

The Criminal Justice Approach: Case Examples

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Published online: 17 July 2008
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Abstract The article presents a special form of a European comparative synopsis. For this case examples have been chosen ranging from administrative or minor (criminal) offences to increasingly serious offences and offenders. In this way it can be comparatively demonstrated how the criminal justice systems studied handle specific cases and whether they do so in a similar or different way.

Keywords Case-examples · Synoptical tables · Types of offence, procedure and reaction

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The main purpose of the case-examples was to present the systems studied comparatively in a less abstract way and to show the study results more tangibly. It may demonstrate the basic differences within and between the systems and illustrate the different procedural forms discussed in the study. The selected cases present a range of various seriousness of offences, it starts with a minor traffic offence and goes on with shop-lifting broken down by the age of the offender and recidivism. On a higher level of seriousness bodily harm was chosen followed by ram-raiding and murder.

These case-examples were developed already for the first publication demonstrating the results of the first project wave (see Jehle/Wade *Coping with Overloaded Criminal Justice Systems*, Heidelberg 2006, pp. 127 onwards). For the second project wave they were used again. The old partners had to actualize their answers where necessary and the new partners (Spain, Switzerland, Croatia, Hungary and Turkey) had to describe the handling of these cases within their systems.

The following synoptical tables show the most likely handling of these cases within the respective criminal justice systems and thus give a comparative overview of the different criminal justice approaches to the same cases.

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Case 1 A is caught driving 30 km/hour above the speed limit. It is his first offence

| Type of offence | Type of procedure | Type of reaction |
|--|--|--|
| CH Minor criminal Offence (<i>Übertretung</i>) | Simplified proceeding (“Verzögerungsverfahren”): Police investigate the case. Then case is handed to the judge who delivers penal orders (“Strafbefehlsrichter”) | Fine Withdrawal of the driving licence through the police for 1 month Fixed admin. fine and penalty points on the driving licence. Fixed admin. fine and penalty points on the driving licence. |
| D Offence against order (<i>Ordnungswidrigkeit</i>) | Admin. (automated) procedure: police are investigative/ prosecutorial agency. Offender is mostly caught by camera. | Fixed admin. fine and 3 penalty points on the driving licence. |
| E Administrative offence | Admin. (automated) procedure: police are investigative/ prosecutorial agency. Offender is mostly caught by camera. | Fixed admin. fine and 3 penalty points on the driving licence. |
| EW Minor criminal offence | Simplified (automated) proceeding: police have special units to track speeding cars via police cameras and issue fixed penalties. Offender is mostly caught by camera. | Fixed admin. fine and 3 penalty points on the driving licence. |
| F Minor criminal offence (<i>Contr. 4</i>) | Admin. (automated) procedure: police are investigative/ prosecutorial agency. Offender is mostly caught by camera. Procedural alternative: police take case to court. | Fixed admin. fine and 3 penalty points on the driving licence. |
| H Administrative offence. | Administrative procedure before the police. | Most likely fine and penalty points on the driving licence. |
| HR Offence against order (administrative criminal offence) (<i>Prekršaj</i>) | Admin. (automated) procedure: police are investigative/ prosecutorial agency. Offender is often caught by camera. If fine is not paid administrative order will be issued, if this is not paid person will be called in front of administrative/criminal court (<i>prekršajni sud</i>) | Fixed admin. fine and penalty points on the driving licence. |
| NL Minor criminal offence (<i>Mulder law</i>) | Admin. (automated) procedure: police are investigative/ prosecutorial agency. Offender is mostly caught by camera. | Fixed admin. fine. |
| PL Minor criminal offences (<i>Mykroczenia</i>) | Admin. (automated) procedure: police are investigative/ prosecutorial agency. Offender is mostly caught by Police or by camera. Procedural alternative: police take case to Mag. court. | Fixed (admin.) fine. |
| S Minor criminal offence | Simplified proceeding: police are investigative/ prosecutorial agency. | Fixed summary fine by police and record in the criminal register. |
| TR Offence against order | Administrative procedure: police are investigative/prosecutorial agency. Offender is always caught by police camera(s). | Fixed admin. Fine and penalty points on the driving licence. |

