

--- VERY PRELIMINARY – THIS VERSION: JULY 14, 2004 ---

Power over Prosecutors Corrupts Politicians: Cross Country Evidence Using a New Indicator¹

Stefan Voigt⁺, Lars Feld[#] and Anne van Aaken^{*}

¹ The authors thank many experts who contributed to the success of this study by sharing their knowledge concerning the institutional set up of the procuracy in their countries, in particular Thomas Ginsburg, Walter Marcus-Jones, Jürgen H.P. Hoffmeyer-Zlotnik (ZUMA-Mannheim), the Max Planck Institute for Foreign and International Criminal Law (Freiburg, Germany), in particular PD Dr. Jörg Arnold and Jan-Michael Simon, Rudite Abolina (Latvia), Charles Adwan (Lebanon), Aigul Akmatjanova (Kyrgyz Republic), Adul Alim (Bangladesh), Dr. Pedro Angulo (Peru), Tos Anonuevo (Philippines), Benito Arrunada (Spain), Beth Aub (Jamaica), Barnabás Balázs (Slovakia), Karoly Bard (Hungary), Abdualaziz Bari (Malaysia), Brigitte Bierlein (Austria), Nathan Brown (Egypt), Justice Collymore (Trinidad & Tobago), Giovanni Cordini (Italy), Frank Costigan, QC (Australia), Bibek Debroy (India), Sophie Delabruyere (France), Donatas Demskis (Lithuania), Djurjevic (Croatia); Lilian Ekeanyanwu (Nigeria); Paul English (Russia), Duncan Fairgrievies (England), Luiza Cristina Fonseca Frischeisen (Brazil), Pedro Galilea (Spain), Georgy Ganev (Bulgaria), Oren Gazal (Israel), Jaan Ginter (Estonia), Mauricio González Cuervo (Columbia), Yonko Grozev (Bulgaria), Yaaseen Hansrod (Mauritius), Ponzalo Himiob (Venezuela), Pentcho Houbtchev (Bulgaria), Johanna Jalas (Finland), David Johnson (Japan), Ivo Josipovic (Croatia), Pacharo Kayira (Malawi), Mr. Koponen (Finland), Lorenzo Livieres (Paraguay), Klaus D. Loetzer (Benin), Nino Loladse (Georgia), Abdullah Al Mamun (Bangladesh), Arne Mavcic (Slovenia), Ilona Medrikat (Honduras), Michael Meier (Botswana), Chadia El Meouchi (Lebanon), Victoria Miron (El Salvador), Bart de Moor (Belgium), Wolfgang Müller (Zimbabwe), Stephen Mwaura (Kenya), Monica Nicida (Brazil), Joachim Nyemeck Binam (Cameroon), Niklaus Oberholzer (Switzerland), Prof. Dr. Dagmar Oberlies (Cambodia), Dr. Arturo R. Oliver González (Mexico), Inigo Ortiz de Urbana (Spain), Dr. Theodor Papakiriakou (Greece), Vlad Perju (Romania), Violeta Piculescu (Romania), Nils Rekee, (Sweden), Boyd Reid (Trinidad & Tobago), Jihad Rizkallah (Lebanon), Kent Roach (Canada), Nathalie Rubio (France), Claudia Schoenbohm (Bolivia), Slaven Scepanovic (Montenegro), Bernhard Seliger (Korea), James Shikwati (Kenya), Onur Sir (Turkey), Pavel Skoda (Slovakia), Michael Sticka (Czech Republic), Ricardo Ernesto Soto Barrios (Panama), Jose Luis Tapia (Peru), Prof. Dr. Jürgen Theres (Morocco), Kestutis Vagneris (Lithuania), Xiomara Vallesteros (Nicaragua), Aldo Vásquez (Perú), Laszlo Venczl (Hungary), Thao Viet (Vietnam), Thomas Weigend (Germany), J.C. Weliamuna (Sri Lanka), Marco Zeisig (Ecuador/Guatemala). Voigt thanks Tobias Göthel and Justyna Wojciechowska for excellent research assistance.

⁺ Economics Faculty, University of Kassel, Germany and ICER, Torino, e-mail: voigt@wirtschaft.uni-kassel.de

Abstract:

The (economic) effects of prosecutorial systems have rarely been systematically analyzed. This paper complements a first conceptual paper by Aaken, Salzberger and Voigt (2004) who present a large number of hypotheses focusing on the different incentives to prosecute crimes committed by representatives of the legislative and executive branches of government as a function of the institutional set-up of prosecution agencies. They hypothesize that prosecution agencies that are dependent on the executive have less incentives to prosecute crimes committed by government members which, in turn, increases their incentives to commit such crimes. Here, this hypothesis is put to an empirical test. In order to test it, it was necessary to create an indicator measuring de jure as well as de facto independence of the prosecution agencies. The regressions show that de facto independence of prosecution agencies reduces corruption of officials while de jure independence of prosecution agencies even increases corruption.

JEL classification: H11, K40, K42

L&E classification: 7100, 7700, and 8000.

Key Words: Corruption, Prosecution Agencies, Judicial Independence and Positive Constitutional Economics.

Power over Prosecutors Corrupts Politicians: Cross Country Evidence Using a New Set of Indicators

1 Introduction

The institutional design of the procuracy is currently discussed in a number of countries including Germany, Italy, Switzerland and Mexico. One reason for the interest in its institutional structure is the recognition that members of the executive have frequently put pressure on prosecutors to investigate cases according to the wishes of the executive. In this paper we argue that the pressure put on prosecutors is a function of the institutional set-up of the procuracy. We further argue that a high degree of government influence on prosecutors will, *c.p.*, lead to higher levels of crimes committed by public figures, including corruption. A procuracy depending on the executive can not only lead to higher levels of crimes but can have far-reaching effects on the legitimacy as well as on the stability of the state.

Public Finance Group, Philipps-University of Marburg, Germany, University of St. Gallen, Switzerland, CESifo, Munich and CREMA, Basle.

* Max-Planck-Institute for Comparative Public and International Law, Heidelberg; e-mail: vanaaken@mpil.de.

The judiciary is conventionally considered to be the guardian of the rule of law. In order to fulfill its role, it needs to be independent from the other government branches. With regard to *de facto* judicial independence, Feld and Voigt (2003) have recently presented evidence that it positively influences real GDP growth per capita in a robust and economically significant manner. But in most systems, the judiciary cannot initiate proceedings as this role is – especially in cases concerning criminal law – often confined to the prosecution authorities. They hence act as gatekeepers to the judiciary. It is thus argued that the independence of the judiciary can only be expected to unfold its beneficial functions if the procuracy enjoys at least some degree of independence from executive bureaus such as the minister of justice or the prime minister of a country.

