prosecutor in the Judicial Council can direct written or verbal instructions or orders the representative of the Republic to follow certain procedures in connection with a



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civil or criminal case, and because the Minister of Justice can also direct instructions and orders to the Public Prosecutor to favorably intervene in court matters or to file a particular case of public interest.

The Public Prosecution's representative being subject to these instructions, however, does not disqualify the Public Prosecution's role or negate its presence as an opponent. However; these interventions could support, defend, and strengthen the position of the representative of the Republic before the court, especially when it is supported by relevant case-related documents that can positively serve the case and help the ruling judge in a way that best serves justice.

It is important to emphasize as well that the Public Prosecution is deemed not responsible of the procedures that took place, favorably or unfavorably. Therefore, it is not possible to order the Public Prosecution a reimbursement due to unfair proceedings, even if it is extremely strict with regard to those actions because, as we previously stated, it is not an opponent in the true sense. Although the Public Prosecution is not questioned about the procedures, but it is still legal to sue its representative directly if certain circumstances exist, such as when the public prosecutor engages in fraud, document destruction, bias, or misuse of their position.

Additionally, the rule in procedures states that it is the losing party in a case who is charged to pay the costs of the legal proceedings) Law S(.. Therefore, the litigants are not always responsible for paying these charges; instead, the public treasury will do so if the public prosecution loses the case

**Forth: the Public Prosecution as a principle party in nationality cases:**

### **1- The Public prosecution in the cases of approval or denial of nationality**

As we have previously demonstrated, that the Public Prosecution does not file a lawsuit before the civil courts only in exceptional cases. It appears from these lawsuits that the Public Prosecution does not seek to achieve the interests of any particular party, but rather that all of the lawsuits it files, based on a particular text,

seek to protect the public interest. This is the case with the lawsuit the Public Prosecutor files to request the seizure of a specific person due to the loss of his eligibility after confirming that he holds the nationality of another country Or the case that is intended to obtain a judgment requiring the withdrawal of the foreign person's Algerian nationality, which he obtained through fraud, or the case that seeks to obtain a judgment requiring the denial of a person's Algerian nationality after being found guilty of a crime or having an involvement in an offense that jeopardizes the interests of the Algerian state) Law. S(..

The aforementioned cases are among the legal grounds that can result in the deprivation of nationality by a judicial judgment, followed by a presidential decree signed by the President of the Republic and published in the Official Journal, on the basis that, the effects of loss, withdrawal, and deprivation of a person and his children generally take effect from the date of publication and also positive and negative impacts of nationality on a person's relationships with others.

It is noteworthy as well that the Algerian legislator did not inevitably require resorting to justice to disapprove Algerian nationality by loss, deprivation, or withdrawal. Because the Central Public Authority can, in accordance with the Nationality Law's provisions, only be content with effective administrative decisions issued by the Minister of Justice, and the President of the Republic includes them in a presidential decree that is required to be published in the Official Journal.

In the case of a legal dispute, notifying the Public Prosecution of these cases is deemed a fundamental procedure, not an optional procedure of the party or the trial judge. In this regard, the Supreme Court ruled: “in people’s personal status cases, the case file must be submitted to the Public Prosecution as a substantive procedure) The Decision of Personal Status Chamber(?)”.

It is clear from diverse nationality cases, and the purpose for which the intervention of the Public Prosecution is needed, that it does not only aim to achieve

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the public interest and protect the vital interests of society and its members. But also, if it is permitted by the provisions of Article 37, second paragraph of the Nationality Law, to file a lawsuit before the civil courts (particularly the Family Affairs Department) to demand proof or denial of national nationality.

The principle lawsuit to prove or deny nationality, or as it is referred to by jurisprudence, “abstract lawsuit”, is considered one of the most important lawsuits, and as long as the Public Prosecution acts as a principle party in lawsuits proving or denying nationality for a specific person, according to what was stated in the explicit text of the Nationality Law) Law. S(., it is binding, through its representative at the level of the judicial authority before which the case is brought, to submit its requests and legal notes in a written form, and its representative must attend the sessions in cases in which he is a principle party. To this effect, it has the right to participate in all the procedures that took place during the course of the litigation, and it is also empowered to submit appeals against the rulings issued if they do not comply with its legal vision in the file.

