

What Makes Prosecutors Independent?

Analyzing the Determinants of the Independence of Prosecutors

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Abstract

The prosecution of criminal suspects is an integral part of a country's justice system. While substantial scholarly attention has been devoted to the study of the police and judges and their relevance to the rule of law, surprisingly little is known about prosecutors. The aim of this paper is to contribute towards filling this knowledge gap. We first demonstrate the rising importance of prosecutors for criminal justice systems around the world. We identify the independence of prosecution agencies from the other two branches of government as a centrally important characteristic and then proceed to analyze the determinants of *de facto* prosecutorial independence from a political economy perspective. We find that press freedom, the immunity of parliamentarians and belonging to the common law tradition are positively associated with higher *de facto* independence.

Keywords: Public prosecution, independence of prosecutors, economics of crime, criminal justice systems

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1. Introduction

The prosecution of criminal suspects is an integral part of a country's justice system. Ideally, prosecutors - together with the police and judges - are central actors in implementing the rule of law. While substantial scholarly attention has been devoted to the study of the police and judges and their relevance to the rule of law, surprisingly little is known about prosecutors. This lacuna of research is not confined to the legal sciences but also extends into the economic analysis of law.¹ This is astonishing since all the actors making up the criminal justice value chain need to work together to effectively sustain the rule of law. Prosecutors are the link between police investigations and court adjudication and have far-reaching decision-making powers over each criminal case.² In the overwhelming majority of criminal justice systems, it is their responsibility to decide whether police investigations will lead to prosecution and thus whether courts will be able to try offenders at all. Prosecutors are, hence, agenda-setters for judges and they have been referred to as the "judge before the judge" and "judge by another name".³ Prosecutors formulate charges, conduct the prosecution and argue the case in court. If they disagree with the court's decision, they may typically appeal against its ruling.⁴ In the wake of recent developments the importance of their independence has increased even further. In order to take the strain off overloaded court systems, many jurisdictions have shifted powers and responsibilities from judges to prosecutors. As a result, some scholars consider prosecutors to be potentially the most powerful actors in the criminal justice system.⁵

The aim of this paper is to contribute towards filling this knowledge gap. We focus on what we consider to be a centrally important factor in the proper functioning of these agencies, namely the degree to which they are independent from the other two branches of government. Although the study of judicial independence is well-established,⁶ the study of the independence of prosecutors is not, despite its potential relevance for protecting the rule of law. Without this independence,

¹ Commenting on the lack of research in the legal sciences, Tonry, 2013: 7 concludes that "[i]f prosecutors possess enormous power, as they do everywhere, and if they differ more greatly between jurisdictions than other criminal justice officials and agencies, as they do, we should want to know what differences those differences make. We don't." Garoupa, 2012: 239 describes "the economics of prosecutors (..) [as] largely underdeveloped" and provides an overview of the limited research in this field.

² Luna and Wade, 2012b: 1.

³ Weigend, 2012: 378, 389.

⁴ Committee of Ministers of the Council of Europe, 2000: 4. See also Tonry, 2013: 1; Luna and Wade, 2012a: xi.

⁵ Weigend, 2012: 383-389. See also Jehle and Wade, 2006.

⁶ Voigt et al., 2015 is just one recent example.

the executive may exercise undue influence over prosecutors to protect government members, interest groups and supporting elites from criminal prosecution or, on the contrary, use its influence on prosecutors to repress citizens, businesses and political opposition if such behavior promises to enhance its own goals.⁷

In a study analyzing the effects of both the *de jure* and the *de facto* independence of prosecutors, van Aaken et al. (2010) find that these two notions of independence are negatively correlated: the greater the independence of prosecutors according to the law, the less independent they actually are.⁸ This finding is puzzling. In their paper, van Aaken et al. suspect that countries experiencing important governance problems (such as high corruption levels) might be encouraged (e.g. by development aid donor countries, international organizations, etc.) to modernize their criminal procedural law leading to high levels of *de jure* independence but that nothing much is changed on the ground, implying low levels of *de facto* independence. In this paper, we take up the puzzle by inquiring more systematically into the determinants of the *de facto* independence of prosecutors. In our empirical analysis, van Aaken et al.'s data on the *de facto* independence of prosecutors serves as our dependent variable. We analyze this data in two steps: as a starting point, we apply the theoretical framework that Hayo and Voigt (2007) developed in their study on the determinants of the *de facto* independence of the judiciary to the procuracy.⁹ We observe that some, but not all of the determinants of the independence of the judiciary are also among the factors that determine the independence of prosecutors. In a second set of models, we extend our investigation to include single *de jure* factors concerning the institutional arrangement of the procuracy in a country's criminal justice system. This modelling approach allows us to gain a comprehensive understanding of the factors that influence the independence of prosecutors. Furthermore, by making an explicit distinction between factors that can be subject to policy measures and those largely exempt from government influence, the results of this study promise to be highly policy relevant. We find that the key determinants conducive to a high level of independence are common law as legal origin, a free press, regulations granting parliamentarians immunity from prosecution and legal regulation that allows prosecutors of any rank in the authority's hierarchy to indict public figures.

⁷ Weigend, 2012: 383-389.

⁸ van Aaken et al., 2010: 210.

⁹ Hayo and Voigt, 2007.

The paper is structured as follows. We first demonstrate the necessity for our study by explaining the rising importance of prosecutors for criminal justice systems around the world (Section 2). We subsequently identify the independence of prosecution agencies as a centrally important characteristic and then proceed to analyze it from the perspective of political economy (Section 3). In Section 4, we discuss the possible determinants of the independence of prosecutors. Section 5 describes how this independence can be measured in a cross-country setting. Our estimation strategy and empirical results are presented in Sections 6 and 7, respectively. We conclude with a summary of how our research contributes to the study of prosecutors and formulate policy advice on how to strengthen the rule of law by better protecting the independence of these agencies (Section 8).

2. The Rising Importance of Prosecutors for Criminal Justice

While the core functions and responsibilities of the police and judiciary are similar in all developed countries, those of prosecutors have traditionally varied fundamentally.¹⁰ Comparative research on prosecutors is thus challenging and this may explain why cross-national research on prosecutors is even scarcer than research on prosecutors in national settings.¹¹ Prosecuting agencies differ not only in their institutional and organizational set-ups, but also on a more fundamental level, namely in regard to the general principles according to which they operate. In some countries, prosecutors have traditionally had to prosecute cases strictly according to the applicable rules ("legality principle") and have had only limited individual discretion over how to handle cases. This is true of Germany and many other continental European civil law countries. In other countries, prosecutors have broader decision making powers ("expediency principle" or "opportunity principle"), including whether and how to prosecute a given case. This is true for the U.S. and all other Anglo-Saxon common-law countries.¹²

¹⁰ Tonry, 2013: 2-4.

