

THE PUBLIC PROSECUTION OFFICE IN GERMANY : LEGAL STATUS, FUNCTIONS AND ORGANIZATION

*Eberhard Siegismund**

I. INTRODUCTION

Where the media in Germany are concerned with legal matters and problems, it is particularly the criminal law that is the focus of public attention. Serious news magazines regularly report on spectacular criminal offences and on the way in which they are dealt with by the investigating authorities and the courts. Thus, a few years ago, a murder case with a policeman as the victim, moved centre-stage – a trial that went on for months; this was followed by the Mainz child molester case – a case that made legal history because it caused Parliament to change the law and establish video examinations as part of criminal procedure; and now we have a case against three right-wing radicals in an East German town, who set fire to an apartment block several years ago, thereby endangering the lives of a large number of asylum seekers.

Whilst it is occasionally apparent that an effort is being made to report objectively on the course of such trials, one cannot fail to recognise a tendency towards critical reporting, indeed in two respects: on the one hand, public attention is drawn to judicial sanctioning practice, which is sometimes felt to be too lenient – especially with regard to young criminal offenders; on the other hand, the criminal prosecution practice of the police and the public prosecution office is often eyed very critically.

Even though it deserves to be called – actually by dint of statute, and this is something I will be coming back to later – the “most objective authority in the world”, the public prosecution office is, however, not infrequently said, as the “cavalry of the law”, to demonstrate a certain “dashing spirit” and is thus thought to be blind in its enthusiasm for prosecution. Public prosecutors, although said to investigate swiftly and in a straightforward manner, are said to do so, however, one-sidedly to the accused’s disadvantage, without any sure instinct and without the requisite critical distance. Charges of this kind were heard again just recently in petitions addressed to the Federal Ministry of Justice in Berlin, after a young man had been convicted of attempted murder and sentenced to a long term of imprisonment in a trial based on circumstantial evidence. Here the victim was a policewoman; her lover and her father, who were also among the suspects, were also policemen. From the media vantage point, the investigating authorities had erroneously concentrated their inquiries on the person who was subsequently convicted and – as they were professional colleagues – had spared the other two suspects further investigations in line with the principle that birds of a feather flock together. An interesting little detail here: after the Federal Court of Justice had dismissed the appeal on points of law only against the judgment of the lower court, composed of three professional and two lay judges, the convicted person’s application for the reopening of the proceedings has now been granted.

Occasionally, but only very seldom, the charge has also been levelled in the press that the public prosecution office is kept on a tight rein by the Government. It is said to be subjected to political influence in its investigations, perhaps with the result that people close to the Government are not being prosecuted with the requisite vigour. In Germany, however, these are matters that do not fall within the competence of the Federation but rather within the competence of the Länder, for in Germany the organization of the justice system is fundamentally a matter for the constituent states of the Federation, i.e. the Bundesländer.

Following a brief introductory historical overview, I would now like to acquaint you with the legal status and functions of the public prosecution office as well as with organizational questions. At this point I will be less concerned with scientific discourse than with a practice-oriented presentation.

II. THE LEGAL STATUS OF THE PUBLIC PROSECUTION OFFICE IN GERMANY

The status and functions of the public prosecution office are laid down by statute, i.e. by the Courts Constitution Act – in its sections 141 to 151 – and by the Code of Criminal Procedure – for instance, in sections 158 to 163 – but not in

* Deputy Director General in the Judicial System Division,
Federal Ministry of Justice,
Berlin, Germany

detail and certainly not conclusively. The provisions in the Courts Constitution Act – which I shall refer to as the CCA – on the status of the public prosecution office rather tend to have the character, at least in part, of guiding principles or of organizational principles, whereas the important allocations of function in the Code of Criminal Procedure are mainly drafted in the form of general clauses.

Nevertheless, in Germany we have had largely positive experience with this system of provisions and so, in October 1990 when East and West Germany were reunified, we also transferred this part of the law unchanged to the new *Bundesländer*.

A. Historical Review

In German criminal procedure the public prosecution office is a relatively young institution. The relevant provisions were conceived on the model in French criminal procedure. Until the beginning of the nineteenth century, France had an inquisitorial procedure conducted in secret and in writing. After Montesquieu had extolled the virtues of English legal institutions as models for the constitution of the courts and for criminal procedure, these institutions were adopted, particularly the principle of *ex officio* prosecution, the parties' duty to furnish proof, the principle of oral proceedings, the principle of proceedings in public, and, above all, trial by jury.

The definitive element of French criminal procedure was a prosecution proceeding where the charges were preferred by a special state criminal prosecuting authority, i.e. a public prosecution office. Compared with the procedure in force in Germany, French procedural law displayed indisputable objective advantages, for in Germany proceedings before the criminal courts up to the mid nineteenth century were conducted in writing and in secret. The criminal courts were equipped with their own investigating staff – the court police. The court police were responsible for clearing up the facts of a case until they were “ripe” for final judgment by the court. There was hardly any control of the police, or none at all. Criminal court judges were reproached for “lack of diligence, bias and overweeningness”. Hence the Prussian King was initially concerned only with disciplining the courts and affording the state interest in imposing punishment greater chances of enforcement. It was, however, the more liberal elements in the Berlin Ministry of Justice who succeeded in developing a conception for reform in 1845: according to this conception, the public prosecutor was not only to act in the state's interest but also to show equal concern for the defendant, i.e. for his defence. This was designed to obtain popular support for a novel institution, and to make it clear that the public prosecution office was now to be the custodian of the law, for the benefit of the defendant as well.

The Ministry took an even greater step forward by making the decision to put the police under the control of the public prosecutor, for there was specific cause for concern that reasonable account was not being taken of the accused's rights during police prosecution measures.

The statute that came into force at the beginning of 1847 contained the following core provisions:

- Public prosecutors were made subject to the official supervision of the Minister of Justice and to his instructions.
- Courts were not allowed to intervene *proprio motu*, but only upon application by the public prosecution office.
- Public prosecutors had to watch over compliance with statutory provisions in criminal proceedings. A public prosecutor had to take care that no guilty person escaped punishment and that the guiltless were not prosecuted.

B. What is the Situation Like in Germany Today with Regard to the Public Prosecution Office, when Seen against the Backdrop of its Early Beginnings in Berlin?

The modern view is that public prosecution offices are hierarchically structured, independent organs of the administration of criminal justice. They are on an equal level with the courts. What this means in detail is easier to understand when one knows how public prosecution offices are structured in Germany. The Federal Republic of Germany is a federal state. And because Judicial Power lies with the individual *Bundesländer* – 16 in all – we have independent *Land* public prosecution offices in each *Bundesland*.