Meanwhile, if it acts as a joined party, it is then not obligated to present a written notice, and is just required to give observations or oral defenses, although the Algerian legislator ordered the Public Prosecution representative to give a written notice, whether it acts as a principle party or a joined party. However, it is established that: “the Public Prosecution member cannot give observations after legal deliberation) The Decision of the Supreme Court (the Supreme Council((”.

### **2- The Public Prosecution as a principle party in other cases related to Nationality**

The Public Prosecution cannot be a principle party in an absolute way, in all the cases related to disputes over approval or denial of nationality only, It can rather

be so in some family cases that are directly related to nationality, as an exception, even if the legislator does not explicitly stipulate it, especially when it comes to cases of faking lineage, cases of adopting foreign children, and cases of joint marriage....

For example, if it appears to the Public Prosecution the existence of illegal adoption, it can file a lawsuit to nullify it, in accordance with the provisions of Family Law) See articles 3 bis(, especially given the fact that adoption may take an organized form by bringing newly born foreign children and faking their lineage or falsifying their paperwork and integrating them with Algerian families, for suspicious future aims in relation with nationality acquisition in order to enjoy both countries' rights and benefits. The Public Prosecution must then intervene to invalidate this lineage, which in turn invalidates the civil status contracts) The Supreme Court ruled“ :Even if the contract itself was lawful in form(, sue the accused of doing so, and file a separate lawsuit to revoke the Algerian nationality by dependence on the adopted child.

It is agreed that the cases of people's personal status do not adhere to the rule of authority of the judged thing. Thus, the Public Prosecution may re-suit the invalidation of adoption, even if it was preceded by a judgment possessing the power of the judged thing. And cases of joint international marriage as well since the Algerian legislator has recognized marriage with a foreign person as a legal reason for acquiring Algerian nationality, however, it may be an explicit or implicit way of the foreign person to gain nationality or for the purpose of obtaining residence documents in the country.

Then, the Public Prosecution has the right to respond by filing a lawsuit to cancel the marriage decree before getting the nationality. It can even act after the official approval of nationality if it confirmed that the marriage was not valid in terms of its procedures and conditions, and is neither based on legal and legitimate factors.

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For instance, the Public Prosecutor can file a lawsuit to revoke a nationality of a feigner, which was granted to him through joint marriage, and it appears later that it was just a formal marriage or a temporary marriage that was concluded in circumvention of the law, even though this act in Algerian law constitutes in itself a crime that is punishable. It is subject to the Foreign Residence Law) See articles 48 of the Law n(11-08 °, if it is proven that the purpose is to just obtain nationality.

Another example of that is the case when a foreigner marries an Algerian minor through material and moral temptations, and then exploits this marriage for personal benefits, i.e.; the real intention of this "international husband" is not to form a family and have children, which is the legal wisdom of marriage, but rather to conclude a decree of “formal marriage” or “temporary marriage” in order to obtain residency or nationality in the future, for hidden and suspicious aims such as spies, for example.

And vice versa if, in accordance with Article 9 bis of the Nationality Law, the foreign wife was the one who married the Algerian man in order to establish residency papers in Algeria and later acquire nationality, taking advantage of the latter's deteriorating psychological and social conditions.

At that point, the Public Prosecution has the option to intervene and start the marriage annulment process before the personal status judge based on a complaint from the aggrieved party, or it can act automatically. The Public Prosecution can then sue the accused party by using its criminal authority to start a public lawsuit to punish this person for the act committed.

The Public Prosecution, however, is responsible for proving the falsity of this international marriage, and when there is any doubt, even in the absence of a complaint from a third party, the Public Prosecution pursues criminal charges against the two parties who entered into this marriage, even if one of the parties is Algerian, due to the potential for international fraud. The Algerian husband has the

right to demonstrate that he was not aware of the intentions of his foreign spouse in order to be considered as a victim and be able then to claim as a civil party and seek damages for the material and emotional harm that resulted from the foreign spouse's actions.

