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THE EUROPEAN PROSECUTION SERVICE

Reviewing:


With the creation of Eurojust out of which, according to the European Constitution, a European prosecution service is to grow, the role public prosecution services play within Europe has become a focal point of discussion. Whilst, for example, the comparative European Sourcebook of Crime and Criminal Justice Statistics\(^1\) displayed clearly that there is a great deal ‘going on’ at the prosecutorial level, it also proved that getting reliable facts and figures on this topic is difficult and understanding them even more so. We stand before an apparent need to create a powerful common European Union institution, only to discover that it is not all that easy to find out what this institution means to each of the individual nations involved.

Tasks and Powers of the Prosecution Services in the EU Member States goes to the heart of the problem, providing seventeen country reports in which academics and prosecutors present their national prosecution services along prescribed lines.\(^2\) It is not the first book of its kind but international comparisons of prosecution services are

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\(^2\) Descriptions are of the fifteen ‘old’ European Union member states, Estonia and Hungary.
either dated\(^3\) or restricted to a small number of countries.\(^4\) The very first pages, a catalogue of questions the contributors were asked to answer, illustrate the aim of the book: to provide information on four central topics (1) the relationship between the public prosecutor and the police; (2) the relationship between the public prosecutor and the Minister of Justice; (3) the prosecution’s role in court; and (4) the public prosecutor’s role in relation to the execution of sanctions. By answering the questions posed, the national correspondents give an overview of the functions performed by their country’s prosecution service and its institutional importance within the respective criminal justice system. Having scanned this series of questions and read the succinct overview provided by the editor in his introduction, the reader is left in no doubt that public prosecution services across Europe do far more than merely evaluate the merits of investigatory results in order to decide whether to bring a case to court or not. Everything points to a powerful institution playing a key role in criminal justice systems across Europe.

In his introduction, the editor summarises the major themes of the book describing broadly the ways in which systems are striving to balance different interests. One example given is the control of discretionary prosecutorial power by means of a strictly hierarchical organisation. Thus, the managerial head of a prosecution service in which discretionary decisions are being made is presented as effectively ensuring legal certainty in providing strict bounds for its use. This portrayal of trends with such broad brushstrokes naturally leaves the reader having to look to questions, \(e.g.,\) effectiveness of such balancing measures, in the individual contributions and, perhaps not surprisingly, to find that the editor’s conclusions are not necessarily borne out in such clarity by the information provided in them.

The introduction does, however, provide a solid reflection upon the major trends which can indeed be described as European, pointing out correctly that very different systems, with different legal principles as their core, are becoming increasingly similar\(^5\) as they

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\(^3\) e.g., H.-H. Jescheck, *Funktion und Tätigkeit der Anklagebehörde im ausländischen Recht* (1979).

\(^4\) One notable exception being *The Prosecutor of a Permanent International Criminal Court* (L. Arbour, A. Eser, K. Ambos and A. Sanders, eds., 2000), which also provides considerable information on a number of national prosecution services.

face a common problem: overloading. The introduction goes beyond a simple summary, however, presenting prosecutorial discretion as a good solution for a variety of problems; e.g., both as a regulatory valve for criminal justice systems struggling to cope with ever-increasing caseloads and as providing a framework to pursue criminal policy adapted to local, regional and national needs. The adjudicative role prosecution services are increasingly being given\(^6\) is described as an appropriate means of ensuring timely and uniform reactions to offences. This pragmatic approach doubtlessly has much to offer and the developing situation in Europe is reflected well.

The individual chapters allow an insight into a wealth of issues in varying national contexts. The uniform structure means that a reader can search fairly specifically for information, for example, as to how far the prosecution service is involved in investigation, what forms of diversion are available, how far political influence is exercised, how far victims can influence cases not brought to court, etc. Naturally, exactly what information is provided, in what style, varies from author to author. The topics given particular attention generally provide a telling insight into the current debate in each respective country.

A book of this kind cannot be criticised for presenting reality; its breadth is an achievement in itself. The reader may, however, be forgiven for noting that there are other options.\(^7\) The lack of a theoretical framework around these contributions means that the reader must consciously place the information given in context or risk losing sight of the greater picture. Apparently conflicting statements, such as a strong hierarchy ensuring uniform use of powers and prosecutorial discretion allowing local flexibility, raise a variety of questions as to legal certainty and other basic principles. A stronger, more rounded, theoretical grounding would have provided a helpful framework to order the wealth of information this book provides. As would a pointer to the importance of considering norms and reality

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\(^6\) Prosecution services’ powers to drop cases or to impose conditions upon doing so are increasing but they are also being given ones beyond these. In many European countries they now go so far that the public prosecutor must be regarded as a controlling organ; on the one hand, negotiating an appropriate sentence with defendants through plea bargaining or voluntary submission to punishment proceedings, and on the other, deciding which cases are brought to court at all, as the powers to make out of court settlements increase.

\(^7\) Criminal justice workloads can, for example, be reduced by other means. Decriminalisation is one that is not considered.
separately. Legally, there is little to criticise in the editor’s statement that the judiciary and private prosecution possibilities provide the necessary checks and balances for prosecutorial discretion. The working reality across Europe is that private prosecutions and judges rejecting prosecutorial proposals are rare, and this sets the information provided in this volume in a different perspective.

These critical points should not distract from the fact that the editor draws the essence of this ambitious project together in a few pages and is faced with a difficult task in choosing what information to present in summary. The value of the book, of course, lies foremost in providing an enormous amount of information on individual prosecution services. A reader can bring the theoretical background him or herself. The book aims to present the prosecution services as they stand and this it does.