The differential effects of alternative institutional set ups for prosecution agencies have long been entirely ignored. Aaken, Salzberger and Voigt (2004) is a conceptual paper that spells out quite a few hypotheses on plausible effects. The inquiry into causes and (economic) consequences of corruption has, however, made considerable progress over the last couple of years. Generally, one can point at two avenues dealing with the topic. The major avenue is the inquiry into the consequences of corruption (corruption as *explanans*), its impact on economic growth, and on the legitimacy of government and the state as a whole. The other avenue is the inquiry into the possible causes for committing corruption (corruption as *explanandum*).

Some papers have recently dealt with the latter question. Based on a cross-national study using two different data sets as a proxy for corruption, Ades and di Tella (1999) find that countries in which firms enjoy higher rents suffer higher levels of corruption. Additionally, the level of corruption was found to be higher where domestic firms are protected from foreign competition either by natural barriers or by politically erected barriers to trade. A broader approach is taken by Treisman (2000) who explains the level of corruption as being determined by a host of variables. According to him, countries with protestant traditions, countries that used to be ruled by the British, and countries that enjoy a higher per capita income were less corrupt. Federal states were, *c.p.*, more corrupt.

Persson, Tabellini and Trebbi (2003) find that lower barriers to entry into the legislators' market are correlated with less corruption, whereas a larger proportion of candidates elected from party lists – rather than directly – is connected with more corruption. Their explanation for the second finding is that a lower degree of individual accountability of politicians vis-à-vis their voters contributes to higher cor-

ruption.² The authors believe that the effects of the electoral system dominate over the effects attributed to the size of the voting district. A focus on political institutions has recently also been chosen by Golden and Chang (2001) who argue, in contrast to Persson, Tabellini and Trebbi, that an intense amount of intra-party competition increases the necessity of politicians to accept bribes in order to finance their election campaigns within their parties. They claim to have evidence with regard to Italy's *Democrazia Christiana* in support of their hypothesis.

In this paper, we advance the hypothesis that the structure of the legal institutions of a country can also be important determinants of the amount of corruption committed by politicians. Corruption is thus endogenized. It can therefore be interpreted as complementing the papers just cited rather than as disputing their findings. We thus argue that criminal behavior by government members cannot only be explained by drawing on regulatory policies (Ades and di Tella), on the level of economic development more generally, on historical and cultural factors (Treisman), or on political institutions – more precisely electoral institutions – (Persson et al., Golden and Chang). The amount of corruption to be expected is conjectured to depend on the way it is investigated and prosecuted. It is thus hypothesized that the probability of prosecution of crimes committed by government officials is an important determinant of the amount of crimes committed by government officials. The expected utility of committing a crime is assumed to depend on the probability of being punished as well as on the severity of the punishment. Other factors determining the expected utility of committing a crime are the probability of being investigated, publicized and prosecuted.

The rest of the paper is organized as follows: in the next section, our key terms will be defined and some theoretical conjectures developed. Section 3 presents the new indicator on the various aspects of prosecutorial independence. Our estimation approach as well as a description of the other variables used are presented in section 4. Our estimation results can be found in section 5. Section 6 concludes.

² Persson, Tabellini and Trebbi (2003) do not mention a crucial precondition for their results to hold, namely that citizen-voters do not only care to have “corruption-free” politicians but that corruption constitutes an issue important enough to determine voting behavior. They use the so-called “Corruption Perception Index” developed by Transparency International as the left-hand variable, which is somehow problematic, as this index is constructed on the bases of foreign experts like investors. As long as they cannot vote, they shouldn't enter into the index and it is not the “perception” of corruption that ought to be inquired into but rather the “evaluation” or “importance” that individual (and domestic) respondents to the survey attach to it.

2 Some Theory

Before presenting some general theoretical ideas, it seems useful to describe what is meant by prosecution agencies in this paper. This is also desirable because the public prosecutor's office takes on different names in different countries. Just to name a few: Crown Prosecution Service, Public Attorney's Office, Department of Public Prosecution, Public Prosecution Authority, Attorney General Office, State Attorney Office etc. For simplicity, the generic term "procuracy" is used to include all of these. If one thinks in terms of a value chain, the procuracy can be separated from the police, which is part of the executive, on the one hand, and from the judiciary, on the other. The following criteria should all be fulfilled in order to qualify as a procuracy: (i) it has the competence to gather information on the behavior of criminal suspects, or to instruct the police to gather more information; (ii) on the basis of that information, it has the competence to indict a suspect; (iii) during a trial it represents the interests of the public.³

The main argument is that the institutional set up of the procuracy has effects on the incentives of prosecutors to prosecute certain cases – and not to prosecute other cases. It is argued that prosecutors who are directly subjected to the legislative and/or executive branch of government will be less likely to prosecute crimes committed by members of these government branches than if they were independent from them. The expected utility of committing a crime as a government member is, *c.p.*, higher if the procuracy depends on government. This includes all kinds of crimes. We are, however, not aware of any statistics that contain information on the general level of crimes committed by members of the executive and/or legislative branches of government. In the empirical part, we therefore confine ourselves to analyze whether there are any systematic correlations between the institutional set up of the procuracy and the level of corruption perceived in a country. Corruption has been defined (Transparency International 2000, 1) as "the misuse of entrusted power for private benefit" and we follow that definition here.

It can be argued that the incentive effects created by various set ups of the procuracy can have repercussions on the realized degree of the rule of law. If equality

³ Empirically, investigative committees that are part of the legislature often inquire into executive crimes during the course of duties. Their competences widely differ. In this paper, we refrain from considering them because they are not part of the permanently established prosecution agency. Their action depends on discretionary acts of parliament. Additionally, their focus is often restricted to crimes committed during the course of office or even more narrowly to breach of duty of office, whereas our focus is, as just spelled out, broader.

under the law is one crucial component of the rule of law, then it is obviously in danger if the criminal acts committed by members of government are less likely to be prosecuted than those committed by ordinary citizens. This can have far-reaching effects: it can undermine the trust of the population in government. Low levels of trust could, in turn, lead to a lower propensity to invest and thus to negative economic consequences. But low levels of trust might also decrease regime stability and lead to an increase in the resources that need to be spent on police forces etc. It is thus hypothesized that low degrees of prosecutorial independence will not only increase the likelihood of corruption, but will also have negative effects on (i) the rule of law, (ii) the legitimacy of the political regime, and (iii) the stability of the political regime. These hypotheses are all testable.