¹¹ Luna and Wade, 2012a: xi.

¹² Tonry, 2013: 7-12.

However, nowadays these fundamental differences between national prosecution authorities are diminishing. In response to an ever increasing case load,¹³ policy makers have implemented measures that have led to a softening of this traditionally strict divide. The following three main policy options can be implemented to deal with overloaded criminal justice systems: (1) increase the size and funding of the entire system, (2) decriminalize less serious offences that are thereafter, for example, dealt with under administrative rather than criminal law and finally, (3) increase the powers of the prosecution authorities to handle incoming cases more independently of judges and the court system.¹⁴ The last option has been chosen by many Western countries. Jurisdictions that have adhered to the legality principle in the past have also implemented it, thus giving more discretionary powers to prosecutors.¹⁵ As a result, in many jurisdictions around the world the importance of prosecutors for criminal justice has steadily increased.¹⁶

Now prosecutors do not simply act as an intermediary between the police and the courts, deciding whether or not a case that has been investigated should also be prosecuted. Their powers extend well beyond these core responsibilities. Under certain circumstances, prosecutors may be the sole decision-makers to determine whether a criminal sanction will be imposed. They may also determine, or negotiate with the offender, the nature and severity of the sanction.¹⁷ To illustrate, consider the example of the U.S., where powers of prosecutors are particularly broad. Here, the vast majority of all criminal convictions (95% or more) result from plea bargaining agreements between defendants and prosecutors. In this system prosecutors - not judges - determine both the charges and the sentences to be imposed for a large majority of cases. Many other countries have broadly comparable mechanisms in place that have shifted decision-making powers from judges to prosecutors and have thus amplified their powers.¹⁸ The example of Germany demonstrates that prosecutorial discretion is also present in countries that have traditionally adhered to the legality principle. According to some calculations, about 90% percent of all cases in which the police had identified a suspect and which were thus declared as "resolved" never went to court in

¹³ In Western Europe, for example, the crime rates have increased significantly since the 1950s, even though in some countries this growth trend has recently come to an end or been slightly reversed. Jehle, 2006: 5. See also Eurostat, 2015a; Eurostat, 2015b.

¹⁴ Jehle, 2006: 5-6.

¹⁵ Economic considerations are not the only justification for increasing prosecutors' discretionary powers. Among other reasons, a concern for individualized justice can also justify such an increase. Weigend, 2012: 384.

¹⁶ Weigend, 2012: 383-389. See also Jehle and Wade, 2006.

¹⁷ Weigend, 2012: 386-389.

¹⁸ Tonry, 2013: 5-9. See also Luna and Wade, 2012a: xi and xvii.

Germany. Instead, prosecutors relied on a variety of case-ending options, the use of which is subject to only minimal external review.¹⁹

In this section, we have shown how more and more powers have shifted towards prosecution agencies. To date, this shift of power from judges to prosecutors has not received much scholarly attention, possibly due to the complexity involved in comparative research on prosecution authorities.

3. The Relevance of the Independence of Prosecutors for Ensuring the Rule of Law

In this section, the importance of prosecutorial independence for the implementation of the rule of law is discussed. Prosecutors and judges can be considered part of a single-value chain producing justice: whereas prosecutors collect information on a case and represent “the public interest”, it is the task of the judges to question the reliability of the information provided by both suspect and prosecutor and reach a final decision based on that evidence. Due to this interplay between prosecutors and judges, the establishment of a high level of *de facto* judicial independence is a necessary, but not a sufficient condition for ensuring that justice prevails in criminal cases. Prosecutors also need to be independent, otherwise some cases may never appear in court, relevant information will not be provided and so on. In what follows, we discuss why a government would want to infringe the independence of prosecutors and why the protection of this independence is thus crucial to the rule of law. We show that from the viewpoint of a government, it may even be more attractive to erode the independence of prosecutors than to compromise the independence of the judiciary. We argue that the former may lead to less opposition and may, hence, be less costly for government.

An executive can exercise influence on the judiciary and the prosecution agency for various reasons. Among these we can broadly distinguish between two types of objectives. First, a government may want to end a legitimate criminal proceeding against one of its members or members of the supporting elites. Second, it may want to initiate an illegitimate criminal case to tarnish the reputation of some opponent, or even wrongfully convict that individual. No matter

¹⁹ Weigend, 2012: 384-385.

which of these objectives the government pursues, it has various methods at its disposal. Consider incentives such as bribes, salary increases, promotions, etc. or disincentives such as salary cuts, demotions, disciplinary transfers, forced retirements, etc., to name just a few. These methods may vary in their effectiveness to produce the desired outcome and the costs that they inflict on a government, whereby the costs will be equal to the strength of the political and social opposition that these governmental actions will evoke.

We argue that, generally speaking, the costs resulting from applying these methods are always higher for judges than for prosecuting authorities. Infringing judicial independence is a governmental action that is more visible and thus also more easily detectable than a comparable action aimed at the prosecution authority. It is therefore also likely to lead to fiercer resistance. From the point of view of a government, since exercising an influence on the prosecution authority is likely to lead to comparable results at lower costs than using the same means against the judiciary it is thus an appealing option. This is illustrated by the following examples.

3.1. Ending a Legitimate Criminal Case

Imagine a scenario where there is a legitimate criminal case the regular prosecution of which would not be in the interest of a government. For example, a member or supporter of a government might have engaged in a criminal activity such as corruption which was subsequently detected. Let us first examine the outcome of this scenario proceeding from the assumption that the independence of the prosecution agency is guaranteed and then alter the scenario by proceeding from the opposite assumption.

Scenario A: The Independence of Prosecutors is Protected

In this scenario, the prosecutor would supervise and direct police investigations to detect the most incriminating evidence.²⁰ Once the preliminary investigation has produced sufficient evidence, the prosecutor may decide whether the case should go to trial or if she wants to choose another

²⁰ However, the role the prosecutor plays in pretrial criminal investigation and the competence she has vary greatly between jurisdictions. See for example Weigend, 2012: 378-381.

case-ending option that she deems adequate.²¹ If she decides to go to trial, she will present the incriminating evidence, argue the case as convincingly as possible and call for a sentence that she considers appropriate. Assuming that the prosecution agency enjoys *de facto* independence but the judges do not, the government can only stop the criminal case once it has reached the court stage. However, from the perspective of both a criminal and a supporting government much damage has been done already at this point. The incriminating evidence is now available to a broader audience. Any infringement of judicial independence will thus become easily visible. Attempts to cover up such governmental actions or to mediate their consequences, for example by convincing the political and social opposition of the innocence of the criminal or hiding the outcome of the case from the public altogether will now be challenging. Consequently, any undue influence exerted on the judge to dismiss a legitimate case once it has been brought to the court stage by an independent prosecutor will come at a high cost to the executive.