Case 2 An adult steals a sweatshirt worth 20 Euros from a shop. This is a first offence

| Type of offence | Type of procedure | Type of reaction |
|--|---|--|
| CH Minor criminal Offence (<i>Übertretung</i>) | Offence requiring an application for prosecution Simplified procedure ("Verzeigungsverfahren"): PPS leads the investigation. Then the case is handed to the judge who delivers penal orders (Strafbefehlsrichter) | Fine |
| D Less serious criminal offence (<i>Vergehen</i>) | Police investigate independently, PPS then decides how to proceed. Alternative proceedings possible: which one depends on individual case and guidelines. | Case will probably be dropped (public interest) or disposed off. |
| E Minor criminal offence (<i>falta</i>) | Police investigate and reports to EM and PPS. Trial in falta procedure, in the EM's court, where the indictment is made orally. No need for defence lawyer. Plea bargain is possible. | Fine |
| EW Less serious criminal offence (<i>Summary offence</i>) | Some stores will prosecute themselves; they have their own sanction. Alternatively the case is reported to Police that will caution. | Fixed fine imposed by shop owner or caution (formal warning) by police officer. |
| F Less serious criminal offence (<i>Délit</i>) | 1st-time offender is usually not prosecuted;shop owner can force police to return the stolen good and/or pay for it. Alternatively police can be called and then initiate prosecution. | Fixed fine imposed by shop owner. <i>Rappel à la loi</i> is possible. |
| H Administrative offence. | Administrative procedure. | Administrative sanction, most likely warning or fine. |
| HR Criminal offence (less serious) | Accelerated (simplified) criminal proceedings (police hand over the case to PPS, PPS may bring charges without instituting investigations, PPS may use conditional disposal, on the request of PPS court may issue penal order) | Fine up to 150 daily incomes or imprisonment up to 6 months. (Most probably case will be dropped as an insignificant offence or disposed off.) |
| NL Less serious criminal offence (<i>Misdrijven</i>) | Shop owner reports the case to police that will then initiate investigation and decide in how far a <i>politieansactie</i> is appropriate. If not possible: writ of summons is issued and handed over to PPS. Investigation is carried out by police independently. Case is then brought to mag. court by police. | Police transaction |
| PL Minor criminal offences (<i>Hydrocczenita</i>) | Police lead the whole investigation. Then case is handed over to PPS. PPS probably issues a penal order. If no suspect's agreement: case will go to court. | Court may impose a fine or a 5–30 day arrest. |
| S Less serious criminal offence | In practice police investigate independently, bring the case then to PPS. Prepayment and mediation are not possible. | Probably 30 day-fines. |
| TR Crime | | Fine or com. service or postponing of punishment |

Case 2 var. a Petty theft – A 15 years old steals a sweatshirt worth 20 Euros from a shop. This is a first offence

| Type of offence | Type of procedure | Type of reaction |
|--|---|--|
| CH Minor criminal Offence (<i>Übertretung</i>) | Offence requiring an application for prosecution PPS (for juveniles) prosecutes the case in a simplified way (“Strafbehördenverfahren”) and imposes a sanction. Police investigate independently, PPS then decides how to proceed. Alternative proceedings possible; which one depends on individual case and guidelines. | Reprimand (<i>Verweis</i>) Probably dropped (public interest) or at least disposed off (with condition). |
| D Less serious criminal offence (<i>Vergehen</i>) | PPS could order Police to investigate and further send the juvenile the mediation programme. Some stores will prosecute themselves; they have their own sanction. Alternatively the case is reported to the police who will caution. 1st-time offender is usually not prosecuted; shop owner can force offender to return the stolen good and/or pay for it. Alternatively police can be called and then initiate prosecution. Administrative procedure. | In case that it will be concluded successfully the case will be disposed off (condition is the mediation procedure). Fixed fine imposed by shop owner; reprimand by police officer. Fixed fine imposed by shop owner; <i>Rappel / à la loi</i> is possible. |
| E Minor criminal Offence (<i>Falta</i>) | | |
| EW Less serious criminal offence (<i>Summary offence</i>) | | |
| F Less serious criminal offence (<i>Délit</i>) | | |
| H Administrative offence. | | Administrative sanction, most likely warning. |
| HR Criminal offence (less serious) | PPS for juveniles investigates and then decides how to proceed. Most probably will be decided on the bases of the principle of opportunity. | Only educational measures may be imposed – but here most probably the case would be dropped (public interest) or at least disposed off (with condition). Probably HALT-measure will be offered by police officer. Then offender will be sent to a HALT-Office. |
| NL Less serious criminal offence (<i>Misdrijven</i>) | Police initiate investigation and decide in how far a Halt-reaction is appropriate. If not possible; writ of summons is issued and handed over to PPS. | |
| PL Punishable act | Investigation by police. Case brought to family court which will investigate offender’s social surroundings and personality. | 1st-time offender: Admonition by court. Recidivist: educational measure by court. |
| S Less serious criminal offence | Police lead whole investigation before case is handed over to PPS. PPS probably decides on waiver. If not, penal order will be issued. If no suspect’s agreement: Case will go to court. | Waiver of prosecution and the offence recorded in the criminal register. |
| TR Crime | Police can just bring the offender to PPS and collect evidence bar interrogation. Prepayment is not possible. Mediation is possible. | Fine or com. service or postponing of punishment/charge/sentence |