In many countries, the procuracy is a gate-keeper to the judiciary. Judges cannot initiate any proceedings but often depend exclusively on prosecutors to bring a case before they can become active. This means that – at least with regard to criminal cases – an independent judiciary can only be expected to have any beneficial effects if the procuracy is also independent from government interference. It can thus be argued that the beneficial effects of *de facto* JI should be even more pronounced if they are combined with a high degree of (*de facto*) prosecutorial independence (PI). The conditional relevance of PI could be tested with (i) the degree of the rule of law as well as with (ii) per capita GDP growth as dependent variables. A low degree of PI is expected to lead to the non-prosecution of crimes that should be prosecuted. Non-prosecuted crimes can be a signal that more effort should be invested in criminal activities – and correspondingly less effort in legal activities. As criminal activities are usually not positive-sum-games, the growth rates of a country will be negatively affected by burgeoning criminal activities.

There are thus good reasons to expect a close interdependence between PI and JI. In particular, if the legal documents of a country lay the foundations for a high degree of JI, we would expect it to also lay the foundations for a high degree of PI. Conversely, if the judiciary of a country is factually not independent, i.e. if other branches of government interfere in its functioning, then it seems likely that the other branches of government will not refrain from interfering in the independent functioning of the procuracy. There may thus be high correlations between the two measures of *de jure* and *de facto* independence.

Presidential systems often experience a legislative majority by a party that is not identical to that of the President. In such cases, the likelihood of crimes committed by members of the executive being prosecuted is higher for several reasons, *c.p.*: First, the legislative majority can be expected to have strong incentives to

prosecute crimes committed by the President or his administration and vice versa. Second, when the governing powers are divided between the legislature and a President, the dependence of the prosecution service on each of these powers is lower than when the executive and legislature speak in one voice. This will enable the procuracy more leverage in the prosecution of government members. We therefore expect a higher degree of prosecution in presidential than in parliamentary systems. More generally, in stronger forms of separation of powers, the likelihood of prosecution is higher, other factors being equal.

Treisman (2000) finds that federal states have, c.p., higher corruption levels than unitary states. We hypothesize that one of the reasons for this finding could be the organizational structures of the procuracy. Given that the procuracy is organized along federal lines, as is the case, for example, in Germany and Switzerland, many prosecutors have incentives not to indict a member of the executive. Such behavior might, however, be countered by the principle of mandatory prosecution and the like. If, under these conditions, there is more than one state procuracy which could potentially pick up the case, we are essentially dealing with the volunteer's dilemma: every prosecutor hopes that someone else in another state will pick up the case. At the end, the case might no be picked up at all.

Above, it was hypothesized that a high degree of government corruption might reduce the stability of the entire political system. Here, we argue that the stability of government, which is itself a consequence of a number of institutional factors, can have effects on the degree to which crimes committed by government members are being prosecuted. The more stable a government in a system with a procuracy being part of the executive, the more we expect the procuracy to be an instrument of fighting opposition, on the one hand, and we can expect a lower rate of prosecution of EXECRIMES, on the other hand, in comparison to countries in which there is a frequent change of government (all other components being equal).

3 A New Indicator on Prosecutorial Independence

3.1 Introductory Remarks

In this section of the paper, we introduce our new indicator that has been constructed relying solely on verifiable information – and not on subjective evaluations of any country experts. Anybody interested in recalculating the indicator should, at least in principle, arrive at identical values. The indicator consists of

more than 30 variables and we present them in various groups that can be kept apart in order to test for the specific influences of specific aspects of prosecutorial independence. The most important separation is that between *de jure* PI and *de facto* PI. The variables that make up *de jure* PI can all be found in legal documents whereas *de facto* PI is concerned with their factual implementation. Within *de jure* PI, five aspects are elaborated upon separately. These are (1) general institutional traits (such as whether the prosecution agency is mentioned in the Constitution, what the formal qualifications are one needs to have in order to become a prosecutor etc.), (2) the personal independence of prosecutors (including appointment, promotion, transfer and removal from office), (3) the formal independence from government (right of government members to give positive/negative instructions to prosecutors), (4) the issue whether the procuracy enjoys a monopoly in initiating prosecutions or whether there are alternative ways to get prosecutions started and (5) the degree of discretion that prosecutors enjoy in pursuing their cases. Each of the variables used can take on values between 0 and 1 where greater values indicate a higher degree of PI.

Information was enquired by country experts via a questionnaire that was e-mailed to them. For filling in the questionnaire, the country experts did not have to make personal evaluations of the situation in the country, but were asked to simply give information on the legal structure of the procuracy. Among the country experts were Supreme Court judges, law professors, lawyers but also activists from organizations such as Transparency International. Mails were sent to far more than 80 experts – the number of country for which data are available - but many recipients never answered or promised to fill in the questionnaire later. The choice of countries could be called ‘biased random’ due to a number of factors: contacts to legal experts are not equally spread around the world, use of e-mail is also not equally distributed around the world. But cultural factors might also play in. The Middle and Far East as well as Africa are clearly underrepresented in our study. The numbers in brackets in the following two subsections refer to the numbers in the questionnaire that is reprinted as appendix 1.

For quite a number of countries, 2 or even more questionnaires were received. The degree to which the answers coincided was quite high. In case, different answers were given, it was attempted to do some fact-finding based on the information given by the experts. Rarely, the coding was done solely on the basis of the more plausible answer, i.e. on its coherence with the other answers provided etc.

3.2 The *de jure* Components

3.2.1 General Institutional Traits of the Procuracy

It was asked whether the office of state prosecutor is mentioned in the Constitution of the country based on the hypothesis that an explicit mentioning in the Constitution can be interpreted as a signal that the founders of the Constitution believed the procuracy to be an important part of the political process [1]. In order to further ascertain the relevance that the legal order attributes to prosecutors, it was asked whether their formal qualification requirements are as demanding as that of judges – or less [14]. Closely related is the difficulty of removing prosecutors from office. Again, this was compared to the difficulty of removing judges from their office [28]. A last aspect of the general institutional set-up is whether incoming cases are allocated to specific prosecutors by a general rule. Such a rule reduces discretionary powers of members of the executive and/or the head of the procuracy [8].

3.2.2 Personal Independence of Prosecutors

The personal independence of prosecutors can be the result of various institutional arrangements concerning the nomination, election and appointment procedures of prosecutors as well as promotion and removal from office. We distinguish between high-level prosecutors, such as the state prosecutor, or general prosecutor / attorney general, and other prosecutors as appointment/election procedures may differ substantially between the low-level prosecutors and the high level ones. The appointment of high-level prosecutors is assumed to be decisive as they usually have an internal right of instruction.⁴

Appointment

In determining the personal independence of the procuracy from the executive and the legislature, three aspects will be distinguished, namely (i) term length [19], (ii) renewability [19], and (iii) appointing organ [18]. Life tenure and appointment by others than politicians will guarantee the greatest personal independence, while

⁴ Appointment of low-level prosecutors is usually done by the high level prosecutor or the minister of justice. The decision is usually based on merits or grades. Due to the hierarchical structure of the procuracy, the appointment of low-level prosecutors is of little influence for the probability of EXECRIMES to be prosecuted, which allows us to neglect this point.

appointment by politicians for a renewable term generates the lowest independence, as it can be expected to motivate prosecutors to cater to the interests of the organ that has the power to re-elect them. Appointment for a non-renewable fixed term will generate more personal independence than appointment for a renewable term.