Scenario B: The Independence of Prosecutors is Infringed

Now consider the same criminal case with modified assumptions. Assume that the executive can infringe the independence of the prosecuting agency. In this scenario, a government that aims to influence the outcome of the case would not wait until it has reached the court stage. The government would rather try to exert influence on the case as early as possible in the criminal justice value chain. Supposing that the government is successful, the case will never reach the court, for instance, because the prosecutor has been sufficiently unsuccessful in finding incriminating evidence etc. The prosecutor could also choose the most favorable pretrial case-ending option available to her with the aim of letting the criminal off with no or minimal sanctions and thus prevent the case from ever being heard in court. If it turns out to be impossible to prevent the case from coming to trial, the prosecutor can still try to conceal incriminating evidence and plead for a very light sentence in court. Under these circumstances, even an independent judge would have a hard time arriving at an appropriate judgement. If the judge sentences the criminal nonetheless, the sentence is likely to be less harsh than would be commensurate. Furthermore, if the government also decides to infringe the independence of the judge, this would be substantially less costly than in a scenario in which the prosecutor is

²¹ The case ending options that are available to a prosecutor again vary greatly among jurisdictions. See for example Weigend, 2012: 386-389.

independent. Less incriminating evidence has been made public and the prosecutor's favorable presentation of the case would make it harder for the public to detect that the judges' freedom had been infringed and the subsequent biases in their judgment. Thus, the costs resulting from infringing the independence of the prosecutors are much lower than they would have been if the prosecutors had been independent.

3.2. Initiating an Illegitimate Criminal Case

Finally, consider a scenario where the executive does not want to end a legitimate criminal proceeding but is, rather, interested in a meritless prosecution because it intends to weaken somebody, for instance a politician of the opposition. We can again distinguish between two variants of this scenario: first, government may aim to destroy the reputation of a person. Publicizing the decision to prosecute a person may in many cases do enough damage to reach this goal and it will thus often not even be necessary to have the person convicted by a court. Hence, it will be sufficient to tinker with the independence of the prosecution agency again.²² Second, a government may aim to have a person convicted. Here, the government needs to be able to infringe the independence of both prosecutors and judges. Infringing the independence of the judiciary alone would not lead to the desired outcome. Courts are generally passive institutions and the prosecution authority performs the function of the gate keeper to the court system. A criminal case can thus only be heard in court once it has been passed by the prosecution authority. To obtain an unjustified judgment, the executive must therefore infringe the independence of the prosecution authority. Otherwise, an independent prosecutor who has objectively assessed the case of a falsely accused individual will not file charges. Additional infringement of the independence of the judiciary under these circumstances is therefore not a mandatory but an optional choice for the executive.

In this scenario, the influence of the executive on the prosecution agency works according to the same mechanisms as described above. The prosecutor may start her undertaking by producing false evidence, possibly in cooperation with the police. She could then rely on the case-ending options that are available to her to bring about an unfavorable outcome for the falsely accused

²² Not all meritless cases brought by prosecutors are the result of unduly government influence, however. There might very well be cases that are being brought by prosecutors on their own initiative, e.g., due to ideological zeal.

individual without involving the judiciary at all. Under threat of more serious charges in court and other factors such as negative publicity, the individual may accept such an unjust outcome despite being innocent. If the case still goes to trial, the prosecutor may produce incriminating evidence and argue the case as fiercely as possible. As argued above, such behavior on the part of the prosecutor may even deceive an independent judge who may then falsely and unwittingly sentence an innocent person. To further augment the effectiveness of its measures, the executive can also decide to curtail the independence of the judiciary. Even though this would mean extra costs for the executive, the presence of a biased judge would further increase the probability of an unjustified and severe judgement.

3.3. Cost Considerations

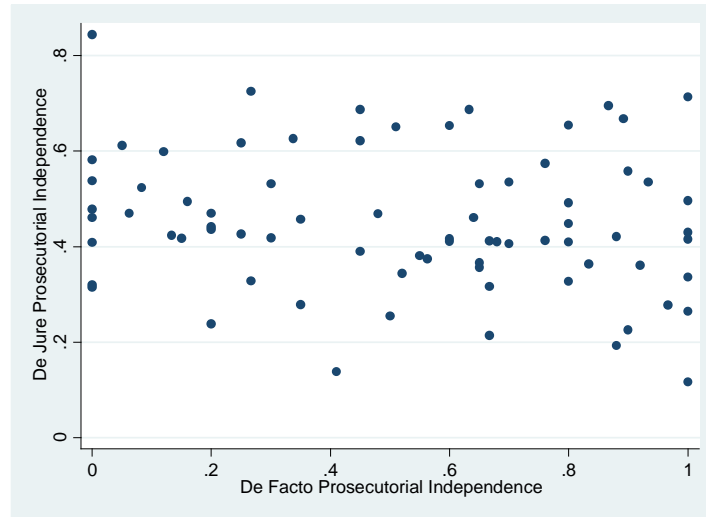
We can conclude that in order to achieve some of the outcomes that a government wishes to see, infringing the independence of the prosecution authority is a necessity. In cases in which a government could alternatively infringe upon the independence of the judiciary, cost considerations will usually lead it to prefer targeting the independence of the prosecution agency. The decision to compromise the independence of the prosecution authority is thus motivated largely by the desire to reduce the costs connected to an infringement of the criminal justice system. The total costs that result from such a breach are made up of two elements: firstly, the costs resulting from carrying out the infringement. Legal and organizational factors that stand against this action will increase costs and lead to a greater independence of the prosecutors. Secondly, costs resulting from the possibility that the illegitimate governmental intervention will be detected and thus subsequently evoke political and social resistance. Factors likely to amplify political and social resistance against an infringement are thus factors that will bolster the independence of prosecution agencies. Based on these considerations, we derive an empirically testable hypothesis on the determinants of the independence of the prosecution authorities in Section 5. Before, we briefly present the measures for both *de jure* as well as *de facto* prosecutorial independence used in this study.

