The Januses of Justice
How Prosecutors Define the Kind of Justice
Done Across Europe

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1. Introduction
The image of a prosecutor does not appear to excite a great deal of interest on the
European research landscape. Even on a national level, empirical research in particular
has been very limited. In stark contrast to their counterparts in some American
states, European prosecution services were clearly perceived as an administrative
organ\(^1\) which prepares cases for court: an institution filtering cases based on dry legal
principles;\(^2\) prosecutors thus individuals deciding between options unworthy of

\(^1\) It has been asserted in English language literature, that prosecutors on the Continent are part
of the judiciary (see e.g. A. Ashworth and J. Fionda, “The New Code for Crown Prosecutors: (i)
This is largely incorrect with most prosecution service bound strongly by the Executive via the
Ministries of Justice, by no means enjoying the kind of independence associated with the Judiciary.
The misunderstanding has probably arisen due to the obligation of objectivity imposed upon
continental prosecutors and the controversial discussion surrounding their position within the state
framework, which has led them to be declared e.g. “a judicial agency of the executive” in Germany.
Even where, as in France, they are formally members of the judiciary it would be misleading to
think of them simply in these terms because they lack the Constitutional protection of judges and
are strongly administratively bound to serve their head of service, the Justice Minister (see e.g. J.

\(^2\) See e.g. J. Rogers “Restructuring the Exercise of Prosecutorial Discretion in England”, 26(4)
closer observation. Accordingly little attention was paid to what public prosecution services actually do; certainly not by academics, and international organisations concerned themselves, if at all, with questions of political independence. The first edition of the European Sourcebook on Crime and Criminal Justice Statistics, however, also undertook to record the data available concerning the prosecution stage, which was in many ways found to be inadequate. The statistics and legal information gathered did, however, provide strong indication that judicial power had shifted to the prosecution stage. As a result the responsible researchers decided to attempt a closer look believing that understanding what prosecutors do is key to understanding how justice is done across Europe today. In the meantime a number of legal comparisons of the prosecutorial role have emerged. The study reported upon here is the only study on prosecution services so far to go beyond a comparison of legal powers in order to establish the role factually played by prosecutors within European criminal justice systems (CJSs). The findings presented result from a three year study, the aim of which was to examine the function of prosecution services across Europe by examining the English and Welsh, French, Dutch, German, Polish and Swedish CJSs. Given the findings presented and the importance of discussions as to the role of the prosecution in relation to international criminal law, surrounding the international recognition of prosecutorial

3) Council of Europe, Report of the Committee of Experts on the role of the Public Prosecution in the Criminal Justice System PC-PR (97) 1 Rev. 3 (Strasbourg 1997).

4) The original group behind the European Sourcebook were: Martin Killias (Switzerland), Chairman of the group, Gordon Barclay (UK), Hanns von Hofer (Sweden), Imre Kertesz (Hungary), Max Kommer (The Netherlands), Jörg-Martin Jehle (Germany), Chris Lewis (UK), Pierre Tournier (France). Joined by the following researchers for the first full Sourcebook: Marcelo Aebi (Switzerland), Andri Ahven (Estonia), Uberto Gatti (Italy), Zdenek Karabec (Czech Republic), Vlado Kambowski (Former Yugoslav Republic of Macedonia), Alberto Laguia Arrazola (Spain) and Calliope Spinellis (Greece), Paul Smit (The Netherlands) and Bruno Aubusson de Cavarlay (France).


6) It was carried out at the in co-operation with partners in each of the study countries.