Promotion/Transfer of Prosecutors /Removal from Office

The behavior of prosecutors towards members of the executive will be influenced by the degree to which members of the executive determine a prosecutor's career. Relevant aspects include (i) promotion [23], (ii) removal from office [24, 25], and (iii) transfer [26].

(i) Even if prosecutors enjoy tenure, a promotion procedure monopolized by politicians can decrease personal independence. Hence, if representatives of the public prosecutors participate in this process, political influence via the promotion process is expected to be lower than in countries where (representatives of) prosecutors are not asked. Self-governing bodies of the procuracy, which can decide on promotions are supposed to lead to the highest degree of independence.

(ii) The same argument applies to removal from office. If prosecutors may be removed at will by the executive, the incentive to resist political pressure will be reduced.

(iii) Transfers to other offices (including in other cities) might be a device for heavy pressure if they can be carried out against the will of the prosecutor. This is the reason why the principle of non-transferal against the will is often named as part of the concept of judicial independence. Application of this principle to the procuracy will make it less dependent on others.

3.2.3 Formal Independence of Prosecutors

Prosecutors may be subjected to orders regarding individual cases they handle. We propose to distinguish between instructions given by superiors within the prosecution agency (internal orders [7]) and instructions given by officials outside the procuracy, e.g., by the minister of justice (external orders [6]). The possibility of external instructions is assumed to be more important for the probability of crimes committed by government members being prosecuted than the possibility of the head of the procuracy to give orders to low level prosecutors because it allocates ultimate decision-making with regard to the prosecution of such crimes to

the executive. If no external instructions may be given, prosecutors will be called formally independent.

The Power to Substitute a Prosecutor in Handling a Specific Case

A functional equivalent of the right to give orders is the right to substitute prosecutors working on a specific case [9, 10]. This is functionally equivalent because it endows the hierarchical superior giving orders to have his line of prosecution carried out (or else having the case taken away). The combination of the power to give external orders to the high prosecutor and his or her authority to give internal instructions or to substitute the prosecutor working on the case, amounts to a rather direct way of influencing the investigation. Nevertheless, substituting the prosecutor might attract more public attention and criticism than instructions given in camera to the prosecutor handling an investigation.

3.2.4 Monopoly in Prosecution?

If the procuracy enjoys a monopoly to prosecute crimes, economists would expect a lower total number of prosecutions compared to institutional arrangements in which prosecutorial activities are not confined to the procuracy. Such a monopoly, even when politicians cannot formally instruct or interfere with the prosecution's decision, provides incentives for politicians who are at risk of being prosecuted to influence the procuracy by, for example, intervening in their appointment process or offering bribes. If other actors can also initiate a trial, it will be more difficult to prevent being prosecuted through such means.

There are various possibilities to institutionalize competition in prosecution: the competence to indict can also be given to the police, to interested private parties, e.g. the victim (or her family) who might have the right to force public prosecution or to initiate proceedings independently, or to certain interest groups, such as child protection groups, environmental groups, or tax payer associations. The latter avenue might be more effective in combating corruption, since many corruption cases are so-called victimless crimes in which there is no individual victim; the victim is the public at large. Taking a case to court thus amounts to the production of a public good. Interest groups can be assumed to be more likely to contribute to its production than individuals [4]

Another potential means of making the procuracy accountable can be to make its decisions subject to judicial review [13]. If actors can force the procuracy to be-

come active via a judicial decision, this increases the incentives of the procuracy to prosecute cases.

3.2.5 Degree of Discretion in Prosecution

The existence of discretion in individual decisions regarding prosecution is likely to have an impact on the chances of public figures being prosecuted [2, 3]. The degree of discretion is influenced by the adoption of the mandatory principle, but also by “hidden” components of discretion, such as the ability to drop a case due to insufficient evidence or not concentrating enough efforts to conduct serious investigations.

The legality principle – sometimes also called the principle of mandatory prosecution – commands that every case in which there is enough evidence of an offence having been committed has to be brought to court. The opportunity principle, in contrast, grants a prosecutor some discretion concerning the indictment decision given the same amount of evidence. The opportunity principle confers more discretion to the procuracy than the legality principle, as it allows broader justifications for non-prosecution of cases.⁵ Other things being equal, the prosecution of crimes committed by government members is expected to be higher under the mandatory principle than under the opportunity principle.

3.3 *De facto* Prosecutorial Independence

We now turn to possible ways of measuring PI not as it is written down in legal documents but as it is factually implemented. As with regard to the *de jure* indicator, no one single proxy adequately reflects all relevant aspects of PI. To assess *de facto* PI, six variables have been used. Again, each of the six variables can take on values between 0 and 1 where greater values indicate a higher degree of JI.

The *de jure* indicator is based on various legal documents. Even if they are changed frequently, exact values can be calculated for every single point in time, depending on the formal validity of the respective documents. This does not hold for *de facto* PI. Counting the number of times that prosecutors have been removed

⁵ Although this conceptual distinction is watertight, empirically one can observe that prosecutors almost anywhere enjoy some degree of explicit discretion in their decision to indict (or not to indict). In most legal systems, charges can be dismissed by the prosecutor on the basis of policy considerations. Lack of public interest in prosecution is a prominent example.

against their will makes only sense if a minimum period is taken into account (for this variable, the decade from 1991 to 2000 was chosen). For others, such as the development of the real income of prosecutors, an even longer period (between 1960 and 2000) was chosen. This means, of course, that the indicator will be very sticky in comparison to the *de jure* indicator. We chose this approach because we think the past matters for how PI is evaluated by citizens and other potentially relevant actors such as investors. A government – or more broadly: a regime – will not be able to build up a reputation as law-abiding or PI-respecting overnight. Here is a list of the six variables and the reasoning used for coding them:

(1-2) If prosecutors are forced to retire against their will or are removed from office against their will [22, 27], this can be interpreted as signs that their factual independence is low. The more frequent such forced changes occurred, the lower the score a country received.

(3) Frequent changes in the legal foundations concerning the prosecution of crimes committed by members of government [29] can be caused by attempts of other government branches to increase their influence over the procuracy. Frequent changes will increase uncertainty among the members of the procuracy. The more changes occurred, the lower the score a country received.