4. Measuring the Independence of Prosecutors

We now briefly summarize van Aaken et al.'s (2010) indicators that we employ to measure the *de facto* and the *de jure* independence of prosecutors.²³ The indicators are index variables that summarize a large variety of measures of the different aspects of this independence. The items that contribute to the *de jure* independence of a prosecution agency index can be found in legal documents. These include, for instance, whether the country relies on the principle of mandatory prosecution, whether prosecutors enjoy a monopoly in prosecuting criminals, whether members of the executive have the power to give instructions to prosecutors and so on. Those items that contribute to the *de facto* index are various measures of the actual implementation of these legal texts such as how many prosecutors were transferred or retired against their will over a specific period. All variables used to construct the two indicators are documented in a summary fashion in Appendix 1. The *de jure* independence of prosecutor indicator is an index variable that contains up to twenty-one items. Within the *de jure* index, five overall groups, i.e. sub-indices, can be distinguished. Each of these sub-indices can take on values between 0 and 1, higher values indicating a greater degree of prosecutor independence. In a second set of models (models 5-8) we include only some of the single items of this index (see below). To assess the *de facto* independence, an index variable based on up to seven items was constructed. Again, each of these sub-indices can take on values between 0 and 1, higher values indicating a greater degree of prosecutor independence. As mentioned above, van Aaken et al. (2010) found a weak negative correlation between the two notions of *de facto* and *de jure* independence ($r = -0.214$). Figure 1 below shows the relationship between the *de jure* and *de facto* independence of prosecutors. In the analysis presented below, we therefore set out to inquire more systematically into the determinants of the *de facto* independence of prosecutors.

²³ This section is based on van Aaken et al., 2010: 211-220, where the two indices were presented for the first time.

Figure 1: *De Jure* and *De Facto* Independence of Prosecutors



5. Factors Influencing the Independence of Prosecutors

We have discussed the purposes for which governments may want to infringe the independence of prosecutors and what costs are associated with such infringements. We are now hypothesizing what factors prevent or at least make it harder for governments to conduct such infringements. We argue that governments will respect the independence of prosecutors permanently only if the costs of such infringements exceed any possible benefits. As we have explained above, these costs are made up of two elements: the costs resulting from carrying out the infringement and the costs resulting from the possibility that the infringement will be detected and subsequently evokes political and social resistance.

As a starting point for discussing the determinants of the *de facto* independence of prosecutors, some insights from the literature on the independence of the judiciary are helpful. Above, we have pointed out the differing scopes of responsibility but also the complex interplay between judges and prosecutors in a criminal justice system. Some of the determinants of the independence of the judiciary may be equally relevant to the independence of prosecutors and will thus be included in our analysis after due consideration. Hayo and Voigt (2007) distinguish

between two types of determinants of judicial independence.²⁴ Those factors that are not open to policy intervention, at least not in the short and medium term (e.g. the legal tradition of a country, its political system, the religious and ethnical diversity in a country, etc.) and factors open to policy intervention (e.g. the degree of press freedom granted, whether immunity from prosecution is granted to members of parliament, various legal regulations pertaining to the prosecution authority). We adopt Hayo and Voigt's differentiation for our presentation of the determinants of the independence of prosecutors.

4.1. Factors Open to Policy Interventions

A natural starting point for explaining differences in the *de facto* degree of prosecutorial independence across countries is the degree of *de jure* independence the prosecutors enjoy according to the letter of the law. It will, hence, always be included on the right hand side of our models.

Press Freedom

We have argued above that governmental actions that infringe the independence of the prosecution authority come at a cost. This cost stems from the risk that an illegitimate intervention will be detected and reported and that it may thus subsequently evoke political and social resistance. We hypothesize that the freer the press in a country, the costlier and, hence, less attractive it will be to infringe the independence of the prosecution authority. To account for the freedom of the press in our models, we use the Freedom House indicator.²⁵ We have multiplied the indicator by -1 and it thus ranges from -100 (the least free) to 0 (the most free).

Immunity of Parliamentarians

According to our theory, the executive may want to exert pressure on the prosecution agency to end a legitimate criminal case against a member of the own government or to initiate an illegitimate criminal case against the opposition. If our theory proves right, in regard to the first

²⁴ Hayo and Voigt, 2007.

²⁵ Freedom House, 2000; see also Hayo and Voigt, 2007: 275.

goal a law that protects members of parliament from prosecution should make this governmental action superfluous and in regard to the second goal, it should make this action ineffective. Consequently, a law granting immunity to parliamentarians will make it less attractive to a government to infringe the independence of its prosecution authority and we thus hypothesize that it will increase the *de facto* independence of prosecutors. The variable is based on our own coding of data from various sources relating to the laws governing the immunity of parliamentarians.²⁶ Countries in which members of parliament are protected from prosecution are coded 1.

Single Components of the “De jure Independence”-Index

As an alternative to our main explanatory variable, the *De jure Independence-Index*, we include some of the items of that index in a second set of models (models 5-8). These are all dummy variables that indicate whether a given regulation pertaining to the institutional design of the prosecution agency can be found in a given country.²⁷ The variable *Prosecution Authority in Constitution* codes as 1 those countries where the office of the state prosecutor is mentioned in the constitution, while those countries that mention it only in statutory law are coded as 0.²⁸ Mentioning the prosecution authority in the constitution is a strong signal that the institutional arrangement in a country respects the importance of this agency. We expect that this increases the *de facto* independence of prosecutors.

The variable *Executive can Instruct Prosecutors* indicates whether the laws of a country grant members of the executive the power to give instructions to prosecutors with regard to specific cases. Countries where the executive has this power are coded as 0. If the executive can only do so by issuing general guidelines, a country is coded as 1. Countries where the executive cannot instruct prosecutors at all are coded as 2. Similarly, the variable *Head of Prosecution Authority can Instruct Individual Prosecutors* indicates whether the head of the procuracy has the power to give instructions to prosecutors. It is coded in the same way as the previous variable. We

²⁶ See Myttenaere, 1998; van der Hulst, 2000 and several national constitutions.

²⁷ See van Aaken et al., 2010: 232-236.

²⁸ Trinidad and Tobago was dropped from the models that include this variable because it is the only country that did not fall in either of the two categories.

hypothesize that granting more powers to the executive or the head of the prosecution authority to instruct prosecutors regarding their handling of specific cases decreases *de facto* independence.

The variable *Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures* indicates whether decisions to indict a public figure have to be authorized. If decisions of this kind must be authorized by the highest prosecutor or a specially appointed prosecutor, countries are coded 0. If, on the contrary, any prosecutor can indict public figures, a country is coded as 1. We expect that regulations that grant to prosecutors of any position in the hierarchy the right to indict will make it harder for the executive to control these kinds of decision as per its own interest. Hence, we hypothesize that such a regulation will be associated with higher *de facto* independence.