Case 2 var. b Petty theft – An adult steals a sweatshirt worth 20 Euros from a shop. He is a persistent offender

| Type of offence | Type of procedure | Type of reaction |
|--|---|--|
| CH Minor criminal Offence (<i>Übertretung</i>) | Offence requiring an application for prosecution Simplified procedure (“Verzichtsverfahren“). PPS investigates independently. Then the case is handed to the judge who delivers penal orders (<i>Strabefehlsrichter</i> “) | Fine or short prison sentence (till 3 months). |
| D Less serious criminal offence (<i>Vergehen</i>) | Police investigate independently. PPS then decides how to proceed. If alternative proceedings possible depends on the content of the different Länder guidelines; drop or disposal seems unlikely. | Probably PPS will bring public charges. |
| E Minor criminal offence/less serious offence' (<i>falta/delito</i>) | If minor criminal offence, police investigates and reports to EM and PPS. Trial in <i>faltas</i> procedure, in the EM's court, where the indictment is made orally. No need for defence lawyer. Plea bargain is possible. If less serious offence, Police will investigate and report to EM and PPS, as well as the other parts implied in the process. EM decides instruction is terminated, therefore, PPS writes the formal indictment, and the defence presents the written report (10 days for each other). Then they proceed to trial (<i>Abreviado</i>). Plea bargaining is also possible. | If minor criminal offence, fine. If less serious offence, prison sentence (but suspendable). |
| EW Less serious criminal offence (<i>Summary offence</i>) | Some stores will prosecute themselves; they have their own sanction. Alternatively, case is reported to police who will initiate an investigation. Court process is possible. | Fixed fine by shop owner or court sanction (short prison sentence). |
| F Less serious criminal offence (<i>Délit</i>) | Investigation will be carried out by police under PPS' instructions. Alternative proceedings possible as: <i>Composition penale or main hearing before tribunal correctionnel</i> . | Short prison sentence likely, with the order of suspension and probation. |
| H Administrative offence. | Administrative procedure. | Administrative sanction, most likely fine. |
| HR Criminal offence (less serious) | Accelerated (simplified) criminal proceedings (police hand over the case to PPS, PPS may bring charges without instituting investigations, PPS may use conditional disposal, on the request of PPS Court may issue penal order) | Fine up to 150 daily incomes or imprisonment up to 6 months. |
| NL Less serious criminal offence (<i>Misdrijven</i>) | Police will then initiate investigation and decide in how far a (police-) transaction is appropriate (i.e. no recidivism within 5 years). Otherwise writ of summons is issued and handed over to PPS. | (Police-) transaction or PPS brings charges. |
| PL Minor criminal offence (<i>Wyroczenia</i>) | Investigation is carried out by police independently. Case is then brought to mag. court by police. | Most likely court may order an arrest (5–30 days). Also fine is possible. |
| S Less serious criminal offence | Police lead the whole investigation. Then case is handed over to PPS that will probably issue a penal order. If suspect doesn't agree: case will go to court. | Most likely sanction will be more severe than in case of a 1st-time offender. |
| TR Crime | In practice police investigate independently, bring the case then to PPS. Prepayment and mediation are not possible. | Fine/com.service postponing of punishment is not possible because of persistence |

Considered as a *falta*, but it becomes treated as a less serious offence if, within one year, the adult has done it 4 times.