### **Thirdly: Procedures of filing a principle nationality lawsuit**

The aim of the Public Prosecution intervention in nationality cases is to achieve public interest. For instance, in cases of nationality approval, the Attorney General may seek to present evidences on the approval of the Algerian nationality of a person, to oblige him later to perform the national service that he was evading claiming that he is a feigner without giving any proof that confirms his claims.

And in other cases involving the denial of nationality, the Public Prosecution seeks by its intervention to provide a proof or evidences of a person holding a foreign personality, and only this can prevent him from running for some important positions that require enjoying Algerian nationality, or present a proof that his nationality is not original, and this prevents him from running for the position of President of the Republic, or does not allow his wife to run for the same position, as the Algerian constitution requires original nationality) See article 87(.

#### **1- The procedures of notifying the Public Prosecution by the litigants:**

Considering that it is the Public Prosecution job to file the principle lawsuit, and it acts as a party by force of law in all nationality cases, as well as family cases (.2005/02/27), the plaintiff shall carry out the procedures of summons to appear to the hearing in which the case is presented before the competent civil court, even though the Public Prosecution can be notified by the court clerk office) See for instance article 438(.

Whereas, it is essential to note, that as long as notifying the Public Prosecution is obligatory in these specific cases, and it is done by the judge in

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charge of the file, why should then the plaintiffs bother to do so through the court bailiff? Isn't that an unjustified effort that burdens the plaintiffs with pointless legal costs and benefits the bailiffs without any reason? The intervention of the Public Prosecution should have been restricted to situations in which intervention is allowed rather than situations in which intervention is required.

However, referring to the general rules for pleadings, we find Article 260 of the Civil and Administrative Procedures Law that determined the cases of mandatory intervention of the Public Prosecution in some cases. However, what is noteworthy is that it did not mention in this article the cases of nationality, but it is understood implicitly from the fourth paragraph of this article relating to civil status cases. Since nationality cases are in fact a type of civil status lawsuits and adjudication in them is also subject to the qualitative competence of the family affairs judge (See the Decision of the Personal Status Chamber of the Supreme Court issued on 05/24/1996), even though the dispute in fact revolves around the party asserting nationality or the party being accused of having no nationality on the one hand, and the state represented by the Ministry of Justice on the other hand, and this justifies the Public Prosecution's notification (The Supreme Court ruled: "It is stipulated by law that the qualitative jurisdiction).

One may also rely on the text of Article 257 of the same law, which mandated that the Public Prosecution intervenes automatically in all cases determined by the law or involving matters of public order. The importance of this legal and political connection in determining a person's relationship to the state and its impact on the declaration of national and international rights and obligations resulting from the enjoyment or non-enjoyment of national citizenship make it clear that nationality-related cases are relevant to public order.

In light of this, Article 37 of the Nationality Law requires the Public Prosecution to mandatorily intervene in nationality cases, regardless of the case's subject matter, parties, or court authority.

If the qualitative jurisdiction in nationality cases has been adjudged by the Supreme Court's judiciary by assigning the matter to the Department of Family Affairs, although the legislator, when deciding on the powers of this department, did not mention, among them, the nationality cases (Law S. a.), the regional jurisdiction also remains problematic, as long as the Nationality Law, as well as the Civil and Administrative Procedures Law, does not include any explicit text in this respect, unlike some comparative legislation (The Moroccan Nationality Law in its article 38 stipulated: "According to Article 38 of the Moroccan Nationality Law). Who is then the competent authority?

We think that the court that is locally competent is the court where domicile of the person concerned with the national nationality is located, whether to prove it or deny it, whether he is a plaintiff or a defendant, and it does not matter whether the nationality case was initiated by the Public Prosecution automatically or at the request of a specific public authority.

The parties to the case designate the Public Prosecution to appear before the court since it is the principle party in the nationality case and is required to do so in accordance with the law (It should be noted that Article 260 of the Law of Civil and Administrative Procedures mandates that the Public Prosecution be informed of the cases that must be included). The plaintiff is the one who is responsible for making the assignment.