(4-5) In order to be factually independent, prosecutors need to be paid adequately. Additionally, in order to do a good job, the budget of the procuracy needs to be adequate. A very conservative criterion was used in order to ascertain these two aspects empirically, namely whether the income of prosecutors had remained at least constant in real terms since 1960 [30] and whether the budget of the prosecutorial offices had remained at least constant since 1960 [31].

(6) The last variable focuses on a different aspect – and offers additional information rather than belonging to the core of prosecutorial independence. It was also asked how many cases are initiated by actors other than the state prosecutors. The interpretation of this number is, however, debatable: on the one hand, one could argue that a high number indicates that the prosecutorial process is not monopolized by the procuracy. They do not prevent cases from being taken to the court. In that interpretation, a high number of cases should thus indicate not a high factual degree of PI, but a high chance of criminal cases being prosecuted. On the other hand, one could argue that a high number of cases being prosecuted by others is a signal that the threat potential of others initiating prosecutions is not sufficient in order to induce the prosecutors to do their work. The second interpretation presupposes an ideal in which close to all cases should be prosecuted by the procuracy. But there can be legal systems that do not share that ideal. We just opt in

favor of the first interpretation, in which a high number of cases initiated by others than state prosecutors is taken as a positive sign for the likelihood of criminal cases being taken to court.

4 The Estimation Approach

A systematic stock-taking of the various prosecutorial systems realized in the world has never taken place.⁶ Since the focus of our analysis is on the impact of PI on corruption, we can only address the data on PI briefly. It is most interesting to note that de jure and de facto PI deviate strongly from each other. While, for example, Argentina (rank 1), Venezuela (rank 2), Estonia (rank 3), Colombia (rank 4) and Guatemala (rank 5) rank in the first places of de jure PI among 80 countries, Switzerland (rank 52), Germany (rank 54), England (rank 57), USA (rank 60), France (rank 63), Australia (rank 74) and Denmark (rank 75) fare relatively badly. This picture turns in the case of de facto PI with Argentina (rank 70), Venezuela (rank 35), Estonia (rank 21), Colombia (rank 64) and Guatemala (rank 55), and Switzerland (rank 17), Germany (rank 29), England and USA (rank 18), France (rank 1), Australia (rank 8) and Denmark (rank 14). Indeed, the correlation coefficients between de jure and de facto PI is negative and merely -0.338 . These differences between de jure and de facto PI remind us of the de jure and de facto JI (Feld and Voigt 2003) between which even a lower, though positive correlation of 0.088 could be observed. The correlation coefficient between de facto PI and de facto JI amounts to 0.326 , and that between de jure PI and de jure JI to 0.018 . Given these data, the question emerges what transforms de jure to de facto PI and vice versa, a question which is beyond the scope of this paper, which may however pretty important to understand the results.

In order to test the impact of PI on corruption, we estimate the following model:

$$(1) \text{CPI} = \alpha_0 + \alpha_1 \text{ de jure PI} + \alpha_2 \text{ de facto PI} + \alpha_3 \text{ JI} + \alpha_4 \text{ LegOr} + \alpha_5 \text{ Regime} + \alpha_6 \text{ X} + \varepsilon .$$

where the dependent variable CPI, stands for the average corruption perception index for the years 1998 to 2003. It ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It defines corruption as the abuse of public office for private gain. The index is con-

⁶ This is even true for the legal science. Dressler (2002) has edited an Encyclopedia of Crime and Justice which does, however, not contain a systematic comparisons of the various systems.

structured on the basis of surveys from 13 independent institutions carried out among business people and country analysts which tend to ask questions in line with the misuse of public power for private benefit, with a focus, for example, on bribe-taking by public officials in public procurement. The index has high index values for countries with low perceived corruption and vice versa.

The explanatory variables are:

De jure PI	de jure index of procuracy independence,
De facto PI	de facto index of procuracy independence,
JI	vector of the de jure and de facto index of judicial independence as introduced by Feld and Voigt (2003),
LegOr	vector of dummy variables taking on the value of one for a particular legal origin (La Porta et al. 1999),
Regime	vector of variables capturing the political regime; following Treisman (2000), a variable for federalism is included, and following Persson, Tabellini and Trebbi, a variable for the distinction between presidential and parliamentary systems is introduced,
X	vector of economic controls, like real GDP per capita (in order to exclude endogeneity problems, real per capita GDP of 1980 is included), population size of 1998 or the degree of trade openness in percent of GDP in 1998; additional economic and socio-demographic controls are used for robustness tests,
ε	stochastic term.

The data basis consists of 102 countries from the Penn World Tables (Heston, Summers and Aten 2001). CPI is available for 113 countries in 2003 though for less countries in earlier years, PI data are available for 80 of these countries although not for both indicators such that all in all given cross exclusions when additional regime variables were used, the estimations draw on cross section data from 65 countries. The estimation strategy consists in establishing a basic impact of PI on corruption using a small set of economic baseline variables and extending the models further by running several robustness checks.

5 Estimation Results

The estimation results of the baseline specifications are presented in *Table 1*. As the results show, the models perform relatively well. Between 73 and 77 percent of the variance of the CPI can be explained by the models. The Jarque-Bera test

statistics indicate that the null hypothesis of normal distribution of the residuals cannot be rejected on any conventional significance level in these four equations.

Table 1: OLS-Regressions of the Average Corruption Perception Index between 1998 and 2003 on Prosecutorial Independence and Controls, Baseline Specifications

<i>Variables</i>	(1)	(2)	(3)	(4)
<i>De iure</i> Prosecutorial Independence	-2.371* (2.52)	–	-2.949** (2.98)	-3.031* (2.91)
<i>De facto</i> Prosecutorial Independence	–	1.146* (2.38)	0.954* (2.09)	0.861(*) (1.73)
<i>De iure</i> Judicial Independence	–	–	–	-1.431 (1.21)
<i>De facto</i> Judicial Independence	–	–	–	0.840(*) (1.76)
Real GDP per capita in 1980 (in \$ 1'000)	0.332** (13.16)	0.317** (11.87)	0.312** (12.43)	0.303** (10.19)
Population Size in Million Inhabitants in 1998	0.068 (0.84)	0.092 (0.89)	0.067 (0.69)	0.061 (0.61)
Trade Openness in 1998 (in % of GDP)	0.008(*) (1.83)	0.009(*) (1.84)	0.009(*) (1.96)	0.007 (1.30)
Constant	2.407	0.788	2.296	2.860
\bar{R}^2	0.745	0.737	0.769	0.769
SER	1.197	1.223	1.146	1.170
J.-B.	0.512	0.820	0.555	1.520
Observations	65	62	62	53

The numbers in parentheses are the absolute values of the estimated t-statistics. ‘***’, ‘**’ or ‘(*)’ show that the estimated parameter is significantly different from zero on the 1, 5, or 10 percent level, respectively. SER is the standard error of the regression, and J. -B. the value of the Jarque-Bera-test on normality of the residuals.