Case 3 Two adults (A&B) who are strangers to that date, become involved in an argument in a pub. A hits B with a glass bottle causing a wound to B's face. This requires stitching in a hospital. B is unable to work for 3 days

| | Type of offence | Type of procedure | Type of reaction |
|----|---|---|--|
| CH | Less serious criminal offence (<i>Vergèhen</i>) | PPS investigates. Case will be brought before court. No simplified procedure. | Prison sentence |
| D | Less serious criminal offence (<i>Vergèhen</i>) | Police investigate independently. PPS then decides how to proceed. If alternative proceedings possible depends on the content of the diff. Lander guidelines. | Full court trial is most likely. Alternative proc. seem unlikely. |
| E | Less serious criminal offence (<i>dèlito</i>) | Police will investigate and report to EM and PPS, as well as the other parts implied in the process. EM decides instruction is terminated, therefore, PPS writes the formal indictment, and the defence presents the written report (10 days for each other). Then they proceed to trial (Abreviado). Plea bargaining is also possible. | Prison from 6 months up to 3 years (suspendable if it's imposed under 2 years) |
| EW | Less serious criminal offence (<i>Summary offence</i>) | Investigation by police. A caution might still be possible. Alternatively case is investigated by police then brought before court. | Short prison-sentence possible accompanied by victim's compensation. |
| F | Less serious criminal offence (aggravating circumstances) (<i>Dèliti</i>) | Investigation will be carried out by police under PPS' instructions. Alternative proceedings possible as: <i>Disposal/Composition penale. Most likely main hearing before tribunal correctionnel.</i> | Short prison-sentence, primarily accompanied by victim's compensation. |
| H | Less serious criminal offence. | Investigation by the police. Alternative, simplified procedures are possible (arraignment, penal order). Local court will deal with the case. | Short prison sentence and labour in the public interest are possible, but probation or fine seems to be the most appropriate sanction. |
| HR | Criminal offence (less serious) | Accelerated (simplified) criminal proceedings (police hand over the case to PPS, PPS may bring charges without instituting investigations; PPS may use conditional disposal; EM may render the judgment at the request of the parties; on the request of PPS Court may issue penal order) | Fine or imprisonment of up to one year. (Most probably case will be disposed off or penal order will be issued.) |
| NL | Less serious criminal offence (<i>Misdrijfven</i>) | Police will carry out investigation under PPS' instructions. Out of court proceedings possible (depends on the consequences of the offence and offender personality). | Transaction most probable (community service). |
| PL | Less serious criminal offence | Police will initiate investigation. If public interest exists, prosecution proceeds. If not: private complaint procedure possible. | Public trial: court sanction, primarily in form of victim's compensation. Private pros.: reconciliation. Penalty possible: fine (most probably), community service and (less likely) imprisonment up to 2 years. |
| S | Less serious criminal offence | Police lead the whole investigation. Then case is handed over to PPS who will bring the case before court. | Most likely conditional sentence combined with fines or com. service or probation. |
| TR | Crime | Police will carry out investigation under PPS' instructions. Then case is handed over to PPS who will bring the case before court. Prepayment is not possible. Mediation is possible. | Mediation/Fine or com. service/Postponing of punishment |