The public prosecution office is organized parallel to the courts, which means that the territorial competence of public prosecutors is governed by the territorial jurisdiction of the court where the public prosecution office has been established: section 143(1) of the CCA.

Section 141 of the CCA states that there should be a public prosecution office at every court. Hence, there is a public prosecution office at every Regional Court in the *Länder* that make up the Federal Republic of Germany, meaning a total of 116 public prosecution offices at the Regional Courts. As a rule, these public prosecution offices also carry out public prosecution functions at the Local Courts. They are subordinate to a regional public prosecution office established at every Higher Regional Court (sections 142 and 147 of the CCA), so there are a total of 25 regional public prosecution offices. The regional public prosecution offices are, in turn, subordinate to the respective ministers of justice of the *Bundesländer*: section 147 of the CCA.

Example: There is one public prosecution office each at the Regional Courts in Bonn, Cologne and Aachen. These public prosecution offices are subordinate to the regional public prosecution office in Cologne. The regional public prosecutor there is subordinate to the Minister of Justice of the *Land* of North-Rhine/Westphalia in Düsseldorf.

On the federal level, the Federal Public Prosecution Office exists parallel to the Federal Court of Justice. This authority is headed by the Federal Public Prosecutor General: section 142(1), no. 1, of the CCA; there are other federal public prosecutors assigned to him. On the one hand, the Federal Public Prosecution Office performs the classical functions of a “public prosecution office at the Federal Court of Justice”, i.e. it represents the prosecution in all cases that come before that court: section 135 and section 121(2) of the CCA. Section 142a of the CCA otherwise provides for special competence of the Federal Public Prosecution Office to act in cases of first-instance jurisdiction of the Higher Regional Courts (section 122[1] and [2] of the CAA), i.e. particularly in cases of crimes against the state and of terrorist crimes as well as in other cases involving serious crime that goes beyond individual *Länder* borders. This means, for instance, that the intervention of the Federal Public Prosecutor General was called for on an exceptional scale after the events of 11 September 2001 in New York.

I still need to mention that in cases of “normal” delinquency there is no national public prosecution office operating throughout the Federation, since criminal prosecution is on principle a matter for the *Länder*. Thus there is no superior/subordinate relationship of any sort between the Federal Public Prosecution Office in Karlsruhe and the *Länder* public prosecution offices at the Higher Regional Courts and the Regional Courts. Nevertheless, in agreements reached by *Länder* ministers of justice, two institutions have been created that are competent in certain criminal prosecution matters, where such competence encompasses all the *Länder*:

- One of these institutions is the Central Agency in Ludwigsburg, concerned with the registration and clearing up of cases of violent action perpetrated by the Nazis, and having the obligation to pass these cases, for the purpose of prosecution, to the public prosecution office at the court with local jurisdiction over the place where the perpetrator is living,
- The other institution takes the form of a central agency for collecting evidence and documentation; this agency was established at the regional public prosecution office in Braunschweig where it is responsible for documenting violent action perpetrated by state organs of the former GDR, and here in particular homicides perpetrated at the border wall in Berlin, as well as on the inner German border; furthermore, physical assaults and deprivation of liberty for political reasons are also included in the agency’s documentation functions. However, apart from the homicide crimes, prosecution of the offences concerned is in most cases already barred by lapse of time (statute of limitations).

III. FUNCTIONS OF THE PUBLIC PROSECUTION OFFICE

To illustrate the public prosecution office’s status, it would seem expedient to look at its various functions in criminal proceedings.

The public prosecution office has three main functions: It is

- the “leader, so to speak, of the investigation proceedings”
- the authority that conducts the prosecution in the intermediate proceedings and in the main proceedings, and
- it is the authority that is responsible for execution of sentence in criminal proceedings, as well as the authority handling pardons in criminal cases.

A. Leader of the Investigation Proceedings

In investigation proceedings the public prosecution office has the sole power of indictment: section 152(1) of the Code of Criminal Procedure – which I shall now be referring to as the CCP. The principle of official prosecution, which is formulated as a legal norm here, means that criminal prosecution is fundamentally the duty of the state (acting for the community of law-abiding people), and not of the individual.

1. The Principle of Mandatory Prosecution

The public prosecution office shall, unless otherwise provided by law, be obliged to take action in relation to all criminal offences which may be prosecuted, provided there are sufficient factual indications: section 152(2) of the CCP. The principle of mandatory prosecution means a compulsion to prosecute any and every suspect, and, on fulfilment of all preconditions, to prefer public charges.

With the public prosecution office's monopoly over indictment, practical application is given to the principles of equality before the law (Art. 3 of the German Constitution) and of justice within the realm of possibility. The public prosecution office's source of information is from receipt of information about a criminal offence or from an application for criminal prosecution (section 158[1] of the CCP) or from somewhere else – particularly from a police communication – regarding suspicion of commission of a criminal offence; this is the usual way in which the public prosecution office gets its information, for more than 80 % of criminal informations are laid with the police. The public prosecution office has to investigate the facts of a case for the purpose of deciding whether public charges are to be preferred; it either has to do this itself or through the police: sections 160(1) and 163 of the CCP.

In its investigations the public prosecution office is bound to maintain absolute objectivity: hence it is required to ascertain not only incriminating but also exonerating circumstances (section 160[2] of the CCP) and it shall ensure that such evidence is taken the loss of which is to be feared. It is these provisions that gave rise to the familiar saying that the public prosecution office is “the most objective authority in the world”.

2. The General Investigation Clause in Section 161 CCP

The statutory basis for the public prosecution office's authority to conduct any kind of investigation, that is to say the core provision regulating investigation proceedings, is section 161(1) of the CCP:

“For the purpose indicated in section 160(1) to (3), the public prosecution office shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided there are no other statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office, and they shall be entitled in this case to request information from all authorities”.

This general investigation provision also forms the legal basis for those cases of interference with basic rights that are less intensive and are therefore not covered by a special statutory authority, such as for instance;

- short-term monitoring,
- the use of undercover investigators (i.e. police informers) or
- the use of purchasers in a bogus sale.

The important thing is that the public prosecution office can obtain information from public authorities, from other agencies or persons at any time. The authorities are obliged to give the public prosecution office the information in question, even where the requested information still has to be put together by collecting material, or where it has to be acquired from observation of official operations. The requested authority may only refuse to provide the information concerned if its provision will cause detriment to the welfare of the Federation or of a German *Land*, or would seriously endanger performance of public functions or would make such performance much more difficult.