The first equation reveals that the basic economic variables show a reasonable performance. The higher GDP per capita in 1980 was, the lower is perceived corruption in a country today. This effect turns out to be highly significant on the 1 percent level in all regressions reported in this paper. The more open a country is with respect to international trade, the less corrupt its officials are, though this effect is only marginally significant on the 10 percent level and does not turn out to be robust across the different specifications. Population size has no significant influence on corruption. Surprisingly, the index of de jure prosecutorial independence has a negative sign and is significant on the 5 percent level. The higher de jure PI, the lower is the perceived (absence of) corruption. De facto PI has however the expected positive impact on absence of corruption at the 5 percent significance level in equation (2). Including both, de jure and de facto PI confirms the results from the two previous equations: de jure PI has a significant negative

effect (on the 1 percent level) and de facto PI reduces corruption significantly (increases the absence of corruption). Equation (4) reveals, first, that these effects are robust to the inclusion of both, de jure and de facto, indicators of judicial independence although both PI indicators lose some statistical significance such that de facto PI is significant on the 10 percent level only. Second, it shows that both de jure and both de facto effects point in the same direction. While of the negative effects of de jure PI and JI only de jure PI is statistically significant, both de facto PI and de facto JI turn out to reduce corruption significantly (on the 10 percent level). Moreover, the impact of both de facto variables is of about the same magnitude which is evidence in favor of a complementary relationship between de facto prosecutorial and judicial independence.

Table 2 reports the results from further robustness checks. When the dummy variables for legal origin are included, the effect of de facto PI on the absence of corruption remains significantly positive, while the significance of de jure PI is reduced to the 10 percent level. The legal origin dummies are highly significant and have a negative sign. This indicates that compared to Scandinavian legal origin which is the baseline effect captured in the constant term, the countries of all other legal origins have a higher perceived corruption increasing from German to English to French and finally to Socialist legal origin. Including a variable capturing parliamentary government systems, de facto PI just fails to reach a 10 percent significance level while de jure PI is significantly negative on the 5 percent level. Differentiating between parliamentary and presidential systems does however not have any significant effect on the CPI. Including a measure for the extent of checks and balances instead, raises statistical significance and quantitative effects of de jure as well as de facto PI. The more checks and balances the constitution of a country imposes the more corrupt are its officials. This effect is significant on the 5 percent level. Equation (4) in *Table 2* confirms Treisman's results on federalism although the negative effect of federalism on the absence of corruption is only significant on the 10 percent level. More interestingly de facto PI is not robust to the individual inclusion of federalism. The significance drops below the 10 percent level. Finally, all these variables are taken together in equation (5). It nicely reveals that aside legal origin, only both PI indicators have their significant effects on corruption: While corruption is significantly higher in countries with higher de jure PI, countries are significantly less corrupt if de facto PI is high. None of the other institutional influences survives under ceteris paribus conditions. This also holds with respect to judicial independence underlining the importance of prosecutorial independence for the rule of law.

Table 2: OLS-Regressions of the Average Corruption Perception Index between 1998 and 2003 on Prosecutorial Independence and Controls, Robustness Analysis

<i>Variables</i>	(1)	(2)	(3)	(4)	(5)
<i>De iure</i> Prosecutorial Independence	-1.829(*) (1.96)	-2.569* (2.50)	-2.942** (3.08)	-2.904** (2.82)	-2.295(*) (1.85)
<i>De facto</i> Prosecutorial Independence	0.975* (2.43)	0.776 (1.63)	1.135* (2.49)	0.714 (1.47)	0.976(*) (1.73)
<i>De iure</i> Judicial Independence	–	–	–	–	-0.356 (0.27)
<i>De facto</i> Judicial Independence	–	–	–	–	0.545 (1.01)
English Legal Origin	-2.154** (3.75)	–	–	–	-2.278** (2.98)
Socialist Legal Origin	-3.065** (5.24)	–	–	–	-2.933** (3.58)
French Legal Origin	-2.640** (4.94)	–	–	–	-2.526** (3.71)
German Legal Origin	-2.023** (3.47)	–	–	–	-2.116** (2.89)
Parliamentary System	–	0.282 (1.26)	–	–	0.051 (0.19)
Checks and Balances	–	–	-0.307* (2.36)	–	-0.060 (0.34)
Federalism	–	–	–	-0.802(*) (1.87)	0.065 (0.12)
\bar{R}^2	0.840	0.771	0.783	0.778	0.819
SER	0.952	1.140	1.108	1.134	1.047
J.-B.	2.253	0.495	2.004	1.136	0.724
Observations	62	62	61	58	49

The numbers in parentheses are the absolute values of the estimated t-statistics. ‘***’, ‘**’ or ‘(*)’ show that the estimated parameter is significantly different from zero on the 1, 5, or 10 percent level, respectively. SER is the standard error of the regression, and J. -B. the value of the Jarque-Bera-test on normality of the residuals. All regressions contain the standard controls real GDP per capita of 1980, openness in 1998 and population in 1998.

6 Conclusions and Open Questions

In this paper, first evidence on the impact of prosecutorial independence (PI) on corruption is presented by introducing two new indicators of PI, a de jure and a de facto index. While de jure PI appears to increase corruption, de facto PI reduces it. This result is relatively robust across different specifications. In addition to what is reported in this paper, several other robustness checks have been performed leaving a similar assessment. These results look contradictory at first sight: or how could it be explained that legal PI is having the opposite effect to factual PI?

One reason might simply be found in a potential reverse causality that is not coped with in this paper. Countries with high corruption levels may feel induced to increase the independence of their prosecutors formally without securing it factually. The non-negligible negative correlation between both indicators somewhat supports this suspicion. It is a requirement for the next revision of this paper to more clearly disentangle the different effects such that this kind of reverse causality can be excluded (perhaps with a useful instrument). It should be expected that de jure PI does not have any significant effect afterwards.

It has also been mentioned that the procuracy is only one element in the value chain producing justice and security; the police and the courts are two other such elements. It could be of interest to delve a little deeper into possible interrelationships between these three actors. This same topic could also be analyzed from a slightly different angle, namely that of the delegation of competence to independent agencies (Voigt and Salzberger 2002).