Case 3. var. a Bodily harm – Two juveniles who are strangers to that date become involved in an argument in a pub. A hits B with a glass bottle causing a wound to B's face that requires stitching in a hospital. B is unable to work for 3 days

| Type of offence | Type of procedure | Type of reaction |
|--|--|--|
| CH Less serious criminal offence (<i>Vergehen</i>) | Investigation through the PPS for juveniles | If no measure is applied Fine, prison till one year or community service work (<i>Arbeitsleistung</i>) |
| D Less serious criminal offence (<i>Vergehen</i>) | Investigation by police more or less independently. Alternative proceedings most probable if offenders' personality is within the range (simplified proceeding, § 76 JGG/ diversion, § 45 JGG). | Diversionary measure is most likely (§ 45 II JGG), perpetrator-victim-mediation is particularly likely here. |
| E Less serious criminal offence (<i>délito</i>) | Investigation by Police, directed by PPS. A mediation will take place whenever both juveniles agree to it. In case it's not successful or they don't want to participate, we use the juvenile proceeding in juvenile courts; a 1st stage for trying to reach a plea bargained sentence; a 2nd stage with a trial | In case mediation is successful, the case is filed. If not, a measure is applied (special courses, work for the community..). |
| EW Less serious criminal offence (<i>Summary offence</i>) | Whole criminal procedure is the same as for adults: Court is able to attempt some restorative justice procedure. | Informal reaction through a reparations process (youth offending panel or by court). Special treatment (drug/anger/alcohol management courses) or mediation. |
| F Less serious criminal offence (aggravating circumstances) (<i>Délit</i>) | Investigation by police and PPS. Summoning before the Juvenile Court. Judge decides about edu. monitoring. Court hearing conceivable, if offender has already been in contact with criminal system. | 1st-time offender: edu. Measures. Recidivist: sentence |
| H Less serious criminal offence. | Investigation by the police. Case will be brought before the court. Alternatively, simplified procedures are possible. | Multi-recidivist: 2-month pre-trial detention/short, unsuspended prison sentence. Prison sentence is possible in theory but most likely probation will be applied. (Fine and education in reformatory institution are possible as well.) |
| HR Criminal offence (less serious) | Investigation by the PPS for juveniles. Most probably will be decided on the bases of the principle of opportunity. | Only educational measures may be imposed. Case may also be dropped (public interest) or disposed off (with condition). Perpetrator-victim-mediation is possible here. Sentence of 24 hours community service. |
| NL Less serious criminal offence (<i>Misdrijven</i>) | Investigation by police under PPS instructions Writ of summons for a court hearing. | Sentence of 24 hours community service. |
| PL Punishable act | Investigation by police. Case brought to family court which will investigate offender's social surroundings and personality. | 1st-time offender: admonition by court. Recidivist: edu. measure by court; Juvenile delinquent centre for highly problematic juveniles. |
| S Less serious criminal offence | Proceedings are the same as in case of an adult perpetrator, although leader of investigation will be a PP. Perpetrators' personality more in focus. Prosecution before a court will be instituted. Investigation by PPS. Case brought to children court. | No prison-sentence. Commitment to social care and/or community service for juveniles possible, depending on social situation of the perpetrator. perpetrator-victim-mediation is possible. Conditional sentence is a must. BEWAHRUNG MÖGLICH |
| TR Crime | | |

Case 4 Two persons are caught ram-raiding (breaking into a shop by driving a vehicle through the shop window in order to steal as much as possible) a clothing store. When their houses are searched, evidence is found that they are members of a gang which regularly ram-raids shops in various city centres