So far as the requested authority's duty to provide information extends, the public prosecution office may also question the officials working for that authority or get them to submit the relevant documents. Information may also be requested from other agencies or persons. If such information is refused, a formal examination may be imposed, and in certain circumstances, surrender may be requested, or search and seizure ordered. The public prosecutor will regularly draw attention here to the conceivable types of possibility in order to lend emphasis to his request for information.

Pursuant to section 161a of the CCP the public prosecution office may formally question witnesses and experts for the purpose of the investigation. Upon being summoned, they are obliged to appear before the public prosecution office and to make statements on the subject matter or to render their opinion. If they are summoned only to appear before the police, they will not be under this obligation. Examination under oath is, however, reserved only for the judge.

3. The Jurisdiction of the Investigating Judge

If the public prosecution office considers a judicial investigation to be necessary it will have to make the relevant applications to the Local Court, to be decided by the investigating judge: section 162 of the CCP; what is meant here is particularly coercive measures, like a search (sections 102 et seqq. of the CCP), seizure (sections 94 et seqq. of the CCP) and remand detention (sections 112 et seqq. of the CCP). Under specific conditions certain coercive measures may also be ordered in exigent circumstances by the public prosecution office acting on its own (see e.g. section 105[1], first sentence, of the CCP for the search of private premises).

Until about a year ago both the public prosecution office and the police with responsibility for conducting criminal investigations had become accustomed to relatively uninhibited application of the element of “exigent circumstances”, and they therefore made relatively generous use of the possibility, for instance, of searching people’s homes without a judicial decision to this effect, on the ground that the element of “exigent circumstances” had been found to pertain. But the Federal Constitutional Court brought this practice to an abrupt end with its decision of 20 February 2001. The principles guiding this decision may be set out as follows:

The Constitution guarantees the inviolability of the home. Hence it is ensured that the individual has an elemental living space, having due regard to his human dignity. On his private premises he has the right to be left in peace. A search represents a serious interference with this constitutionally protected sphere of life. It is in line with the weight attached to such interference and with the constitutional importance of protecting private premises that the Constitution should, on principle, reserve the right of ordering a search for members of the judiciary.

It is now the responsibility of all state organs to ensure that this judicial prerogative becomes effective in practice as a means of securing a elemental basic right. Both the courts and the criminal prosecuting authorities have to take action to counter any deficits in effectiveness. This means practical and organizational measures to create the conditions needed for judicial control that is actually effective. Only by doing this can there be suppression of the frequently criticised tendency on the part of the criminal prosecuting authorities towards excessive use of powers available in cases of urgency.

Conclusion: It must remain absolutely exceptional for the investigating authorities to have competence in regard to searches of private premises.

This decision of the Federal Constitutional Court is of very considerable importance in practice. It is now no longer sufficient if there is just pure speculation or just presumptions based on everyday criminalistic experience as the basis for assuming exigent circumstances. Exigent circumstances have to be established on concrete facts relating to the individual case. The mere possibility of losing evidence will not be enough. Hence the criminal prosecuting authorities must make a regular attempt to obtain an order from the competent court with jurisdiction before beginning a search. Only in extremely exceptional situations will they themselves be allowed to make the order in exigent circumstances without first trying to obtain a judicial decision. Not only do the investigating authorities have to take account of the Federal Constitution Court decision, so do the courts: they are required to set up an emergency or duty service in order to ensure that an investigating judge can be reached at any time.

4. The Principle of Discretionary Prosecution

The public prosecution office’s competence to terminate proceedings on discretionary grounds is such an everyday occurrence that one cannot imagine doing without it (sections 153 et seqq. of the CCP). These possibilities of terminating proceedings are indispensable particularly for the purpose of swift disposal of petty crime (shoplifting, fare dodging, negligent infliction of bodily harm). Here we are essentially looking at the following measures:

- Termination by the public prosecution office, pursuant to section 153(1) of the CCP, where the perpetrator’s guilt is considered to be of a minor nature and there is no public interest in the prosecution (e.g. shoplifting by a first offender where the item stolen is worth up to 5 Dollars).

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- Termination, pursuant to section 153a of the CCP, where the perpetrator does not bear heavy guilt and where the conditions and instructions imposed on the accused are of such a nature as to eliminate the public interest in criminal prosecution (e.g. where there has been minimal bodily harm and the accused is willing to pay the victim a sum of money for pain and suffering).
- Termination pursuant to section 154 of the CCP, or else limitation of criminal prosecution pursuant to section 154a of the CCP in a case where several offences have been committed but where other offences committed by the same perpetrator in addition to the principal offence are no longer significant (on the grounds of procedural economy: the accused first steals a bottle of beer in a department store, and an hour later he commits a bank robbery; here the proceedings may be terminated in respect of the theft because a severe sentence is to be expected for the robbery).

It follows from the plenitude of competence I have just outlined that the public prosecution office is rightly referred to as the “leader of the investigation proceedings”.

5. Disposal of Cases by Public Prosecution

If the public prosecution office has not brought the proceedings to a conclusion through application of the provisions I have referred to, or has terminated the proceedings for lack of evidence of commission of an offence, it will have three options at its disposal:

- To start with, the public prosecution office may apply for issuance of a penal order if a main hearing does not seem necessary and a prison sentence is to be expected not exceeding one year (with suspension of sentence on probation).

Penal order proceedings have developed into an extremely popular instrument for the public prosecution office; sanctioning is swift and economical in procedural terms, and it is less of a burden on the accused because he is spared a main hearing held in public. In 2001 approximately 500 000 penal orders were issued in Germany.

- Secondly, the public prosecution office may make an application for a decision to be taken in an accelerated procedure if, given the simple factual situation or the clarity of the evidence, the case is appropriate for an immediate hearing. (maximum sentence of one year's imprisonment).

The accelerated procedure, a type of procedure that deserves support in the light of the view that punishment should, as far as possible, follow hot on the heels of the offence, has not yet developed its full potential in Germany. Practitioners are experiencing some difficulty with this procedure; it is mainly a matter of encountering organizational difficulties (at present also including co-ordination problems between the police and the public prosecution office), and this is preventing an increase in the number of cases here. In 2001 there were only 35,000 cases where use was made of the option of following the accelerated procedure.

- Thirdly, the public prosecution office may prefer charges. Whenever the investigations offer sufficient reason for preferring public charges, the public prosecution office must prefer such charges by submitting a bill of indictment to the court that has jurisdiction locally: section 170(1) of the CCP.