Prosecution services across Europe offer every thinkable alternative. These are portrayed here: from the enormously powerful Dutch model, displaying a prosecution service very much a driving force in creating and enforcing criminal policy, to the Irish DPP, with its narrow mandate, responsible for dealing only with the most serious of cases; hemmed in between a powerful police force and the courts. From the dominant French styled representative of the public interest, granted powers beyond the realms of criminal law, to the English Crown Prosecution Service, flanked by a series of regulatory agencies performing a similar function in specific areas (e.g., dealing with environmental offences), which is described as an institution aiming to gain convictions. There is much to learn.

One of the central problems in understanding a prosecution service’s role is the discrepancy between the legal requirements placed upon the service as set out in the legal texts and the working reality. It is a clear achievement of this book that most contributions go beyond merely presenting the law. It is not, however, always entirely clear which is being discussed, legal provision or practice, but the reader usually gains a feel for the respective system.

The collection provides a fascinating opportunity to identify features of common legal traditions developing differently in various national contexts and to observe what remains the same. The impression left is, above all, one of great dynamism. Very few of the chapters do not refer to recent, or planned, fundamental changes being made to the system described and herein lies perhaps the most interesting point. Whilst, as one would expect, the volume provides descriptions of systems with a huge variety of powers and functions
(from the Italian prosecutor who is forced to set priorities by leaving files to gather dust so long they fall foul of the statutory time limit for prosecution, to the Swedish prosecutor’s ability to impose a sanction and the stigma of a criminal record entirely independently), the reader also finds a great number of common features. A central one, as mentioned above, is that prosecution services not only decide whether to bring cases to court at all, but they are increasingly caught in a process of deciding which cases are to be treated. So we see growing powers to divert cases and make out of court settlements with defendants or in-court deals (plea bargaining, consensual punishment/voluntary submission to punishment). Prosecution services are not only charged with making such decisions to ensure the best outcome for the individual case. Many chapters explicitly mention such powers as created to increase system efficiency all together. This role can also be seen in prosecution services’ increased responsibility to set priorities for police work.

The prosecution service emerges as the resource manager in many of the criminal justice systems portrayed. Although one can question to what extent the prosecution service should be making such essentially political decisions, this may be regarded as a natural development for countries in which the prosecution service is formally in charge of investigations. It is, however, interesting to note that the English and Welsh system seems to be developing in the same direction. A general, European tendency towards inter-agency cooperation between police and prosecution is to be observed, in some cases leading to these institutions working so closely together to reach decisions in such a way that it is no longer possible to describe these as purely police or prosecutorial ones.

This, it seems, is not the only traditional line blurring across Europe. Institutionally, this book bears witness to the courts only formally ‘rubber-stamping’ results negotiated between defendants and the prosecution service, especially for less serious offences. Some country reports discuss the principle of legality being satisfied out of court. Others claim their systems reject ‘out-of court settlements’ in order to protect this very principle. At this point the lack of theoretical framework behind the book, which of course means that core issues and terms are not defined, becomes noticeable. The impression of dynamism and blurring lines is strong but it is sometimes difficult

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8 Working practice there sees the highly independent police consulting the prosecution service so regularly it is difficult to imagine this not resulting in a prosecution service with significant influence over what is investigated and how intensely.
to understand exactly what is blurring. A careful reader will, unsur-
prisingly, discover that certain principles, like the principle of legality
or prosecutorial independence, mean different things in different
national contexts and will certainly not find every question answered.

The book’s aim is to present an overview of prosecutorial practice
across Europe today and this it does well. The reader gets a feel for
the traditional role of the prosecution service in most states and for
current debate and changes being made. We see, for example, great
variety in the style of trials and the prosecution service’s involvement
but also get a feeling that adversarial elements are being adopted in
most inquisitorial courtrooms. There is an impression of the judiciary
becoming more and more an instance of control only. This is true
both within the investigative stage, e.g., with the role of the exam-
ining magistrate rapidly decreasing, as well as in the adjudicatory
stage, with the prosecution service increasing its jurisdiction over
minor cases. One additionally gets a feel for a kind of European
consensus on best practice developing, with the prosecution service
playing a dominant role, e.g., with a trend towards factual control of
police work at a general level, not usually during the investigation of
individual cases, but also an increasingly central role in deciding what
evidence is brought during court proceedings.

European cross-fertilisation can be seen best perhaps in the
Estonian contribution: this describing a highly dynamic situation
having produced a system based on the German model of police
subservience to the prosecution in the investigative stage,9 a highly
pragmatic approach to prosecutorial case settlement10 (with plea
bargaining and consensual settlement11 powers) with the prosecution
service taking an adjudicatory role. In court, finally, we see yet an-
other prosecution service, not the objective body assisting the court in
finding the truth as one might expect (considering that the service is
vested with such powers pre-trial), but an adversarial institution
presenting evidence with the aim of achieving a guilty verdict. It is
difficult to imagine an institution having a greater variety of roles to
play.

Taken as a whole, the book is an enormous achievement and an
indispensable read for anyone wanting to understand criminal justice
system development across Europe. It provides a wealth of information, to which the reader has fairly easy access due to the prescribed report structure, and does so succinctly and clearly. The fact that it raises a great deal of questions in the mind of the more discerning reader only proves how overdue it is. The book is a robust first step in a field that requires comprehensive research.