| Type of offence | Type of procedure | Type of reaction |
|---|--|---|
| CH Serious criminal offence (<i>Verbrechten</i>) | PPS leads the investigation. Case will be brought before court. No simplified procedure. | Prison sentence between 6 months and 10 years. |
| D Serious criminal offence (<i>Verbrechten</i>) | PPS leads the investigation from the very beginning; Case will be brought before court. No simplified procedure. | Custodial sentence between 1 and 10 years. |
| E Serious criminal offence (<i>delito</i>) | Police will investigate and report to EM and PPS, as well as the other parts implied in the process. EM will hand the file to the Tribunal who will judge them, for reviewing the instruction. Then the PPS writes the formal indictment and the defence presents the written report (10 days for each party). Then they proceed to trial (Sumario). CPS and Police work together on investigation | Prison sentence of several years (8 to 14), impossible to suspend or substitute for another penalty. |
| EW Serious (indictable) offence | Brought before crown court after initial hearing before mag. court. No simplified procedure. | Subject to a (severe) prison sentence of several years. |
| F Serious criminal offence (aggravating circumstances) (<i>Crime</i>) | Summary trial if PPS after nationwide investigation (Police under PPS' advice) is sure that only the two offenders are involved and not other members of a gang. | Offence punishable by up to 10 years of imprisonment. Considerations of an organized gang would lead to a prison sentence not exceeding 15 years. |
| H Serious criminal offence. | Police will investigate. Case will be brought before the court (local court). Simplified procedures are not excluded but unlikely. | Punishable by imprisonment. (Length depends on the value of stolen goods.) |
| HR Criminal offence | Investigation is led by EM. PPS brings charges before the court (1 professional judge and 2 lay judges). | Punishable by imprisonment (from 6 months to 5 years) |
| NL Serious criminal offence (<i>Misdrijven</i>) | Investigation headed by PPS. Charge brought before court, main hearing probable. No simplified procedure. | Max. 6 years prison sentence. If damage caused/ repeat offending the most probable sentence will be either 210 hours community service/ 105 days imprisonment minimum. |
| PL Serious criminal offence | Investigation by police. Case is probably brought to court. | 1–15 years of imprisonment or even a fine possible. |
| S Serious criminal offence | Leader and conductor of investigation is PPS, maybe police. Case is brought before court. | Only prison sentence of max. 6 years (most likely approx. 1 year) will be a possible reaction. If offenders are members of a gang, this might lead to aggravating circumstance relevant for sentencing. |
| TR Crime | Investigation by police. PPS brings the case to court. No prepayment/ mediation. | Max. 6 years prison sentence. Postponing of punishment is possible when first time offender. |

Case 5 Murder- A breaks into B's home in order to take revenge for B's affair with A's wife. A kills B through a blow to the head. He feigns a burglary in order to cover his tracks

| Type of offence | Type of procedure | Type of reaction |
|---|---|---|
| CH Serious criminal offence (<i>Verbrechen</i>) | PPS leads the investigation. Case will be brought before court. No alternative proceedings. | Subject to a mandatory life prison-sentence (minimum 10 years). |
| D Serious criminal offence (<i>Verbrechen</i>) | PPS leads the investigation from the very beginning: Case will be brought before court. No alternative proceedings. | Subject to a mandatory life prison-sentence (minimum 15 years). |
| E Serious criminal offence (<i>delito</i>) | Police will investigate and report to EM and PPS, as well as to the other parts implied in the process. Case brought before a jury, after the PPS writes the formal indictment, and the defence presents the written report. CPS and police work together on investigation. Case brought before court, consisting of a jury and judge (who has no role in sentencing but has to set a minimum sentence length). | Prison sentence from 15 to 20 years, not suspendable. |
| EW Serious criminal offence | Investigation by PPS. Court hearing (judge and a jury of 9 members). | Subject to a mandatory life prison-sentence (min. 15/20 years). |
| F Serious criminal offence (aggravating circumstances) (<i>Crime</i>) | Investigation by police or by PPS. Case will be brought before the county court, (panel of one judge and two lay judges). No alternative proceeding is available. Psychiatric expert has to be involved. | Subject to a mandatory life sentence or 30 years of imprisonment; security period must be set in case of murder (ensures that the sentence can't be suspended within a certain period). |
| H Serious criminal offence | Investigation is led by EM. PPS brings charges before the court (2 professional judges and 3 lay judges). No alternative proceedings. | Subject to a mandatory life imprisonment or max. 15 years of imprisonment. |
| HR Serious criminal offence (aggravating circumstances) | Normal investigation headed by PPS. Charge brought before court (main hearing). | Subject to long-term imprisonment (minimum 8 years). |
| NL Serious criminal offence (<i>Misdrijven</i>) | PPS is leader of the investigation. Normal court hearing with psychiatric examination. | Subject to a long life sentence. Mandatory life prison-sentence is possible, but most likely this will only be given for murders with more than one victim. |
| PL Serious criminal offence | Leader of investigation is PPS. Case will be brought before court (normal court hearing). | Long prison sentence 8-25 years, up to life. |
| S Serious criminal offence | PPS investigates from the very beginning on. No prepayment/mediation | Imprisonment of 10 years or for life. |
| TR Crime | | Long life sentence. If first time offender imprisonment of 25 years is possible. |