4.2. Factors Impervious to Policy Interventions

Polity

Following the theoretical argument we introduced above, actions that infringe the independence of prosecutors come at a cost for a government. If the independence of the prosecution authority is a value that voters embrace, they may sanction a government that acts contrary to it in their re-election decisions. However, this mechanism can only work effectively in a democratic regime. We therefore control for the level of democratization in a country using the Polity indicator developed by Marshall et al. (2014). The variable codes countries on a scale from -10 (strongly autocratic) to +10 (strongly democratic).

Federalism

Compared to a unitary state, a federal state has an additional layer of government. In the latter political system, we thus find additional players that may have interests different from the federal government. If the federal government wants to infringe the independence of the prosecution authority, it must therefore deal with a larger number of potential veto players and potentially also cope with more political resistance. In a federal state, we expect the cost for infringing the independence of the prosecution authority and thus also this independence to be higher than in a

unitary state.²⁹ We use the dummy variables from Norris (2009) to control whether a country has a unitary, federal or hybrid form of government.

Legal Origin

Feld and Voigt (2003) hypothesize that the legal tradition of a country may affect judicial independence and this may also apply to prosecutorial independence. In our regression models, we thus include the legal origin dummy variables from La Porta et al. (2008). We hypothesize that, as for judicial independence, English legal origin may provide for a legal environment that is more supportive of prosecutorial independence than French legal origin. As we have no convincing theoretical reason to suppose that Socialist, German, or Scandinavian legal origin would affect prosecutorial independence differently, we include these legal origins as the reference group in our models.

Religious and Ethnical Polarization

The costs that a government must bear as a consequence of infringing the independence of prosecutors will be the larger the better society can organize political and social opposition. The ability to organize political opposition depends on a society's capacity to overcome the problem of collective action.³⁰ We argue that the greater the religious and ethnic diversity of a society, the harder it will be for the people to organize such actions. We thus include Montalvo and Reynal-Querol (2005) indicator of countries' religious and ethnical polarization in all our models. The indicator measures the extent to which individuals in a society are separated into different religious and ethnic groups. Both polarization indices range from 0 (minimum) to 1 (maximum).

Log of GDP

We also include a country's real gross domestic product in 1995 as a general control variable to our model. The data are taken from Feenstra et al. (2015) and are measured at constant 2005

²⁹ Hayo and Voigt, 2007: 275.

³⁰ Hayo and Voigt, 2007: 276-277.

national prices. Table 2, below, displays summary statistics of all the key variables introduced above.

Table 1: Summary Statistics for Variables between January 2008 and December 2014

<i>Variable</i>	<i>N</i>	<i>Mean</i>	<i>S.D.</i>	<i>Min</i>	<i>Median</i>	<i>Max</i>
De facto Independence of Prosecutors	76	0.52	0.33	0.00	0.58	1.00
De jure Independence of Prosecutors	76	0.45	0.15	0.12	0.43	0.84
Press Freedom	76	-36.53	20.94	-80.00	-30.00	-5.00
Legal Origin: English	76	0.22	0.42	0.00	0.00	1.00
Legal Origin: French	76	0.51	0.50	0.00	1.00	1.00
Log of GDP	75	11.48	1.83	7.50	11.64	16.01
Polity	74	6.76	4.56	-7.00	8.00	10.00
Religious Polarization	57	0.39	0.35	0.00	0.27	1.00
Ethnical Polarization	57	0.51	0.25	0.03	0.55	0.95
Federalism	76	0.46	0.72	0.00	0.00	2.00
Immunity of Parliamentarians	62	0.65	0.48	0.00	1.00	1.00
Prosecution Authority in Constitution	75	0.63	0.49	0.00	1.00	1.00
Executive can Instruct Prosecutors	70	1.14	0.91	0.00	1.00	2.00
Head of Prosecution Authority can Instruct Individual Prosecutors	75	0.23	0.53	0.00	0.00	2.00
Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures	52	0.81	0.99	0.00	0.00	2.00

Note: The following variables are dummy variables: *Legal Origin: English & French*, *Federalism*, *Immunity of Parliamentarians*, *Prosecution Authority in Constitution*, *Executive can Instruct Prosecutors*, *Head of Prosecution Authority can Instruct Individual Prosecutors*, *Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures*. *Log of GDP* is based on a country's real gross domestic product in 1995 and measured at constant 2005 national prices in million US dollars.

6. Estimation Strategy

We analyze the data on the *de facto* independence of prosecutors in two steps. In a first set of models (models 1-4) we broadly follow the modelling approach that Hayo and Voigt (2007) developed for their study on the determinants of *de facto* judicial independence.³¹ In a second set of models (models 5-8), we investigate the effect of specific *de jure* regulations on the *de facto* independence of prosecutors. Each of the models presented below thus differs in regard to the set of explanatory variables employed.

³¹ Hayo and Voigt, 2007.

Of the 76 countries in our dataset, 3 have missing values for some of the independent variables. A total of 73 countries were thus used to identify model 1. An OLS regression model was employed. The model is highly significant, as indicated by the F-test of overall significance (p-value <0.01). The model has an R Square value of 0.28, indicating an acceptable fit of the model. The result of the Shapiro–Wilk test was not significant (p-value 0.09), indicating that our data is from a normally distributed population. The result of the Breusch-Pagan and Cook-Weisberg test were not significant (p-value 0.94). These results show that our model does not suffer from heteroscedasticity. We finally tested for multicollinearity between all explanatory variables using VIF (variance inflation factors), but found no sign of multicollinearity (all VIF values are below 3 and the mean VIF is 2.05). Similarly, test results for all other models (models 2–8) are along the same lines, thus the models seem to be well specified.

7. Results

In our models 1-4, the coefficients of the variable *De jure Independence* are not statistically significant when all other variables are controlled for. Furthermore, in all models these coefficients have a negative sign, except for model 4 which is based on the smallest subsample. These results are therefore largely in line with the previous research of van Aaken et al. (2010) who find that our two notions of independence of prosecutors are negatively correlated.³² In model 5-8 (see below), we thus further investigate this counter-intuitive finding and analyze the effect of specific *de jure* regulations on our dependent variable, the *De facto Independence of Prosecutors*.