Let me give you a few supplementary figures on operations conducted by the public prosecution office and on its work in investigation proceedings:

In the whole of Germany there are about 5,300 public prosecutors – of whom circa 30 % are women – who deal with roughly 6.5 million criminal offences every year. Charges are preferred in only 540,000 cases, and in addition to this, about 500,000 penal orders are issued. Approximately 3 million cases are terminated by the public prosecution office, of which about 1.2 million cases are terminated for lack of evidence of guilt, and the remainder on the ground of negligible guilt or on other grounds. Indictments are mainly preferred before the Local Court, i.e. in 530,000 cases. Only 10,000 indictments go to the Regional Court, and a much smaller number, i.e. only about 150, go to the Higher Regional Court.

B. Main Hearing, Filing of an Appellate Remedy

Pursuant to section 226 of the CCP the presence of a public prosecutor shall remain uninterrupted at the main hearing. In extensive proceedings, for instance where the facts of a case are very complex, or where there are several defendants, the public prosecution office will be represented by two prosecutors.

The main hearing begins with the indictment being read out: section 243(3) of the CCP. While the evidence is being taken the public prosecutor shall have the right to ask questions (section 240[2], first sentence, of the CCP) and the right to apply for evidence to be taken (sections 244 et seqq. of the CCP). In practice the public prosecutor usually exercises restraint here and leaves it to the defence to make applications for evidence to be taken. When the taking of evidence has been completed, the public prosecutor will give his closing speech: section 158(1) of the CCP.

If the public prosecution office considers the decision questionable on factual or legal grounds, it may seek an appellate remedy, also for the defendant's benefit: section 296 of the CCP. When appellate remedies are sought, however, this usually happens to the defendant's detriment in the vast majority of cases (about 95 % of all cases).

C. Execution of Sentence

The public prosecution office is responsible for execution of sentence. In practice this means that it calls upon the convicted person to pay his fine or to present himself at a specified penal institution at a specified time in order to serve the prison sentence imposed on him.

For social reasons or for health reasons relating to the convicted person himself the public prosecution office may grant the convicted person permission to pay his fine in instalments or to begin service of his prison sentence at a later date. The public prosecution office is also the authority responsible for dealing with pardons; hence it can, in a decision granting a pardon, remit execution of a prison sentence in certain extremely rare cases, for instance where the convicted person is seriously ill. In my twelve years of experience in the criminal courts I only encountered this in one or two cases.

IV. THE POSITION OF THE PUBLIC PROSECUTION OFFICE BETWEEN JUDICATURE AND ADMINISTRATION

A. Parallels with Judicial Training and Activity

Every public prosecutor in Germany undergoes the same – excellent – training as judges do. As a rule, he will have spent four or five years training at a university, and then registered for the First State Examination in Law, which takes about six months and which covers the whole syllabus, written examinations and a written assignment to be completed within a period lasting several weeks. Following this relatively demanding examination he will undergo a period of practical training lasting roughly two and a half years, ending with a state examination which also takes about six months and for which there are written requirements (written examinations and a written assignment) and oral requirements (analysis of file material, and an oral examination). A public prosecutor's professional qualification therefore corresponds precisely to that of a judge.

The public prosecutor's investigating activities in preliminary proceedings does not actually differ from the duty incumbent on the judge at the main hearing to clear up the facts of the case comprehensively. Like a public prosecutor, the judge is also required by law to clear up the offence in question in full, taking into account all incriminating and exonerating circumstances. In other words, by law the public prosecutor is not a party, and equally he is not the opponent of the defendant.

If one further considers the various opportunities the public prosecutor has in shaping the investigation, opportunities that are otherwise nowhere to be found in the Code of Criminal Procedure, in particular the possibilities of terminating the proceedings, it could be argued that his activity is attributable to the judicial field. However, the public prosecution offices do not exercise any judicial functions; in their essential functions they move in the border area between the executive and the judicature. Even though the majority of cases are disposed of by means of termination by the public prosecution office, this does not constitute an exercise of judicial power in qualitative terms and, as such, is negated by the fact that public prosecutors are bound by instructions received – a subject we still need to discuss – and that they lack the competence to give decisions with final and binding effect, for it is the final and binding decision that forms the essence of judicial power.

B. The Public Prosecution Office as an Organ of the Administration of Justice on an Equal Level with the Courts

The public prosecution offices are not, however, an administrative authority of the executive. Within the administration of justice they have the task, jointly and equally with the courts, of dispensing justice and, as such, they are integrated in the justice system as an independent organ in the administration of justice, without however becoming part of the Third Power, i.e. the judiciary. In other words, the public prosecution office is an institution *sui generis*. It does not "administer" but works towards adjudication, belongs within the functional realm of the courts and, together

with the judge, fulfils the function of dispensing justice in the criminal law field. The public prosecution office builds a bridge between the executive and judiciary and therefore stands between both Powers. And so the position and the function of the public prosecution office are best described as follows:

The public prosecution office is an organ in the administration of justice on an equal level with the court. It is a custodian of the law and therefore serves to implement criminal justice.

V. OVERVIEW OF STRUCTURES AND ORGANIZATION AT THE PUBLIC PROSECUTION OFFICES

A. Internal Structure of the Public Prosecution Office

The organizational foundations of the public prosecution offices are only dealt with in initial outline by the Courts Constitution Act. Other provisions are to be found in rules on the organization and service operations of the public prosecution office, contained in uniform orders issued by the *Land* ministries of justice. The public prosecuting authorities are hierarchically – monocratically – structured. Pursuant to section 147 no. 3 of the CCA they are headed by a “first official”. The heads of the authority at the public prosecution offices at the Higher Regional Courts have the official title of “Public Prosecutor General”; the heads of the authorities at the public prosecution offices established at the Regional Courts have the official title of “Chief Senior Public Prosecutor”.

The public prosecution office is divided into divisions that are headed by senior public prosecutors. The number and scope of the divisions within a public prosecution office depend on the area of competence of the authority concerned. As a rule, larger public prosecution offices have general divisions and also special divisions geared to specific areas of crime. The general divisions cover cases of “normal” everyday crime such as, for instance, theft, offences of infliction of bodily harm, criminal damage to property and fraud.

The general division is usually the training ground for new professionals starting their careers; it is in the general division that they become best acquainted with the fundamentals and techniques of public prosecution work. These public prosecutors are often called “alphabet men” because of the fact that they have to process, for example, all cases against accused persons whose family names begin with the letters A to D. Although such cases are rarely spectacular, the large number that have to be processed parallel to one another – sometimes amounting to 1,000 *per annum* – and also the breadth of life situations involved demand a high measure of perception, operative ability and legal knowledge.

That public prosecutors – like the police investigating authorities, too – are required to deal mainly with mass crime or everyday crime is shown by the statistics kept. The statistics indicate that theft, fraud, criminal damage to property and infliction of bodily harm top the list of criminal offences committed in Germany.

