LXV

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in The Netherlands

dr. Jan J.M. van Dijk

Ministry of Justice The Hague - Netherlands
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C O N T E N T S

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I. INTRODUCTORY REMARKS.

In this paper I will discuss the experiences with guidelines within the Dutch criminal justice system. Naturally these experiences can only be understood within the context of the Dutch system. The dangers of cross-national generalizations on sentencing policies or related subjects are strikingly illustrated by the Anglosaxon concept of a "sentencing guideline". This concept gives rise to serious misunderstandings when applied to the Dutch experiences with harmonizing judicial discretion. In the Netherlands guidelines of this sort are used extensively by the office of the public prosecutor in order to harmonize the decisions of local prosecutors regarding criminal prosecutions. In their effects most of these guidelines contribute to the harmonization of the sentences as well. For obvious reasons they cannot be labelled as sentencing guidelines though.

The Dutch judges on their part do not make use of guidelines themselves. Since the prosecutor always makes a well considered sentencing suggestion to the judge, it can be argued that sentencing guidelines for Dutch judges are superfluous. It can even be argued that the existence of a strong office of the public prosecutor is incompatible with the use of formal guidelines by judges. In any case the adoption of sentencing guidelines by the judges of the Netherlands would imply a major change in their functional relationships with the prosecutors.

This short elaboration on the non-existence in the Netherlands of "sentencing guidelines" in the Anglosaxon tradition underlines the necessity of discussing the Dutch experiences with guidelines within the context of the Dutch criminal justice system. I will therefore start this paper with a very brief exposition concerning the role played by the public prosecutor in the criminal justice system of the Netherlands. Next I will discuss the experiences with the national prosecution guidelines issued during the sixties and seventies, and in particular with the highly influential guidelines on drunken driving of 1974 and 1977. After this I will present and discuss some research findings on the actual decision making processes of local prosecutors. These findings

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have been used as a theoretical frame for the construction of a new type of prosecution guidelines which reflect actual decision making practices. In the last paragraph I will discuss the first experiences with these practice-oriented guidelines and try to list their main functions.

2. THE FUNCTION OF THE PUBLIC PROSECUTOR IN THE DUTCH CRIMINAL JUSTICE SYSTEM

A central role within the Dutch Criminal justice system is played by the office of the public prosecutor. This office employs app. 200 specialized penal lawyers who are recruited, trained and payed like judges. Unlike the judges they are not appointed for life. The large majority of the prosecutors however end their careers as senior prosecutor or (deputy) prosecutor general.

The prosecutors are formally in charge of the criminal investigation departments of the various police forces. They also have the monopoly of initiating criminal proceedings. Despite this monolopy the prosecutor is not obliged to initiate proceedings in each case. Even if there is sufficient evidence, the prosecutor may decide not to prosecute on grounds derived from the common interest (the principle of expediency). On the other hand interested parties may lodge a complaint with the Court of Appeal against such a decision. In practice prosecution is in the Netherlands no longer the rule on suspicion of an offence. It takes place only if the common interest warrants it. At this time less than half of the cases presented to the prosecutor by the police are brought to trial The other cases are either dismissed flatly, dealt with by the prosecutor by means of cautioning, ordering of restitution or community service.

At the stage of trial the prosecutor decides upon the nature of the charges and summarizes the evidence. He also demans a specific penalty if he considers the offence to be proved. The judge is not bound by this demand. By tradition,however,the judge hardly ever imposes a penalty which goes beyond the one demanded by the prosecutor. In most cases the judge, after considering the counsel's reply, grants the defendant a "discount" of ten or twenty percent upon the sentence demanded by the prosecutor. For this reason guidelines for local prosecutors concerning their sentencing demands are effective means of harmonizing actual sentences.