In models 1-4, the coefficients of the variable *Press Freedom* are statistically significant, controlling for all other variables. Our results show that a free press is positively associated with the *De facto Independence of Prosecutors*. For example, model 1 predicts that a 10-point increase in the press freedom index leads to a 0.10 points rise in the *De facto Independence of Prosecutors*. Thus, the freer the press in a country, the greater the *de facto* independence of the prosecution authority will tend to be. This finding supports our theoretical argument that a

³² van Aaken et al., 2010: 210.

government's decision to infringe the independence of prosecutors is based primarily on cost considerations. A free press amplifies the costs that may result from social and political resistance following an infringement and thus make such an action less attractive. One way to strengthen the independence of prosecutors is thus to implement measures that allow for free and extensive media coverage on a country's criminal justice system. However, there is a possibility of endogeneity between this independent variable and the dependent variable. We therefore included the *Polity* variable (see below) to mitigate this potential problem.

In models 3 and 4, the coefficients of the variable *Immunity of Parliamentarians* are statistically significant at the 10% and 5% levels, respectively. After controlling for all other variables, model 3 predicts an average increase in *De facto Independence of Prosecutors* of 0.19 points when a country grants immunity to parliamentarians in its laws. We argue that such a law affects not the costs, but the benefits resulting from an infringement of the independence to a government. In the presence of parliamentary immunity, a government cannot abuse the prosecution authority to initiate an illegitimate criminal case against the opposition and this regulation also makes it superfluous to end a legitimate criminal case against a member of the own government. A law that protects members of parliament from prosecution therefore also protects the prosecution authority from governmental infringements.

In our models 1-4, the coefficients of the variable *Legal Origin: English* are statistically significant, after controlling for all other variables. Thus there is statistical evidence that countries of common law legal origin perform better in ensuring the independence of prosecutors than countries from the reference category Socialist, German, or Scandinavian legal origin. For example, model 1 predicts that on average, countries of common law legal origin do 0.22 points better on the *De facto Independence of Prosecutors-Index* than the reference category. The coefficients of the variables *Legal Origin: French*, *Polity*, *Log of GDP*, *Religious and Ethnical Polarization* and *Federalism* were not found to be statistically significant. Hence, there is no statistical evidence for an association between these variables and our dependent variable, controlling for *Press Freedom*, *Immunity of Parliamentarians* and *Legal Origin: English*. However, due to their theoretical importance, we left them in the models as control variables.

Table 2: The Independence of Prosecutors Models with the “De jure Independence”-Index

	(1)	(2)	(3)	(4)
De jure Independence	-0.22 (0.30)	-0.21 (0.42)	-0.06 (0.33)	0.17 (0.42)
Press Freedom	0.01*** (0.01)	0.01* (0.01)	0.01*** (0.01)	0.01* (0.01)
Immunity of Parliamentarians			0.19+ (0.10)	0.31* (0.12)
Polity	-0.01 (0.01)	-0.01 (0.01)	-0.02 (0.01)	-0.01 (0.01)
Legal Origin: English	0.22* (0.09)	0.21* (0.09)	0.40** (0.12)	0.50** (0.15)
Legal Origin: French	0.12 (0.10)	0.07 (0.11)	0.15 (0.10)	0.02 (0.12)
Log of GDP	0.01 (0.02)	-0.01 (0.03)	0.03 (0.02)	0.03 (0.05)
Religious Polarization		-0.12 (0.18)		-0.27 (0.18)
Ethnical Polarization		-0.14 (0.18)		-0.14 (0.22)
Federalism: Hybrid Unions		-0.06 (0.11)		-0.14 (0.15)
Federalism: Federal States		-0.06 (0.12)		0.03 (0.20)
Constant	0.87** (0.31)	1.10* (0.42)	0.34 (0.41)	0.23 (0.68)
F-value	10.44***	5.04***	11.27***	6.43***
R ²	0.28	0.33	0.36	0.49
N	73	55	60	47
Mean VIF	2.05	2.39	2.06	2.81

Note: *** significant at 0.1%, ** significant at 1%, * significant at 5%, + significant at 10%. The dependent variable is *De facto Independence of Prosecutors*. The reference category for *Federalism* is *Unitary States*.

In models 5-8, we extend our investigation to include specific *de jure* factors concerning the institutional arrangement of the procuracy in a country's criminal justice system. We regard these results as exploratory, as our small sample size does not allow us to include all of these *de jure* regulations in a single model and we thus cannot test their effect on our dependent variable in a more systematic manner. We nevertheless regard the following models useful to investigate the effect of specific *de jure* regulations on the *De facto Independence of Prosecutors*. As in the previous models 1-4, the coefficients of the variables *Press Freedom*, *Legal Origin: English* are again statistically significant in all models. The coefficients of the variable *Log of GDP* was again not found to be statistically significant in any models. Similarly, the coefficients of the variables *Polity* and *Legal Origin: French* were also not found to be statistically significant, except for model 7 and 8, respectively. Due to their theoretical importance, we again left them in the models as control variables. The coefficient of the dummy variable *Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures* is statistically significant at the 10%-level. Model 8 predicts that when a country's criminal law grants prosecutors of any position in the authority's hierarchy the right to indict public figures the *De facto Independence of Prosecutors* will be on average 0.07 points higher than in an institutional setting in which this right is given only to the highest or a specially appointed prosecutor. Thus, the higher the number of prosecutors who have the formal right to indict suspects, the more difficult it is for governments to put pressure on the procuracy as a whole. Attaching little weight to hierarchical structures within the procuracy is, thus, conducive to higher levels of *de facto* independence.

Besides the variable *Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures*, the coefficients of the other variables representing regulations that concern the institutional arrangement of the procuracy in a country's criminal justice system are also statistically significant. However, contrary to our conjectures, the coefficients of these dummy variables (*Prosecution Authority in Constitution, Executive can Instruct Prosecutors: Not at All* and *Head of Prosecution Authority can Instruct Individual Prosecutors: Not at All*) all have a negative sign and thus affect the dependent variable in the direction opposite to the one we expected. Our models show that countries where the criminal procedural law contains these regulations have on average lower levels on the *De facto Independence of Prosecutors*-index. We regard this finding as empirical support for van Aaken et al.'s conjecture that there is a reverse causality problem playing out here. Countries that face governance problems in regard to the

independence of their prosecution authority may have reformed their criminal procedural laws leading to high levels of *de jure* independence. At the same time, these changes may not (yet) have positively affected *de facto* independence of prosecutors. This conclusion is also supported by comparing the mean *de jure* independence of the entire sample with those of subsamples of countries that have carried out criminal justice reform and those that have not conducted such reforms in the recent past (since 1990). The mean *de jure* independence for the entire sample is 0.45, for countries that have carried out criminal justice reforms the mean is 0.52 and for countries that have not conducted such reforms the mean is 0.42.³³

³³ van Aaken et al., 2010: 224-225.