In the special divisions cases are processed falling within closely defined fields of crime. Here mention must be made of:

- corruption,
- organized crime,
- capital crimes (i.e. particularly homicide crimes),
- political crimes, criminal offences against press laws,
- economic crimes,
- environmental crimes,
- drug-related offences,
- juvenile crimes and those relating to the protection of juveniles,
- sexual crimes,

- traffic crimes.

Usually through many years of specialisation in certain groups of offences the public prosecutors on the staff of a division will have acquired profound expertise and legal knowledge in their fields. It is true that they are not usually inundated with a multitude of cases; nevertheless, their work is often so complicated that the workload of a special division staff member is no less than that of his colleague from the “alphabetical” division.

B. Core Elements of a Special Division for the Suppression of Economic Crime

It is clear that the structures and sequences organized for the special divisions, which often have to process spectacular cases and are therefore under particularly strong pressure to succeed, need to be especially well structured in order to ensure concentrated and accelerated processing of proceedings. This I would like to illustrate with reference to the area of economic crimes, which, in some of the *Bundesländer*, are concentrated at one single public prosecution office. In the light of what I have just said, the competent public prosecutors can be assumed to have absolutely expert knowledge.

- The preconditions for effective and time-saving work in this field lie in both staff composition and material equipment within this division. Public prosecutors, registry staff and typists need to be a practised team and must not be subject to constant changes of staff.
- As a supporting measure, training and further training must be ensured in the whole division, particularly for the public prosecutors.
- What has long since become indispensable is the reinforcement of economic crimes divisions with business experts, e.g. from banking, EDP experts and auditors, who all have to be integrated into the public prosecution office. Here the expenditure of time and money that would be associated with calling in external expertise can be kept at a reasonable level.
- What is also indispensable is an EDP infrastructure with integrated workplace networking, so as to be able to operate competitively.
- At the same time, we need to abandon the public prosecutor as a “sole combatant”: there are new forms of organization involving a combination of small groups with two or three public prosecutors backed up by the relevant service units.
- Here one will regularly have to go a step further and also bring in experienced police staff. Such multi-track co-operation could avert friction and loss of time, especially in large-scale proceedings.

C. How Does the Individual Public Prosecutor organize his Work?

1. As a Division Staff Member

Let us now go back to the work done by divisional staff in the general divisions, in the “alphabetical division” dealing with “normal” crime of an everyday nature. The diversity of his work cannot be encompassed in just a few sentences. Moreover, the way in which a public prosecutor on the staff of a division actually performs his work will also depend on his personality, his temperament and his professional commitment as well as on his area of work.

It is well imaginable that public prosecution office investigations can be conducted almost entirely from one’s desk – with more intensive use of the telephone. This way of performing the work to be done is frequently found in practice, because the enormous workload, especially in the “alphabetical” divisions seldom allows time for external investigatory acts – for instance inspection of the scene of the crime or participation in the search of private premises.

Some years ago, the Federal Ministry of Justice commissioned a “Survey of organization at the Public Prosecution Offices and the Regional Public Prosecution Offices”. This survey was designed to show ways of effectively shaping internal organization as well as to speed up work sequences by means of new forms of organization, by the intelligent use of EDP and by taking other measures.

In the framework of this survey public prosecutors were asked to make a down-to-the-minute record of their work assignments. The analysis that followed led to interesting results, for the first ten slots were filled by the following assignments:

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1. obligatory representation of the public prosecution office at specified court sittings 30.5 %
2. studying files/processing 13 %
3. telephone calls 10.5 %
4. dealing with the public 9.5 %
5. drafting public charges 8.5 %
6. termination orders 8.0 %
7. travelling time 8.0 %
8. deadlines/statistics 5.5 %
9. inquiries and communications 3.75 %
10. training 2.75 %

It is interesting to see *inter alia* that termination orders accounted for more or less the same amount of work as the drafting of public charges did.

2. As a Head of Department

The allocation of functions for a senior public prosecutor, as the departmental head, takes on a very different complexion:

1. responsibilities of a departmental head 29 %
2. dealing with the public 26 %
3. studying files and processing 15 %
4. telephone calls 8 %
5. terminations 7 %
6. legal remedies/appellate remedies 6 %
7. travelling time 4 %
8. own investigating activity 2 %
9. applications to the court 2 %
10. transfer orders 1 %

The responsibilities of a departmental head include, *inter alia*, the assignment of divisional staff to the court sittings where they are required to represent the public prosecution office; giving decisions on whether corpses may be released; the examination of termination orders; the examination of new criminal informations; the checking of reports on sittings; the evaluation of daily newspapers; and the preparation of draft testimonials.

Dealing with the public mainly involves specialist discussions and consultations within the authority. This area naturally takes up much more time than it does in the case of a "normal" public prosecutor.

It is a remarkable fact, however, that the head of a department spends most of his time at his desk; his own investigating activity, amounting to just 2 %, is of hardly any significance.

**VI. ARE POLICE ONLY IN THE ROLE OF ASSISTING
THE PUBLIC PROSECUTION OFFICE?**

A. General Proposals to Improve Co-operation between the Police and the Public Prosecution Office

However, the fact of the public prosecutor being "tied to" his desk – probably a mainly self-imposed practice – does not fit Parliament's picture of the public prosecution office, in its role of leading the investigation proceedings, being required to take charge of all investigations, i.e. particularly those conducted by the officials assisting it, for this is a task that can hardly be performed from one's desk. In the light of such very evident restraint shown by the public prosecution office in investigation proceedings, it is not surprising that in recent years the police, who in fact – compared with the public prosecution office – have more expertise in criminalistics, and more technical equipment, and have therefore attained a higher degree of specialisation, are now intensifying their demands for an expansion of their police powers in criminal proceedings at the expense of functions exercised by the public prosecution office and by judges.

Naturally, it will often be appropriate to limit the public prosecution office's power of heading investigations to the basic issues and central aspects of the investigation proceedings, and to give the police a free hand with regard to the detail. However, in an individual case, the sensitivity of a case, and the legal difficulties involved, may make it necessary

for practically all investigative steps to be planned and implemented in close co-ordination with the police. Generally, as the evaluation of the statistics shows, hardly any use is made of this possibility.

