

2.A GENERAL COMMENTS

2.A.1 Definitions of the prosecution stage

3. Once an offence has been reported to the police and a suspect identified the decision has to be taken whether or not to prosecute, i.e. to bring the case before a court.

4. In a narrow sense, the term *prosecution* refers only to bringing a case before a criminal court. Here, the term is used in the broader sense of processing/disposing of cases (decision making) by the prosecuting authorities, thus including the decision to drop proceedings or to impose a sanction or measure, where this possibility is available to the prosecution.

5. The term *prosecuting authority* refers to the legal body which has as its main task to institute criminal proceedings, i.e. decides, depending on national legislation and practice, whether or not to prosecute. The actual functions vary widely between countries. In most European countries, the prosecution of suspected offenders is dealt with by a special authority: either a public prosecutor and/or an investigating judge.

6. There are of course many differences and variations in the form the prosecution stage takes in the different European countries. For the purpose of the Sourcebook, the prosecution stage is considered to be an intermediate stage between the police and court levels. Accordingly, this chapter deals with the decisions taken at this intermediate stage.

2.A.2 The role of the police in relation to the prosecution stage (case input)

7. In some countries, the input at prosecutor's level is identical with the output at police level (including specialised authorities of public order, such as customs or tax authorities). This is the case in countries (such as France and Germany) in which the police are regarded purely as an institution which assists the public prosecutor in his/her tasks, with no direct powers to dispose of criminal cases. Consequently they are obliged to transfer all cases to the prosecuting authority. This also applies to cases in which no suspect has been identified. The number of cases input to the prosecuting authority will appear to be disproportionately high in such systems compared to the number of suspected offenders identified by the police, especially when cases without suspects are counted at prosecution level (France, Belgium).

8. However in most European countries, actual practice deviates from this model, i.e. the input at prosecutor's level is not identical to output at police level because the police can exercise some discretion and decide on whether to prosecute or not. Thus certain cases are not transferred to the prosecuting authority and are ended by a police decision, possibly in combination with some sort of sanction (e.g. police cautioning in England and Wales). In addition the prosecuting authority may in some countries include the police themselves (e.g. Ireland).

9. These different structures influence the scale of the input and thus the statistics of the prosecution system. Furthermore, as a consequence of changes in definitions and counting rules between agencies, prosecution statistics may be different from the police "output".

2.A.3 What is recorded?

10. Unlike most other tables in the Sourcebook, this chapter does not differentiate between the types of offences because most of the countries concerned were not in a position to provide a breakdown according to offences. It covers all offences disposed of by prosecuting authorities.

11. In order to make the data comparable the figures were meant to exclude: minor traffic offences (e.g. parking offences), breaches of police and administrative regulations as well as less serious cases disposed of by the police under the responsibility of a prosecutor. Some countries (see technical table 2.C.1) could not apply this rule.

12. The counting unit here should be the *case* in the sense of proceedings, not the offence. Thus, one case may comprise several offences and/or several defendants. In general, these cases are counted as single cases, but there are some exceptions (see technical table 2.C.3) and some countries counted defendants rather than cases (e.g. England & Wales).

2.A.4 Discretion at prosecutor's level and output

13. The data provided for the cases disposed of by the prosecuting authority (table 2.B.1.1) refer to the "output" at public prosecutor's level (table 2.B.1.2), i.e. the type of decision taken. Two countries were not able to give data for the breakdown of the total (Italy, Spain).

14. The structure of prosecuting authorities varies from country to country depending on the discretionary powers available to them. We developed some simple categories for disposals in order to make figures comparable: the number of cases brought before a court, the number of cases dropped, the number of cases ended by a sanction from the prosecuting authorities with or without admission of guilt. Some of these categories may not apply to every country considered.

15. Three *basic structures* are possible:

- There are countries in which the prosecuting authority has neither the power to drop a case nor the ability to impose conditions / sanctions on an offender; in accordance with a strict principle of legality, the prosecuting authority merely has the function of preparing a case for the court.

- *In most of the countries dealt with in this chapter the prosecuting authority has the discretionary power to decide whether or not to prosecute (i.e. to drop a case completely) or not.*

- In other countries the prosecuting authority has not only the power to decide whether to prosecute or not, but also the possibility of dropping the case under conditions, to be imposed on, and accepted by, the suspected offenders

16. The differentiation between "cases brought before a court" and "proceedings ended by a sanction from the prosecuting authority" is not always as simple as it may appear. It is a matter of how far the court is involved in the public prosecutor's decision-making.

17. Depending on the country, the public prosecutor can be empowered to impose conditions with or without the formal consent of the court. For example, the public prosecutor can suspend prosecution with the court's consent on certain conditions, e.g. that the defendant pays a sum of money to the Treasury or a charitable institution. The necessary acceptance by the offender may infer an admission of guilt, but no formal admission is necessary.

18. In other cases, sanctions can be imposed by the prosecutor with admission of guilt by the defendant. Relevant examples are the German "Strafbefehl" (penal order) or the French "ordonnance pénale" where the public prosecutor brings a motion for a fine which is issued by the court after summary review. This could be regarded (or counted in statistics) as a sanction of the public prosecutor or a case brought before a court.

19. The category "other disposals" refers to such decisions as the referral to private criminal action (as in Germany) or transfers to another competent authority, and in some countries a significant number of pending cases are either included in "other disposals" and/or in the total of cases disposed of (see general remarks on tables 2.B.1.1 and 2.B.1.2).

2.A.5 Staff of the prosecuting authorities (table 2.B.2)

20. The rates of public prosecutors per 100,000 inhabitants in European countries vary considerably from 26.4 in Latvia to 0.7 in Cyprus. These rates are not in correlation with the crime situation or with the number of police officers under the supervision of the prosecuting authorities. The number of prosecutors depends on national legislation and consequently on their function in the system of State administration.