The office of the prosecutor is itself hierarchically organized. Each of the nineteen district courts has its own local office of the public

prosecutor. These local offices are coordinated by the prosecutors general, who are attached to the five Courts of Appeal. At the top of the office one finds the assembly of prosecutors general, chaired by the secretary general of the Ministry of Justice (representing the minister). The minister of justice or the assembly of prosecutors general will only in highly exceptional cases interfere with the decisions of local prosecutors on individual cases (e.g. cases which will set a precedent in a sensitive area like euthanasia*)). From the sixties the assembly of prosecutors general have tried to arrive at national policies with regard to the prosecution of certain offenses. The original thrust behind this effort has been the wish to reduce the levels of crime by way of a clear and harmonized sentencing policy. In order to achieve this the assembly have issued several national guidelines, e.g. on the prosecution of the illegal possession of fire-arms, the sale of drugs, and drunken driving. Since the national guidelines on drunken driving have been the most influential ones, the experiences with them will be discussed extensively in the next paragraph.

3. THE 1974 AND 1977 GUIDELINES ON DRUNKEN DRIVING

The first national guidelines on the penalties to be demanded for drunken driving have been issued after the enactment of a new section in the Road Traffic Act which defined drunken driving as driving a car with a blood alcohol reading above 0.5 per mille. During the preparation of these guidelines the prosecutors general discussed the various local sentencing traditions and their presumed social effects but could not reach an agreement. Finally it was decided, by way of a compromise suggested by the secretary general, that unconditional custodial sentences were not to be sought in cases with blood-alcohol readings below 1.5 per mille. The Research and Documentation Centre of the Ministry of Justice (RDC) was invited to evaluate the implementation of these guidelines, issued at the end of 1974. The main findings of this study are summarized in table 1. This table shows the nature of the sentences imposed by the courts for drunken driving before and after the implementation of the prosecution guidelines of 1974 and 1977 (to be discussed below).

*) Serious criminal cases against ministers or other high officials are prosecuted by the prosecutor general at the High Court who cannot be discharged from his post.

Table 1 : Percentages of unconditional custodial sentences imposed for drunken driving by the nineteen Disctrict Courts of the Netherlands in 1974, 1976 and 1980, disaggregated according to the jurisdiction according to the jurisdictions of the Courts of Appeal.

Jurisdiction	Percentages unconditional custodial sentences		
	1974	1976	1980
Den Bosch	46	46	16
Arnhem	13	5	
The Hague	79	48	24
Amsterdam	26	11	11
Leeuwarden	67	42	21
Netherlands	49	33	16

The data presented in table 1 show that the prosecutorial guidelines issued at the end of 1974 have led to an almost immediate reduction of the custodial sentences imposed for drunken driving. In 1976 the overall percentage of custodial sentences had gone down significantly to 33 percent compared to 49 in 1974. The disparity between the sentencing policies of the various jurisdictions however appeared to be as large in 1976 as in 1974. Especially the very high percentages of custodial sentences in the jurisdictions of The Hague and Den Bosch seemed to run counter to the prosecution guidelines.

A more detailed analysis of both the sentences suggested by the local prosecutor and the sentences imposed by the judges revealed that in The Hague and Den Bosch several prosecutors had routinely demanded custodial sentences for cases with alcohol readings below 1.5 per mille. In most of these cases these prosecutors had charged the defendants with the old section in the Road Traffic Act concerning drunken driving. Since the guidelines only applied to the new section this charging policy had enabled them to stick to their own more punitive policy without flouting the guidelines.

After the RDC had reported on this instance of bureaucratic deviance by local prosecutors the assembly of prosecutors general issued revised guidelines in 1977. The new guidelines made it mandatory to charge all

defendants with known alcohol readings with the new section of the Road Traffic Act.

The right column of table 1 shows that three years after the issuance of the second national prosecution guidelines for drunken driving the local sentencing traditions had not yet vanished altogether. The relative low percentage of custodial sentences imposed by the district court of Arnhem however is not due to departures from the guidelines by prosecutors. It is mainly due to the reluctance of the judges to impose such sentences. By and large however the new guidelines seem finally to have been accepted by the majority of both prosecutors and judges (Van der Werff, 1981).