What can be done to block the public prosecution office's retreat from investigation proceedings? Can the theory of the public prosecution office's overall responsibility for investigation proceedings still be upheld in the face of actual control by the police? The experts brought in by the Federal Ministry of Justice have advised against having statutory solutions; they propose organizational changes adapted to regional needs:

- Intensive consultation with the police about matters arising in connection with a particular investigation reduces police frustration about releasing the accused or about subsequent termination of the proceedings, and leads to better results in the investigation, because there can then be precise determination in advance of what is actually needed for the purpose of preparing the main hearing.
- Changes of location (having the police criminal investigation department at the public prosecution office, or else having public prosecutors at the police criminal investigation department) might intensify co-operation and reduce bureaucratic sequences as a result of the closer proximity.
- Regular joint official discussions between the police and the public prosecution office may, in different areas, lead to co-ordinated and simplified investigations. This also includes, for instance, agreements on the use of forms when a criminal information is laid in shoplifting cases.

B. Optimism of Co-operation in the Accelerated Procedure

Let us now look at these recommendations in specific terms, referring to the example presented by the "accelerated procedure": Cases that are clear and simple in terms of their facts – like shoplifting or fare dodging – are regularly disposed of in the accelerated procedure. In such cases the statute envisages punishment following hot on the heels of the offence committed. The public prosecutor does not need to prefer public charges in writing; they will be preferred orally at the beginning of the main hearing and entered in the record made at the court sitting. If the defendant confesses, witnesses can be dispensed with and – under favourable circumstances – judgment pronounced on the day the offence was committed.

As I said at the outset, the investigative work is largely performed by the police acting on their own. Only when they have finished their investigation will the files be sent to the public prosecutor, who will then – so to speak, without getting up from his chair – only have to draft the decision concluding the investigation, i.e. the memorandum of termination or the indictment.

This kind of sequence with processing by the police followed by processing by the public prosecution office ought to come into juxtaposition in the accelerated procedure, whereby the police will bring in their criminalistic and the public prosecution office their court experience. This is what the position is, particularly where an accused person is arrested, for it is at least mandatory for the person apprehended to be questioned immediately, for his committal to be effected at short notice and, if necessary, for him to be brought to court without delay. That requires arrangements to be made on the organizational level between the court, the public prosecution office and the police – something which functions in an exemplary manner in a number of German towns and cities, but which is only in its infancy in other areas .

The motivating energy of efficient collaboration between police investigating officials and the public prosecution office cannot be overestimated in relation to the goal of avoiding, or at least reducing, frustration experienced by the police – as has frequently been the case in the past. It is totally disappointing for investigating officials if an arrested accused is set free by the public prosecution office because the prerequisites have not been fulfilled for issuing an arrest warrant, or where investigatory activity involving great expenditure of time and effort leads to the termination of the proceedings. Since the actual fact of "successful" conclusion of the proceedings, in the sense of obtaining the accused's conviction, is something which the police officials concerned often remain unaware of, it may certainly have an uplifting effect on job satisfaction in the service if police investigation measures can be concluded directly with a judgment.

With this in mind, consideration could be given to the following sequence of police activity in the accelerated procedure: In most cases the police will generally arrest the perpetrator at the scene of the crime. Using police information, the police will then, in addition to taking the accused's personal particulars and ascertaining his personal situation, also ascertain whether he has had any prior brushes with the criminal law. At this stage, they will already be examining whether the facts are appropriate for a hearing using the accelerated procedure, in other words whether the event involving commission of the offence remains within a simple dimension, or whether the evidence is clear.

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The competent police official may now face three different situations:

- Firstly, the situation where the facts are so clear, from the police point of view, that the accused can immediately be taken into the custody of the court, the police will then give the documents to the public prosecutor, who will go on processing the case.
- Secondly, the situation where the police can affirm the case's suitability for swift disposal but rule out taking the accused into custody, for instance because he has a permanent domicile. The accused may then and there be summoned to the court hearing. After his personal particulars have been taken, he will be set free again, the police file on the matter will be closed, and the file will be sent to the public prosecution office.
- Thirdly, the situation where there may be doubts as to whether the case is really appropriate for swift disposal. In such a situation the police official processing the case will get in touch directly with the public prosecutor on duty to deal with urgent cases, in order to get a decision from the latter on whether an accelerated procedure is to be followed at all.

This sort of gradation of action by the police should be the subject of consultation with the public prosecution office so as to improve communication between both authorities and thus also their mutual understanding. Here we find relevant models in pilot schemes in Germany. It is obvious that adjacent accommodation for the public prosecution office and the police may also be beneficial. In fact, the police headquarters of some of the large German cities have made an office available on their premises to the public prosecutor who is responsible for cases involving the accelerated procedure.

VII. PILOT SCHEMES FOR SIPHONING OFF THE PROCEEDS OF CRIME

A. Organizational Recommendations

There certainly are successful models of fruitful co-operation not only between the public prosecution office and the police but also involving close co-operation with customs, the tax and other authorities, i.e. in the field of siphoning off illicit funds. In practice, siphoning off assets acquired through criminal offences has proved to be a difficult matter in legal terms and has actually necessitated great effort, which has effectively restricted its application to a few important cases. The expertise needed for taking urgent measures in an individual case and the relevant experience therefore cannot be assumed – in the long run as well – to apply at all times in the case of every divisional public prosecutor. So, in actual fact, it is the following organizational measures that need to be taken as essential elements of an effective, differentiated and “court-tested” siphoning-off practice:

- Through training and further training adequate basic knowledge will have to be imparted to all divisional public prosecutors and judges.
- At every public prosecution office at least one specialist will have to be appointed who has a more profound knowledge of the subject, who constantly updates his knowledge and who, as a multiplier – here assuming the necessary freedom for him to operate in his service unit – imparts his knowledge within that unit.
- Guidelines, collections of forms, and manuals must be made available for use in everyday practice.
- Close co-operation must be organized with the courts, the police, customs, tax authorities and other partners, whereby the power of the public prosecution office to direct the investigations in substantive terms must remain unassailable.
- Regular joint service meetings must lead to constant mutual exchange of up-to-date information and of court decisions.

B. Practical Application and Successes

On the basis of these perceptions the public prosecution office in Hanover has, for instance, set up a pilot investigation unit where investigations relating to property assets are conducted separately from the other investigations. This unit has the sole task of tracing criminally tainted assets and of freezing them for the benefit of the state or of the victims of the offences concerned. The classical functions of clearing up the offence and conducting the criminal prosecution are the responsibility of other public prosecutors acting in the same case. This central office for “organized crime and corruption” principally has a co-ordinating and response function for legal and organizational questions. It is also responsible for organizing and co-ordinating supra-departmental training events and exchanges of experience, the drafting of forms, and the assessment of success, including securing the assets frozen.

In the police force of the state of Lower Saxony special investigation groups have been set up for the purpose of securing assets. Certain persons have been assigned by the tax offices to act as contacts with the task of responding to these special investigation groups and to the experts at the public prosecution offices.