Table 3: The Independence of Prosecutors Models with Single Components of the “De jure Independence”-Index

	(5)	(6)	(7)	(8)
Press Freedom	0.01+ (0.01)	0.01** (0.01)	0.01*** (0.01)	0.01*** (0.01)
Polity	-0.01 (0.01)	-0.01 (0.01)	-0.02+ (0.01)	-0.02 (0.01)
Legal Origin: English	0.25** (0.08)	0.21* (0.08)	0.24** (0.09)	0.33** (0.10)
Legal Origin: French	0.10 (0.09)	0.06 (0.09)	0.14 (0.10)	0.27* (0.10)
Log of GDP	0.01 (0.02)	0.01 (0.02)	0.01 (0.02)	0.03 (0.02)
Prosecution Authority in Constitution	-0.18+ (0.10)			
Executive can Instruct Prosecutors:				
by Issuing General Guidelines		-0.11 (0.09)		
Not at All		-0.17* (0.08)		
Head of Prosecution Authority can Instruct Individual Prosecutors:				
by Issuing General Guidelines			0.01 (0.11)	
Not at All			-0.39*** (0.10)	
Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures				0.07+ (0.04)
Constant	0.75** (0.27)	0.87** (0.28)	0.82** (0.28)	0.49 (0.30)
F-value	10.37***	8.02***	11.62***	8.33***
R ²	0.32	0.32	0.34	0.42
N	72	68	72	50
Mean VIF	2.30	1.95	1.80	2.27

Note: *** significant at 0.1%, ** significant at 1%, * significant at 5%, + significant at 10%. The dependent variable is *De facto Independence of Prosecutors*. "Executive can instruct Prosecutors", "Head of Prosecution Authority can Instruct Individual Prosecutors", "Prosecutors of any Position in the Authority's Hierarchy can Indict Public Figures" are single components of the "*De jure Independence of Prosecutors*"-Index. The reference category for *Executive can Instruct Prosecutors* and *Head of Prosecution Authority can Instruct Individual Prosecutors* is *with Regard to Specific Cases*.

8. Conclusions

Prosecutors are potentially the most powerful actors in a country's criminal justice system. To date, quantitative comparative research on prosecutors has been rare. In this study, we set out to identify the factors that determine the independence of prosecuting agencies worldwide. We find that countries of common law legal origin perform better in ensuring the independence of prosecutors than countries of Socialist, German, or Scandinavian legal origin. As this factor cannot easily be influenced by policy-making this finding is mainly of academic interest. However, there are also several factors that affect the independence of prosecutors which are susceptible to policy interventions. According to our empirical analysis, freedom of the press is a key guarantor of prosecutorial independence. Furthermore, a law granting immunity to parliamentarians is another factor that contributes to the *de facto* independence of prosecutors. Countries whose criminal procedural laws grant the right to prosecute public figures to prosecutors of any position in the authority's hierarchy reach higher levels of *de facto* independence. This paper can only constitute a very first step in closing the pertinent knowledge gap still existing regarding the functions and effects of prosecution agencies. Due to data constraints, the analysis here presented relies exclusively on a cross-section. To capture the dynamics in the development of prosecutorial independence over time, drawing on time series is definitely a desideratum.

In this paper, we summarized the specific interests of government in prosecutorial behavior by using two paradigmatic cases: in the first case, government has an interest in preventing prosecution of those who are on its side but have committed a crime. Formulated differently: government has an interest in false negatives or type 2 errors. In the second case, government has an interest in having actors prosecuted who are innocent like regime critics. Here, the government is interested in seeing false positives or type 1 errors. Are there governments who are more active in pursuing a particular kind of error than the other error? What are the factors determining that choice? One way to learn about this is by case study research. Sometimes, indicting a public figure is sufficient to destroy her reputation. But sometimes, this will not do and a court decision

is necessary. In such situations, the outcome is determined by the interplay between the prosecutors and the judges. Modelling their interactions explicitly is, hence, also a desideratum.

9. References

van Aaken, A., Feld, L. P. & Voigt, S. "Do Independent Prosecutors Deter Political Corruption? An Empirical Evaluation Across 78 Countries", *American Law and Economics Review*, 2010 204-244.

Committee of Ministers of the Council of Europe. "The Role of Public Prosecution in the Criminal Justice System", *Rec(2000)19* 2000

van der Hulst, M. *The Parliamentary Mandate. A Global Comparative Study*. Geneva: Inter-Parliamentary Union, 2000.

Eurostat. *Crimes Recorded by the Police* Brussels: Eurostat, 2015a.

Eurostat. *Crimes Recorded by the Police. Historical Data (Total Crime) 1950-2000*. Brussels: Eurostat, 2015b.

Feenstra, R. C., Inklaar, R. & Timmer, M. P. "The Next Generation of the Penn World Table", *The American Economic Review*, 105, 2015 (10), 3150-3182.

Feld, L. P. & Voigt, S. "Economic Growth and Judicial Independence. Cross-Country Evidence Using a New Set of Indicators", *European Journal of Political Economy*, 19, 2003 (3), 497-527.

Freedom House. *Press Freedom Survey 2000*. New York and Washington: Freedom House,, 2000.

Garoupa, N. M. "The Economics of Prosecutors", in: Harel, A. and Hylton, K. (eds.). *Economics and Criminal Law*. Cheltenham: Edward Elgar, 2012, 231-242.

Hayo, B. & Voigt, S. "Explaining de Facto Judicial Independence", *International Review of Law and Economics*, 27, 2007 (3), 269-290.

Jehle, J.-M. "The Function of Public Prosecution within the Criminal Justice System", in: *Coping with Overloaded Criminal Justice Systems. The Rise of Prosecutorial Power Across Europe*. Berlin and Heidelberg: Springer, 2006, 3-25.

Jehle, J.-M. & Wade, M. "Preface", in: *Coping with Overloaded Criminal Justice Systems. The Rise of Prosecutorial Power Across Europe*. Berlin and Heidelberg: Springer, 2006,

La Porta, R., Lopez-de-Silanes, F. & Shleifer, A. "The Economic Consequences of Legal Origins", *Journal of Economic Literature*, 46, 2008 (2), 285-332.

Luna, E. & Wade, M. "Preface", in: *The Prosecutor in Transnational Perspective*. Oxford: Oxford University Press, 2012a, xi-xvii.

Luna, E. & Wade, M. "The Prosecutor as Policy Maker, Case Manager, and Investigator. Introduction", in: *The Prosecutor in Transnational Perspective*. Oxford: Oxford University Press, 2012b, 1-19.