Generally speaking, legal errors can be divided into two categories. The first category of error is called type I error, or the "false positive", where meritless prosecutions are allowed to be commenced, i.e. a supposedly committed crime is prosecuted even though it was not committed. That may be the case if the procuracy is used to prosecute members of the opposition. Type II errors, or "false negatives", keep legitimate indictments out of court. This might be the case if a crime, although having been committed is not prosecuted. There is thus not only the possibility of the procuracy being not sufficiently active with regard to prosecution of crimes committed by government members, but also the possibility of being too active regarding the prosecution of members of the opposition. This issue was not dealt with in any detail in the paper but certainly deserves more careful treatment in the future. One could even draw some remote analogy with the judicial branch: with regard to the judiciary, the danger of its becoming too eager has been discussed under the heading of 'judicial activism'. In analogy, the danger mentioned here could be discussed under the heading of 'prosecutorial activism'.⁷

⁷ *Prima facie*, the danger of 'prosecutorial activism' seems, however, less relevant than that of judicial activism, at least if the activism of the judiciary refers to the highest courts of a country. Prosecutorial activism is systematically checked upon by the courts whereas this is not the case – or a lot more costly – with regard to highest courts.

References

- Aaken, A.v, E. Salzberger and S. Voigt (2004); The Prosecution of Public Figures and the Separation of Powers. Confusion within the Executive Branch – A Conceptual Framework, forthcoming in: *Constitutional Political Economy* 15(3):261-80.
- Ades, Alberto and Rafael Di Tella (1999); Rents, Competition, and Corruption; *American Economic Review* 89: 982-993.
- Dressler, Joshua (2002; ed.); *Encyclopedia of Crime and Justice*, New York: Macmillan, 2nd ed.
- Feld, L. and S. Voigt (2003); Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators, *European Journal of Political Economy* 19(3).497-527.
- Golden, Miriam and Chang, Eric (2001); Competitive Corruption: Factional Conflict and Political Malfeasance in Postwar Italian Christian Democracy, *World Politics* 53:588-622.
- Heston, A., Summers, R., Aten, B., 2001, Penn World Table Version 6.0. Center for International Comparisons at the University of Pennsylvania (CICUP), December 2001.
- La Porta, R., Lopez-de-Silanes, F., Shleifer, A., Vishny, R. (1999); The Quality of Government, *Journal of Law, Economics and Organization* 15, 222-279.
- Mauro, Paolo (1995); Corruption and Growth, *Quarterly Journal of Economics*, 110:681-712
- Persson, T., G. Tabellini and F. Trebbi (2003); Electoral Rules and Corruption; *Journal of the European Economic Association* 1(4):958-89.
- Transparency International (2000), Source Book: Confronting Corruption: The Elements of a National Integrity System. Author: Jeremy Pope, Berlin: Transparency International
- Treisman, D. (2000); The Causes of Corruption: A Cross-National Study, *Journal of Public Economics* 76: 399-457.
- Voigt, S. and E. Salzberger (2002); Choosing Not to Choose: When Politicians Choose to Delegate Powers, *Kyklos* 55(2):247-68.

Appendix 1: Text of the Questionnaire Combined With the Coding Used

The role of state prosecutors and the separation of powers

QUESTIONNAIRE

Please return to:

Prof. Dr. Stefan Voigt
Economic Policy, Economics
University of Kassel
Nora-Platiel-Straße 4
34127 Kassel
Germany

Dear Reader,

this research project is concerned with the systematic place that state prosecutors occupy in the separation of powers as implemented in various countries. It tries to identify the degree of independence that state prosecutors enjoy in general and their independence in prosecuting crimes committed by members of government in particular. It complements a previous research project concerned with judicial independence.

We would be grateful if you could help us with your knowledge concerning the country on which you are an expert. We would appreciate if you could (a) answer the following questions, and (b) could indicate good sources for additional information (primary as well as secondary). In some countries, prosecutors are called state attorneys, public attorneys etc. In order to keep things simple, we have decided to use the term “prosecutor” to describe the function and “procuracy” to describe the office no matter what the exact term in a given country.

You will notice that we distinguish between high level prosecutors and other prosecutors. High level prosecutors are the state prosecutor, the general prosecutor or the attorney general. Other prosecutors are all those that are not high level prosecutors.

If you are interested, we would be pleased to keep you informed on the progress concerning the indicator. In that case, please provide us with your address. Of course, the easiest way to return the questionnaire is by e-mail. The latest results regarding this research project will be put on our server:

<http://www.wirtschaft.uni-kassel/voigt/htm>

Thank you very much for your help. Yours sincerely

Stefan Voigt

Country for which information is provided:

(1) Is the office of state prosecutor

- | | | | |
|---|---|----------------------|--------|
| a | mentioned in the Constitution? | YES (1) ⁸ | NO () |
| b | mentioned in the Law? | YES (0,5) | NO () |
| c | mentioned somewhere else? Namely _____. | | |

(It is possible to tick more than one answer.)(If more than one answer, the country gets the higher score).

(2) Is the principle of mandatory prosecution

- | | | | |
|---|--|------------|---------|
| a | mentioned in the Constitution? | YES (1) | NO () |
| b | mentioned in the Law? | YES (0,66) | NO () |
| c | mentioned in precedent/court decisions | YES (0,33) | NO () |
| d | not part of the legal system | YES (0) | NO (). |

(It is possible to tick more than one answer.)(If more than one answer, the country gets the score of the answer that is coded highest).

(3) *Please answer this question only if mandatory prosecution is the pertinent legal principle in your country.*

Are exceptions – due to the opportunity principle – enumerated

- | | | | |
|---|------------------------------|-----------|---------|
| a | in the Constitution? | YES (1) | NO () |
| b | in the Law? | YES (0,5) | NO () |
| c | in precedent/court decisions | YES (0) | NO (). |
-

⁸ The numbers in parantheses are the codings used; these were NOT part of the questionnaire as sent to the country experts.

- (4) Is the power to initiate court proceedings with regard to crimes
- a confined to state prosecutors only? (0,0)
 - b also available to others
 - i namely the police? (0,2)
 - ii directly concerned individuals? (0,4)
 - iii others (such as associations), namely _____ (if state agencies 0,2; if non-state agencies 0,4)

(5) Please answer this question only if the power to initiate court proceedings is not confined to the state prosecutor.

What is the percentage of cases that are initiated by other actors than the state prosecutors?

- a Between 0 and 5% of all cases (0,00)
- b Between 6 and 10% of all cases (0,25)
- c Between 11 and 20% of all cases (0,50)
- d Between 21 and 40 % of all cases (0,75)
- e More than 40% of all cases (1,000).

(6) Do members of the executive have the power to give instructions to prosecutors

- a with regard to specific cases? YES (0) NO ()
- b by issuing general guidelines? YES (0,5) NO ()
- c not at all? YES (1) NO ().