The public prosecution in this context refers to the prosecution as a judicial authority, not to specific people. It is well recognized that the Public Prosecution cannot be divided and cannot be recused (It should be noted that Article 260 of the Law of Civil and Administrative Procedures mandates that the Public Prosecution be informed of the cases that must be included).



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The assignment is generally directed to its representative on the court level (the Attorney General or his assistant), as it shall be directed to the Public Prosecutor's representative on the level of the judicial council (the Public Prosecutor or his assistant (Following the issuance of the amendment to the Family Law)) and the summons to appear in the court hearing must include the information stated in article 19 of Administrative and Civil Procedures Law.

After summons to appear through the court bailiff, the Public Prosecution shall administratively notify the Minister of Justice, giving that it is deemed the Supreme Authority that supervises the Public Prosecution body from the administrative aspect. Particularly due to the existence of a specialized authority at the level of the Ministry of Justice that deals with nationality cases and litigations (See the Executive Decree n° 04-333). Thus, a copy of the opening petition, is sent to the Minister in order to inform him about the procedures carried out or will be fulfilled by the Public Prosecution, in order for the Minister to participate in responding to the demands of defenses of the litigants, taking into account that the Ministry may have confidential information and documents that are not available to the first instance court.

We shall note that the Egyptian Law for instance assigned the Minister of the Interior to consider nationality cases, and that every lawsuit is filed against him, whether as a plaintiff or as a defendant with the necessity that the Public Prosecution litigates in a principle quality.

### **2- The Procedure of notifying the litigants by the Public Prosecution**

If the case is filed to the Public Prosecution to prove or deny the enjoyment of the Algerian nationality, the Algerian legislator granted the Public Prosecution

exclusively the right to bring an action against any person, the purpose of which is to prove that the defendant does or does not enjoy the Algerian nationality.

Moreover, the law forces the Public Prosecution to file a lawsuit if any public authority requests it to do so, like for instance a request from the Ministry of Justice (in cases of granting nationality to the kids) or based on a request from the Ministry of the Interior (in cases of elections) or a request from the Ministry of Defense (in cases of the obligation of national service for instance). These authorities are not limited, they may be central or of a local nature.

On this basis, the *Wali* has the authority to, for example, ask the Public Prosecution to file a case to prove or deny a person's nationality in order to ensure that he satisfies the requirements for eligibility to run in municipal or parliamentary elections (See articles 79 and 92 of the Statutory Law n° 10-16), among other things. The condition of having Algerian nationality is specifically intended (the original nationality is not necessary), particularly if the supporting documentation provided by the applicant for the position raises questions about his nationality. The same is true for holding a high position in the government, in which case the administration or the relevant authority asks the Public Prosecution to prove the applicant's nationality for the position candidate.

This is what is set forth in the second paragraph of Article 38 of the 2005 Nationality Law amendment that states: “The Public Prosecution alone has the right to file a lawsuit against any person whose aim is proving the defendant's enjoyment of Algerian nationality or not, and it is required to file the lawsuit in the event that a public authority asks it to do so (The article 38 was formally amended in 2005)”

The Public Prosecution in this case, litigates as a plaintiff, and is represented generally by the Attorney General and is required to designate the defendant to appear in court according to the terms of the Civil and Administrative Procedures Law (Contrary to penal matters).

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If the law acquires the Public Prosecution to notify its opponent if it acts as a plaintiff, its opponent as well is forced to notify it of the first session of the case by a formal summons to appear or by the court clerk.

Although the law gives insolvent Algerian litigants the right to request legal assistance in order to be discharged from paying fees and expenses, and even from defense expenses, provided that it is the Public Treasury that bears these expenses, it should be noted that the Public Prosecution is considered an opponent who is legally discharged from paying registration fees, assignment and notification fees, and lawsuit expenses, unlike the other litigant (See Order n° 57-71)

### **3- The Procedures of a third party intervention in nationality cases**

Granting the Public Prosecution the right to file principle nationality cases by the legislator should not affect the right of intervening third parties (With regard to the intervention in litigation), such as the person's relatives, spouse, children, and persons who may have been engaged in civil and commercial dealings with this person, with the aim of protecting their interests and acquired rights.