This pilot scheme has produced very positive results indeed. What was impressive was not only the commitment of all those involved in the project, but also the quality of co-operation and, surprisingly, the considerable extent of the proceeds ensuing from the respective investigations:

About 28 million Marks' worth of assets were siphoned off, i.e. about 14 million Dollars.

This pilot scheme shows that developing communication between the public prosecution office and the police authorities and the close co-operation between them is one of the important requirements for successful investigation work.

VIII. THE FUNCTIONING OF THE PUBLIC PROSECUTION OFFICE

A. Statutory Foundations of the Power to Issue Instructions

After trying to give you an overview of the external contacts of the public prosecution office with the police, I would like to conclude this lecture by giving you a brief statement on the way in which the public prosecution office functions, with special reference to the question of the importance attached to the right to issue instructions – a right that is established by statute – in the everyday business of the public prosecution office.

As I said at the beginning already, the public prosecution office is structured as a hierarchy. According to section 144 of the CCA, public prosecutors act, in their service capacity, as deputies of the head of the authority. So if the public prosecution office at a court is composed – as is usually the case – of several officials, all public prosecutors subordinate to the head of that authority will be acting as his deputy. It follows from this that the acts performed by a public prosecutor at a trial (for instance giving his consent to termination of the proceedings) will also take full effect if they violate a binding instruction given by his superior.

It is explicable, in terms of the monocratic structure of the public prosecution office, that no specific public prosecutor is, in the final analysis, required to have the competence to act in a specific criminal case; on the contrary, changes of competence can be made, as and when desired, within a public prosecution office. The first officials of the public prosecution offices at the Higher Regional Courts, i.e. the Public Prosecutor Generals, and those at the Regional Courts (the Chief Senior Public Prosecutors) are entitled themselves to take over the official duties of the public prosecution office at all courts in their district and, if necessary, to entrust the discharge of those duties to an official who is not the official who would initially be competent, for instance the official duty of representing the public prosecution office at specified court sittings.

The officials of the public prosecution office shall carry out the official instructions of their superior: section 146 of the CCA. The right to issue instructions (section 147) is vested in the public prosecutors who hold positions as superiors as well as in the Minister of Justice. Since, however, the Minister of Justice is not a public prosecutor, his power to issue instructions is referred to as being “external”. An external instruction issued by the Minister of Justice is initially directed to the Public Prosecutor General, who will then, assuming the instruction is accepted, translate it into an internal instruction for the public prosecution office concerned.

B. The Ministerial Right to Issue Instructions as a General Guidance for Action

The actual significance of the Ministerial right to issue instructions is illustrated by the issuing of general guidelines and circulars that do not relate to a specific individual case but to the proper handling of provisions of criminal procedure and of criminal law. Here reference must be made to

- the Guidelines on Criminal Proceedings, containing in particular detailed instructions on the prosecution of certain criminal offences;
- the Guidelines on the Youth Courts Act, containing requirements relevant to criminal proceedings in cases against young persons;
- the Guidelines on Relations with Foreign Countries in Criminal Matters; and

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- the Directive on Communications in Criminal Matters, identifying the service units that are to be informed on the commencement of investigations. Here the particular focus is on communications about persons who are subject to service supervision, to state supervision, to professional supervision or to supervision under the law regulating their profession, such as doctors, clergymen or Public Service staff.

Ultimately, having such guidelines is sensible and indispensable for ensuring that the administration of justice is carried out consistently.

C. The Ministerial Instruction in an Individual Case

By contrast, what is highly problematic is the individual, i.e. specific, Ministerial instruction. Such instructions are, however, a very seldom occurrence. As a rule, it is sufficient for the Ministry to make informal requests, give informal advice or recommendations.

To the extent that there is any public knowledge at all regarding such recommendations – most of which are usually expressed in informal terms – external observers often assume the existence of extraneous political considerations on the part of ministerial bureaucracy.

With this in mind, attention must be drawn to the following fact: the Minister of Justice bears parliamentary responsibility for the Ministry's activities. Hence he, or she, is essentially free to implement his or her legal policies by issuing instructions in an individual case, for in doing so the Minister is also subject to the control of Parliament.

Clearly, when issuing an individual instruction, he can only move within the parameters of what is legally permissible. That the Minister's right to issue instructions is not to collide with the principle of mandatory prosecution and the relevant provisions of criminal law and of criminal procedure law requires no further elaboration.

D. An Instruction Issued Internally within the Authority Concerned

In the final analysis, similar considerations apply to the right to issue instructions internally within the authority itself, pursuant to section 147 no. 3 of the CCA. Internal instructions issued by the head of the authority may relate to general rules – for instance regarding uniformity in the prosecution of shoplifting – and might suggest certain ways of proceeding corresponding to the value of the goods stolen, e.g. that the regulatory fine should be 10 times the value of what was stolen. As a rule, no difficulties will be encountered here, so far as the public prosecutor working on a case has sufficient scope to act.

What is more difficult to assess is those instructions that affect the handling of a specific individual case. There is much controversy about the details of where the limits lie in respect of the public prosecutorial right to issue instructions. Conflicts may certainly arise, for instance when the recipient of an instruction considers that instruction to be unlawful and his superior tries to exert informal pressure. It is particularly these informal instructions, issued orally and politely to the public prosecutor concerned, that may cause difficulties, especially for a young colleague trying to conform to what is required of him, in a situation where that public prosecutor takes the view that the instruction in question is not correct.

E. Problem Solving by an Individual Instruction being Issued in Writing

With this situation in mind, and also to cover the case where an external instruction is issued, a group of criminal law professors have presented a proposal for a legal provision dealing with this problem. Let me just refer to this provision as follows:

“ ... (2) Instructions by superior authorities in respect of the handling of a case in specific proceedings shall be issued in writing and shall include the reasons. 2Where there are exigent circumstances and an instruction cannot be issued in writing, an oral instruction shall be confirmed in writing without delay.

(3) 1A public prosecutor may request that instructions relating to the handling of a case in specific proceedings shall be issued to him in writing including the reasons. 2Where a public prosecutor deems an instruction to be unlawful, he shall indicate this to the head of the authority in writing, stating the reasons. 3The instruction shall be deemed to have been withdrawn to the extent that it is not repeated in writing.

(4) 1A public prosecutor who deems an instruction already issued to him to be unlawful and who has indicated this to the head of the authority shall, upon his own application, be released from handling the case further. 2 He shall however undertake any action that cannot be postponed. ...”