Montalvo, J. G. & Reynal-Querol, M. "Ethnic Diversity and Economic Development", *Journal of Development Economics*, 76, 2005 (2), 293-323.

Myttenaere, R. *The Immunities of Members of Parliament*. Geneva: Inter-Parliamentary Union, 1998.

Norris, P. *Democracy Timeseries Data Release 3.0*. Cambridge: Harvard University, 2009.

Tonry, M. "Prosecutors and Politics in Comparative Perspective", in: *Prosecutors and Politics. A Comparative Perspective*. Chicago: University of Chicago Press, 2013, 1.

Voigt, S., Gutmann, J. & Feld, L. P. "Economic Growth and Judicial Independence, a Dozen Years On. Cross-Country Evidence Using an Updated Set of Indicators", *European Journal of Political Economy*, 2015 forthcoming.

Weigend, T. "A Judge by Another Name? Comparative Perspectives on the Role of the Public Prosecutor", in: *The Prosecutor in Transnational Perspective*. Oxford: Oxford University Press, 2012, 377-391.

Appendix 1: Single Components Entering the Indices of Prosecutorial Independence

Here, we document the single components that went into the construction of both the *de jure* as well as the *de facto* indicator. Please note that the original questionnaire asked these questions in a different order and also that it did not contain any of the headlines used here to make the structure of the *de jure* indicator more visible. For information on how the variables were coded, please turn directly to van Aaaken et al. (2010).

De Jure Prosecutorial Independence

General Traits

- (1) Is the office of state prosecutor (a) mentioned in the Constitution? (b) mentioned in the Law? (c) mentioned somewhere else?
- (2) Are formal qualification prerequisites for being appointed as a prosecutor less demanding than those applying to judges? (a) yes (b) no
- (3) Removal of state prosecutors is (a) easier, (b) the same, (c) more difficult than removing judges from office.
- (4) Is there an impersonal rule that allocates incoming cases to specific prosecutors? (a) yes (b) no

Personal traits

- (5) Do **high-level prosecutors** enjoy tenure (a) for life or until retirement? (b) for a fixed term of ___ years, (i) with renewability? (ii) without renewability? (c) other, namely _____
- (6) How are **high-level** public prosecutors nominated/appointed/elected? (a) High-level prosecutors are nominated and appointed by one or more members of the executive; (b) High-level prosecutors are nominated by one or more members of the executive and are elected by parliament (or a committee thereof); (c) High-level prosecutors are nominated by one or more members of the executive and are elected by the judiciary; (d) High-level prosecutors are nominated and elected by parliament (or a committee thereof); (e) High-level prosecutors are nominated by parliament (or a committee thereof) and are elected by one or more members of the executive; (f) High-level prosecutors are nominated by parliament (or a

committee thereof) and are elected by the judiciary; (g) High-level prosecutors are nominated and elected by the judiciary; (h) High-level prosecutors are nominated by the judiciary and are appointed/elected by one or more members of the executive; (i) High-level prosecutors are nominated by the judiciary and are elected by parliament (or a committee thereof); (j) High-level prosecutors are nominated by the judiciary, the legislature, or the executive and are elected by actors not representing any government branch (academics, the public at large); (k) High-level prosecutors are elected by general elections. (l) High-level prosecutors are elected by still a different procedure, namely ...

(7) **Low-level prosecutors** can be promoted by (a) high-level prosecutors; (b) the minister of justice (c) other members of the executive.

(8) **High-level Prosecutors** can be removed from office (a) only by judicial procedure, (b) by decision of one or more members of the executive, (c) by decision of parliament (or a committee thereof), (d) by joint decision of one or more members of the executive and of parliament (or a committee thereof), (e) other.

(9) **Low-level Prosecutors** can be removed from office (a) only by judicial procedure, (b) by decision of one or more members of the executive, (c) by decision of parliament (or a committee thereof), (d) by joint decision of one or more members of the executive and of parliament (or a committee thereof), (e) other. The reasons are (e.g. disciplinary offence):
_____.

(10) Do **low-level prosecutors** enjoy tenure (a) for life or until retirement? (b) for a fixed term of ___ years, (i) with renewability? (ii) without renewability? (c) other, namely _____.

(11) Do **criminal law judges** enjoy tenure (a) for life or until retirement? (b) for a fixed term of ___ years, (i) with renewability? (ii) without renewability? (c) other, namely _____.

Formal Traits

(12) Does the head of the procuracy have the power to give instructions to prosecutors (a) with regard to specific cases?, (b) by issuing general guidelines? (c) not at all?

(13) Do members of the executive have the power to give instructions to prosecutors (a) with regard to specific cases? (b) by issuing general guidelines? (c) not at all?

(14) Can an investigation be reallocated to another state prosecutor against the will of the hitherto investigating state prosecutor without due reason? (a) yes (b) no

(15) Are the possibilities for reallocation enumerated by law? (a) yes (b) no; They are _____.

Monopoly

(16) Is the power to initiate court proceedings with regard to crimes (a) confined to state prosecutors only? (b) also available to others (i) namely the police? (ii) directly concerned individuals?, (iii) others (such as associations), namely _____.

(17) Prosecutorial decisions are subject to review by the judiciary. Does the judiciary have the competence to (a) review the charges brought by the prosecutor? (b) review the decision to prosecute a certain crime? (c) review the decision not to prosecute a certain crime due to legal or factual deficiencies? (d) review the use of the opportunity principle by the prosecutors?

Discretion

(18) Is the principle of mandatory prosecution (a) mentioned in the Constitution (b) mentioned in the law? (c) mentioned in precedent/court decisions, (d) not part of the legal system.

(19) Please answer this question only if mandatory prosecution is the pertinent legal principle in your country. Are exceptions – due to the opportunity principle – enumerated (a) in the Constitution? (b) in the law? (c) in precedent/court decisions.

De Facto Prosecutorial Independence

(20) In the decade from 1991 to 2000, approximately _____ prosecutors were forced to retire against their will.

(21) In the decade between 1991 and 2000, prosecutors have been removed against their will approximately _____ times.

(22) Since 1960, the laws relevant for the prosecution of crimes committed by members of government have been changed (a) 0 times, (b) 1 or 2 times, (c) 3 or 4 times, (d) 5 or 6 times, (e) 7 or 8 times, (f) more than 8 times.

(23) Since 1960, the income of prosecutors has remained at least constant in real terms. (a) yes (b) no

(24) Since 1960, the budget of state prosecutorial offices has remained at least constant in real terms. (a) yes (b) no