Moreover, any administration or public authority can intervene in litigations related to nationality if they had an interest in that, like the Ministry of Defense and Ministry of the Interior. We do not believe that it actually intervenes as long as it is represented by the Public Prosecution, which falls under its authority.

And since the intervention or integration of a third party, as the case may be, in the litigation is deemed a lawsuit as it includes new requests or defenses that the parties to the case are not aware of, the Algerian legislator obligated the third party to carry out the summons to appear procedures, according to the conditions stipulated in Article 15 and what follows of the Law de of Administrative and Civil Procedures. However, it is noted that the legislator in the nationality law spoke only of the procedure of intervention, and did not refer to the procedure of integrating.

And we think that this last procedure is legally permitted, in compliance with the general rules. Because the judge can ask to integrate one of the persons whose name is mentioned in the case file or any person that may have a direct or indirect relationship with the case or its parties.

In the same way that a third person may voluntarily intervene in any legal case at any time, it is also legal to force him to intervene at the request of either party to the case or the judge under penalty of a special threat fine, if he believes that his intervention is vital for the proper course of justice or to reveal the truth.

It may also be integrated in the case at the request of the Public Prosecution, or at the joint request of all litigants (With regard to the intergrating in litigation).

This intervention and integrating seeks interest in the first place (It is noted that the Algerian legislator stipulated the capacity and interest in the case of intervention). It can be joined with the plaintiff or a litigant against the plaintiff, as his interest requires in the dispute.

According to the guidelines for bringing a case, intervention and integrating must be done in accordance with Article 196 of the Law of Civil and Administrative Procedures and what follows. The litigant then has the same rights as the other litigants to present defenses and requests, except for what is excluded in a specific texts However, the litigant integrated or intervened in the litigation will be bound by the operative part of the judgment or decision, whether favorably or unfavorably.

We draw attention to the fact that, as his intervention is regarded as a lawsuit within a lawsuit; the third party who intervened in the lawsuit is also required to follow the same procedures in the lawsuit, in accordance with the conditions outlined in Article 15 and what follows of the Law of Civil and Administrative Procedures (See article 194) as it contains new demands and defenses, and because they can be important and decisive (It is stated in article 202 of the Civil and Administrative Law: “The third party is not permitted to intervene in the dispute to raise the defense of the lack of territorial jurisdiction of the judicial authority

assigned to appear before it), it is important for the parties to the case to be aware of them.

### **Conclusion**

If the laws grant the Public Prosecution a significant procedural role in civil cases of all types, with the exception that the lawsuits the Public Prosecution files in these cases before the civil judiciary do not assert a personal right of its own, it has no capacity in these lawsuits, with the legislator being the only exception. Generally speaking, it is permitted to have a procedural competence in some litigation to intervene or litigate in it as a principle litigant (principle party) or as a secondary litigant (joined party)

Nationality cases are among the cases for which the legislator first demanded its intervention as a principle party. Its legal position enables it to take some appropriate procedures that aim to achieve the legislator's purpose, which is preserving the public interest and upholding public order. The Public Prosecution, whether it acts in the position of the principle party or the joined party, only seeks to achieve the public interest and justice. In other words, it is regarded as an honest opponent that only seeks to apply the law, and this is why it is called the best lawyer of the law, according to French jurisprudence.

The role of the Public Prosecution in nationality cases is not different from that in other civil cases, although there are some peculiarities in terms of parties and dates, and in terms of regional jurisdiction.

There are undoubtedly many benefits, closely related to the public interest, that the Public Prosecution may reach through issuing a judgment that a person may or may not enjoy Algerian nationality, in view of the legal and political implications that may result from this association, whether in the relationship of the individual

with other individuals or in his relationship with the state, in terms of rights and duties.

It is agreed in the jurisprudence and jurisdiction field, that the Public Prosecution cannot conduct conciliation, request arbitration, or waive the lawsuit in cases in which it intervenes, especially in nationality cases, as long as the Public Prosecution has the right to be associated to the civil lawsuit, and because these issues are related to public order, and because it does not have a personal right that she can act upon.