(7) Does the head of the procuracy have the power to give instructions to prosecutors

- a with regard to specific cases? YES (0) NO ()
- b by issuing general guidelines? YES (0,5) NO ()
- c not at all? YES (1,0) NO ().

(8) Is there an impersonal rule which allocates incoming cases to specific prosecutors? YES (1) NO (0).

(9) Can an investigation be reallocated to another state prosecutor against the will of the hitherto investigating state prosecutor without due reason?

YES (0) NO (1).

(10) Are the possibilities for reallocation enumerated by law?

YES () NO ().

THEY ARE _____

_____.

(11) Does the state prosecutor officially have to inform the media about an ongoing investigation? YES () NO ().

(12) *Please answer this question only if your answer to question (11) was yes.*

Does the state prosecutor have to inform the media

a before indictment? YES () NO ()
b after indictment? YES () NO ().

(13) Prosecutorial decisions are subject to review by the judiciary. Does the judiciary have the competence to

a review the charges brought by the prosecutor? YES (0,25) NO ()
b review the decision to prosecute a certain crime? YES (0,25) NO ()
c review the decision not to prosecute a certain crime due to legal or factual deficiencies? YES (0,5) NO ()
d review the use of the opportunity principle by the prosecutors? YES () NO ().

- (14) Are formal qualification prerequisites for being appointed as a prosecutor less demanding than those applying to judges? YES (0) NO (1).
- (15) Are there special rules concerning the investigation and prosecution of politicians/ other public figures? YES (0) NO (1).

If yes, please specify _____

_____.

- (16) Decisions to indict a public figure have to be authorized by
- a the highest prosecutor? YES (0) NO ()
 - b any prosecutor? YES (1) NO ()
 - c especially appointed prosecutors? YES (0) NO ()
 - d others? YES (na) NO ().

- (17) After finishing their term, high level prosecutors often enter
- a Political office ()
 - b Judicial office ()
 - c Other, such as _____.

- (18) How are **high-level** public prosecutors nominated/appointed/elected?
- a High level prosecutors are nominated and appointed by one or more members of the executive; ()
 - b High level prosecutors are nominated by one or more members of the executive and are elected by parliament (or a committee thereof); ()
 - c High level prosecutors are nominated by one or more members of the executive and are elected by the judiciary; ()
 - d High level prosecutors are nominated and elected by parliament (or a committee thereof); ()
 - e High level prosecutors are nominated by parliament (or a committee thereof) and are elected by one or more members of the executive; ()
 - f High level prosecutors are nominated by parliament (or a committee thereof) and are elected by the judiciary; ()

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

		Competence to elect/appoint high level prosecutors		
		Executive	Legislature	Judiciary
Competence to nominate high-level prosecutors	Executive	0	1/3	2/3
	Legislature	1/3	0	2/3
	Judiciary	2/3	2/3	1

- (19) Do **high level prosecutors** enjoy tenure
- a for life or until retirement? (1)
 - b for a fixed term of ___ years ()
 - i with renewability? (0)
 - ii without renewability? (0,5)
 - c other, namely _____ ().

- (20) Do **low level prosecutors** enjoy tenure
- a for life or until retirement? (1)
 - b for a fixed term of ___ years ()
 - i with renewability? (0)
 - ii without renewability? (0,5)

c other, namely _____ ().

(21) Do **criminal law judges** enjoy tenure

- a for life or until retirement? (1)
- b for a fixed term of ___ years ()
 - i with renewability? (0)
 - ii without renewability? (0,5)
- c other, namely _____ ().

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

The answers were coded using the following table:

<u>Number of forced retirments</u>	<u>Coding</u>
0	1,0
1-2	0,8
3-4	0,6
5-6	0,4
7-8	0,2
more	0,0

IF response was "a few", the coding was 0,6

Among the most important reasons for forced retirement were

- A low popularity of prosecutors ()
- B that the prosecutors had committed criminal acts ()
- C that the prosecutors reached retirement age ().

(23) **Low level prosecutors** can be promoted by

- a high level prosecutors YES (1) NO ()
- b the minister of justice YES (0,5) NO ()
- c other members of the executive YES (0) NO ().

If $a \wedge b = 0,75$; if $a \wedge c = 0,5$; if $b \wedge c = 0,25$

(24) **High Level Prosecutors** can be removed from office

- a only by judicial procedure YES (1) NO ()
- b by decision of one or more members of the executive YES (0) NO ()

- | | | | |
|---|--|------------|---------|
| c | by decision of parliament
(or a committee thereof) | YES (0,33) | NO () |
| d | by joint decision of one or more
members of the executive and of
parliament (or a committee thereof) | YES (0,66) | NO () |
| e | other | YES (na) | NO (). |

If $a \wedge b = 0,25$; if $a \wedge c = 0,5$; if $b \wedge c = 0,33$, if $b \vee c = 0$.

The reasons are (e.g. disciplinary offence): *IF “change of government” = 0.*

(25) **Low Level Prosecutors** can be removed from office

- | | | | |
|---|--|------------|---------|
| a | only by judicial procedure | YES (1) | NO () |
| b | by decision of one or more
members of the executive | YES (0,25) | NO () |
| c | by decision of parliament
(or a committee thereof) | YES (0,5) | NO () |
| d | by joint decision of one or more
members of the executive and of
parliament (or a committee thereof) | YES (0,75) | NO () |
| e | other | YES (na) | NO (). |

The reasons are (e.g. disciplinary offence):

(26) Can prosecutors be transferred against their will to

- | | | | |
|---|-------------------|---------|---------|
| a | another position? | YES (0) | NO (1) |
| b | another location? | YES (0) | NO (1). |

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

The answers were coded according to the key used for variable 22.

(28) Removal of state prosecutors is

- | | | |
|---|-----------|-------|
| a | more easy | (0) |
| b | the same | (0,5) |

c more difficult (1)
than removing judges from office.

(29) Since 1960, the laws relevant for the prosecution of crimes committed by members of government have been changed

- a 0 times (1)
- b 1 or 2 times (0,8)
- c 3 or 4 times (0,6)
- d 5 or 6 times (0,4)
- e 7 or 8 times (0,2)
- f more than 8 times (0,0).

(30) Since 1960, the income of prosecutors has remained at least constant in real terms YES (1) NO (0).

(31) Since 1960, the budget of state prosecutorial offices has remained at least constant in real terms YES (1) NO (0).

A GOOD SOURCE FOR MORE DETAILED INFORMATION CONCERNING PROSECUTION OF GOVERNMENT MEMBERS IN MY COUNTRY IS

General comments (please feel free to make any comment):