I am not entirely sure whether this proposed provision will solve the problem, for it is specifically the informal requests, advice and recommendations from the superior authority, or from the service superior, that can lead to conflict. However, I am confident that discussions with experts from other countries will point to ways of getting to grips with these difficulties.

IX. RECAPITULATION

- a) On the basis of his professional competence and his statutory functions a public prosecutor is entitled and bound to guarantee the lawfulness of investigation proceedings. Part of this involves, in particular, the protection of the accused's and other participants' basic rights anchored in the Constitution. Where investigation measures are taken which are associated with a particular interference with the accused's elemental basic rights, such as searching his home, the public prosecutor's power to make such an order shall not, as a rule, suffice. Here it is the judge, with basically the same qualification but independent in terms of his position, who has jurisdiction; only where there are exigent circumstances can the public prosecutor or the officials assisting him intervene. Against the backdrop of the high ranking basic rights established in the Constitution the Federal Constitutional Court has rightly warned that the element of "exigent circumstances" must be resorted to with restraint.
- b) In Germany the multitude both of criminal offences committed and of investigatory acts needed in connection therewith make it actually impossible for the public prosecution office to comply with their obligation to take the lead in all investigation proceedings. In the majority of cases, investigations are therefore, in actual fact, led by the police. However, since in all cases competence to terminate proceedings, as well as to prefer public charges, rests solely with the public prosecution office, the final legal and factual control of the investigation proceedings remains the prerogative of the public prosecution office. This has proved its worth in practice. Hence there is no cause for expanding the powers of the police in investigation proceedings.
- c) As coercive measures in investigation proceedings may go hand in hand with interference with elemental basic rights – especially those of the accused – there is, on the contrary, reason for strengthening the public prosecution office's power to take the lead and their competence in investigation proceedings, and to counter the tendency on the part of the police – often complained of – to make more generous use of their competence to act in urgent cases. What is more, effective, preventive judicial control has to be ensured in relation to coercive measures.
- d) The fact that in practice it is the police who are leading the investigations draws a veil over the sole responsibility borne by the public prosecution office. For the purpose of strengthening their position and of dismantling possible hurdles obstructing information and communication in the relationship between the defence and the public prosecution office, statutory provisions are being drawn up in the Federal Ministry of Justice in Berlin; they are designed to give the public prosecution office the opportunity of informally discussing the factual and legal position with the participants in the proceedings. This way conflicts can be resolved and the conditions needed for swift conclusion of proceedings created.
- e) There are no easy answers in view as regards conflicts arising for the public prosecution office when a public prosecutor is given problematic instructions by a service superior or by his Minister of Justice. Here the only thing that might help would be to appeal to those in positions of authority at least to issue those instructions that are of a politically sensitive nature in writing and therefore to take responsibility – *vis-a-vis* the outside world and the media. Whether, however, this is the ideal route to take will be a matter for careful examination.

ANNEX 1

Options facing the public prosecution office when making their decisions *

Type of disposal	Overview of prerequisites	Ground for choosing different type of disposal
1.	termination, section 153 CCP <ul style="list-style-type: none"> - less serious criminal offence - lack of public interest in prosecution - guilt considered to be of a minor nature - in the case of subsection (1), second sentence, approval of the court not necessary 	<p>-</p> <p>-Guilt would not -be considered of a minor nature.</p>
2.	termination, section 153b CCP <ul style="list-style-type: none"> - also applicable in respect of serious criminal offences - lack of public interest in prosecution (unwritten element) - presence of conditions where a court may dispense with imposing a penalty (e.g. reparation, perpetrator-victim mediation) 	<p>-</p> <p>-Public interest in criminal prosecution must be offset in relation to the perpetrator and/or offence.</p>
3.	termination with conditions and instructions, section 153a CCP <ul style="list-style-type: none"> - less serious criminal offence - interest in criminal prosecution may be offset by sanctions - degree of guilt not an obstacle - court's and accused's consent necessary 	<p>-</p> <p>-Gravity of guilt presents an obstacle.</p>
4.	penal order proceedings, sections 407 et seqq. CCP <ul style="list-style-type: none"> - less serious criminal offence - further clarification of the facts not necessary - anticipated penalty (for a defended accused) imprisonment not exceeding one year (suspended on probation) 	<p>-</p> <p>-Main hearing seems necessary.</p>
5.	accelerated procedure, sections 417 et seqq. CCP <ul style="list-style-type: none"> - appropriate for immediate hearing given simple factual situation or clarity of evidence - anticipated penalty imprisonment not exceeding one year 	<p>-</p> <p>-Case is inappropriate for immediate hearing.</p>
6.	normal proceedings, section 170 subsection (1) CCP - public charges -	

* according to Schlüchter, Beschleunigtes Verfahren, 1999, p. 69

ANNEX 2

Sample Penalty Order (See paragraph 409 for an explanation of the order's contents)

Local Court	Place and date <u>Münster, 4 February 2001</u>
File Reference: <u>13 Cs 72/97</u> (Please indicate in all correspondence with the Local Court - especially when lodging legal remedies)	Address and telephone <u>Kleine Gasse 7 999876</u>
Mr Klaus Schrader Am Ring 13 4400 Münster	Defence Counsel: Mr Müller
Penalty Order	
You stand accused by the Münster Public Prosecution Service of negligently causing bodily injury to the witness Mr Fechte whilst in charge of a motor car in the Hilstrup district of Münster at 3.30 pm on 5 October 2000.	
You stand accused of the following:	
While driving along the South Promenade you turned left onto state highway 54. Paying insufficient attention, you failed to observe Mr Fechte's right of way as he approached in his vehicle from the direction of Rinkerrode. You thereby caused both vehicles to collide, resulting in Mr Fechte's motorcar being propelled onto the on-coming carriageway where it collided with the vehicle of Mr Hellmer, who is also a witness and who was travelling in the direction of Rinkerrode. Mr Fechte suffered minor injuries in the collision .	
Offence pursuant to section 230 and the second clause of the first sentence of section 232, subsection 1, of the Criminal Code. Prosecution of this instance of bodily injury by negligence is deemed to be in the public interest.	
The Public Prosecution Service has brought the following evidence:	
1. Information provided by yourself 2. Witnesses: (a) Dieter Fechte, 4600 Dortmund, Sachsenring 12 (b) Rainer Hellmer, 4400 Münster, Gänsestieg 13 3. Extract from the criminal register	
Upon application by the Public Prosecution Service you are sentenced to pay a fine of:	
20 daily amounts of _ 40 each.	
Your are also ordered to pay for the costs of the proceedings. In addition you are held liable for your own expenses.	
P.T.O.	

The reverse side contains information about appeals and shows how the costs were calculated.