In this research, we have seen some procedural aspects resulting from the extent of the obligatory litigation of the Public Prosecution in nationality cases. We have also investigated the legal importance of this intervention, and we revealed the procedural effect that the law arranged for not integrating the Public Prosecution in nationality cases or not being able to view the file or preventing it from expressing its written or oral defenses and requests.

As long as the Public Prosecution litigation is deemed a crucial procedure in nationality cases, its violation has a negative impact on the integrity of the procedures. And the penalty stipulated for that is the absolute annulment of the procedure as agreed among jurisprudence and judiciary. Therefore, the judgment or the final decision in this matter is invalid and can be revoked by the Supreme Court, on the basis of violation of laws and ignorance of the crucial procedures stipulated.

We note that the Algerian legislator was not precise regarding cases that are related to the ways of notifying the Public Prosecution with the file and determining the duration of presenting briefs, and the extent to which the Public Prosecution has the right to appeal and the possibility to recuse its representative. Additionally, the Algerian legislator was not strict regarding the penalty resulting from integrating the Public Prosecution, it neglected to mention this point despite of its great significance from the procedural aspect, even though all the judicial provision and

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jurisprudence views state that this penalty is the absolute nullity and nothing else, although the rule is that such penalties are determined only by an explicit legal text.

However, we assume that for the appropriate application of the law and the achievement of the legislator's intent, the Public Prosecution, represented by the Attorney General on the court level, shall examine nationality cases registered in the court level. It does not matter the appearance does not matter as much as the positive role of the Public Prosecution by submitting its requests, defenses and opinions. However, the appearance of its representative in the hearings is automatic, as it is considered one of the necessities of the court formation. Thus, when the Public Prosecution gives demands briefs or briefs in reply or a legal opinion in a written form, it achieves the intent of article 37 of nationality law.

The ruling will also be valid if it states that the Public Prosecution has seen the file or if the judge suggests in the justifications that he has informed the Public Prosecution of the case file and it abstained from expressing its opinion. Thus, the ruling is true even if the Public Prosecution did not present requests in this respect, unless the Public Prosecution decides to appeal the decision on its own behalf for any reason, or unless the Supreme Court automatically points out the nullity.

It is noted in this research, that we have concentrated on the role of the Public Prosecution in the original case involving the proof or denial of Algerian nationality before the national judge. While, it is hardly imaginable that a foreign nationality would be a point of dispute to approve or deny before the national judge out of respect for other nations' sovereignty. We also have not referred to other litigation that may be brought up in a subsidiary capacity or administrative cases involving nationality.

The most remarkable point in this research is the last amendment of the Algerian nationality law that introduced a radical change in judicial competence of nationality cases, through the omission of the text of article 30 by virtue of article

9 or the Order n° 01-05, dated on 27 February 2005. However, the government did not outline the alternative processes when it presented the legislation project or discuss the procedural truth or the intent or the substantive legal arguments that led to the text's omission.

We assume that, the legislator should have kept the State Council competence to examine and decide on requests of annulment of the administrative orders relating to nationality, because of the abuse of power, especially when the Minister of Justice is one of these cases parties in his quality of the state representative. And this complies with the general provisions in the field of administrative litigations stipulated in the statutory law n°01-98, relating to the State Council, even if there is no special provision in this regard in the Nationality Law.

Ministerial decisions are not invulnerable from abuse or inaccuracy, and the best control over them is the administrative judiciary. It cannot be recognized that nationality decisions are deemed acts of sovereignty, as they remain prone to judicial control<sup>1</sup>.

Unfortunately, we were not able to support our research with jurisprudence related to the topic of the research due to its rareness. Although we have investigated in all periodicals in which decisions of the Supreme Court and the State Council are published (such as the Judicial Journal, the Journal of Judges' News, and the Journal of the State Council), as we searched on the website The Supreme Court as well as the State Council, and we did not obtain civil or administrative judicial decisions related to the right to nationality, which made it difficult for us to study the subject of nationality cases, and prevented us from enriching the subject in its practical and judicial aspect.

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Ben Ammar, Mokni. The Acts of Sovereignty as a Restriction on the Competence of the <sup>1</sup> Judiciary and its Applications in the case of Nationality, research published in the Journal of the Spirit of Laws, Tanta University, Egypt, in 2013, Issue 62, p. 1247.



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But, what strengthens our point of view is, in the nationality law itself and by referring to article 26 of it, we find that it gives the Ministry of Justice, the authority to announce his refusal of the request or declare, by virtue of the justified order that is notified to the concerned person, in case of lack of the legal conditions needed.

Even when the legal conditions are met, the Minister of Justice can, by virtue of an order notified to the concerned, refuse the request or object to the declaration if this is recognized by the Minister. In this case, the order of the Minister of Justice can be appealed before the State Council, as it is a core administrative decision, which has a negative executive effect on the rights of the appellant.

And the Ministry of Justice will undoubtedly be sued, in its quality of State Representative, and this latter will be represented by the State Governor in the administrative litigation, who will perform the same procedural role that the one of the Public Prosecution on the level of ordinary judicial authorities or the general lawyer on the level of the Supreme Court.

It is important to note that the Nationality Law did not specify a deadline for accepting this appeal against decision. We can conclude from this that the legislator intended to implement the requirement of Article 28's second paragraph, which establishes a deadline of two years from the date the decision to be appealed was published in the Official Journal. The cessation and interruption are not addressed because this deadline is not a deadline of limitations but rather a period for dismissing the action.

In conclusion, we say that the legislator integrated the Public Prosecution in civil cases for the aim of achieving important goals that do not deviate from the preservation of public interest and the protection of public order, in its various forms. And the principle is that: whenever there is public order, there is a representative of a public right. Although the concept of public order remains one of the broad terms that may open the way for intervention in all civil cases, without

exception. This led one of the jurists, after failed attempts to define and the concept of public order, to acknowledge the difficulty and say: “Public order is a great idea and derives its greatness from the ambiguity that surrounds it.”

Despite everything that has been said about the Public Prosecution's intervention in civil cases and its procedural position, it is still just a regular, neutral litigant, not an excellent one, and it has no procedural advantages over the other parties, with the possible exception of being discharged from paying judicial fees and costs and from being held liable for damages in the event that the right to sue is misused.

Finally, we see that in spite of the multiplicity of domains in which the Public Prosecution intervenes in civil field, besides the procedural field, despite its noble positive aims, it may also have a negative side. It may cause a lot of strain on the system given that there are not enough people to serve as Public Prosecution judges.

Whereas, assigning the Public Prosecution with further civil cases, in all the branches of the Private Law, whether as a principle party or a joined party, needs considerable mental and physical effort. Because the judge cannot be competent in all procedural and civil branches. In this situation, the Public Prosecution judge will be forced to investigate and research in all areas of civil law, family law, commercial law, insurance law, and other aspects of private law. This is a very stressful situation for the Public Prosecution representative, and it may even lead him to abandon his original responsibilities in the criminal article, which necessarily has a greater significance and effect than civil proceedings.

And in order to solve this problem, we suggest the establishment of prosecution offices specialized in family and civil status cases, which is the method used by Egyptian law, provided that the tasks of the representatives of these offices are limited to these types of cases only. In this way, the purpose that the legislator aims for, from the Public Prosecution intervention in civil cases, will be achieved.

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We believe that, through this research paper, we have presented a contribution to researchers in a procedural topic that was not sufficiently approached. However, we assert that we have covered legal points. We acknowledge that we may have been wrong in certain issues, and thus we apologize in advance for any shortcoming which may be covered by the fact that we have offered many legal and procedural ideas through analysis and discussion. We have also tried to be as precise as possible. We have supported the research as well with various Arab jurisprudential opinions and deliberately enriched it with Algerian jurisprudence, in particular, for the purpose of generalizing the benefit, and we have not intended to recognize what was stated in these opinions and jurisprudence, which remains subject to discussion, as every work is prone to criticism.

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