The eventual effectiveness of the drunken drivers' guidelines has not induced the assembly of prosecutors general to issue many other national guidelines. In fact the implementation of the drunken drivers' guidelines seems to have been a phyrric victory for the prosecutors general. Although this guideline has achieved its main goals, the opposition towards central guidelines among local prosecutors has not decreased. The more recent guidelines of the prosecutors general on drugs seem to have had much less impact on prosecution or sentencing policies and has never been evaluated.

Part of the annoyment of the local prosecutors with the drunken drivers' guideline was redirected towards the RDC. According to some local prosecutors the Centre had registered their departures from the guidelines without considering their reasons for this. Partly on account of these observations the RDC has subsequently initiated a major research project on the actual information of processing and problem solving by local prosecutors and judges (Van Dijk, 1980).

4. A CLOSER LOOK AT THE PROSECUTOR

As part of our study on the decision making on sentences the prosecutors of one of the smaller district offices agreed to read and think aloud with a tape recorder at their desk while reaching a preliminary decision on a newly arrived case. This part of their work seems to be similar to what is called "marking" by the procurators fiscal in Scotland.

The researcher assembled a total of approximately hundred think-aloud-reports by seven different prosecutors concerning a representative sample of criminal cases (or files). A full report on this study will be published this year by dr. P.C. van Duyne. In this paper I will try to

highlight those findings which seem to have a direct bearing upon the use of guidelines by prosecutors. Three general research findings seem to stand out in this respect.

First, the contents of the think-aloud reports confirm the conclusion of previous experimental research that prosecutors (and judges) are highly selective in their utilization of available information. Only a small proportion of the information contained in the file was actually used -or even read by the prosecutors. The willingness to consider new information declined increasingly during the process of "marking". After an initial image of the case had been constructed the prosecutors selected those items of information which could confirm and particularize this image. Much of the other information was disregarded. Conflicting information would compel them to reconsider the case altogether. In order to avoid this they sometimes even unconsciously misread small pieces of information in order to make it fit their image of the case.

Secondly and related to the above, the more experienced prosecutors appeared to reach their decisions on most categories of cases along semifixed routes. After having made a global image of a case they unconsciously applied a pre-existing scheme to it, e.g. the scheme for cases of professional burglars. This means they would check a limited number of the same aspects of the case (e.g. value of stolen property, number of previous arrests, aggravated circumstances like use of weapons etc.). Subsequently a tariff based upon previous decisions on cases interpreted by means of the same scheme, seemed to determine the penalty to be demanded.

Thirdly, overt references to the various well known philosophies of sentencing were strikingly absent in the large majority of the think-aloud-reports. Utilitarian objectives like deterrence or rehabilitation were only rarely mentioned during the decision making on the appropriate sentence*). The same is true for the objective or justification of retribution**). When prompted by the researcher to comment upon the goals of a particular sentence the prosecutors would usually refer to several of these goals. Such prompting however seemed often to embarrass the

*) In this summarized description the assessment of the available evidence concerning the case is disregarded for reasons of simplicity. In some cases this of course is an important part of the "marking".

**) Shapland ('81) found that sentencers only rarely refer to sentencing philosophies in their sentencing speeches. According to our findings such philosophies don't play a prominent role in the internal decision making either.

interviewed prosecutors and was discontinued.

From the viewpoint of penal philosophy the actual decision making of the prosecutors seems to be a rather crude application of the principles of retributivism. The various schemes which are used by the prosecutors to reach a sentencing decision seem to be standardized ways of determining the defendants measure of culpability or desert (Von Hirsch, '81). The schemes are build up by a limited number of fixed indicators of desert, like the seriousness of the intended effects of the crime, the defendants wilful involvement in other criminal activities as apparent from his criminal techniques and criminal record, aggravating circumstances like the use of weapons, etc. To the defendants desert, determined in this objective way, a penalty is matched according to a fixed tariff.

This whole practice seems to be rather far removed from any utilitarian penal philosophy.

It cannot be doubted that the classical theory of retributivism has never been discarded altogether by Dutch penal lawyers. Also, it is clear that the positivistic philosophy of rehabilitation has recently lost some of its credibility with many prosecutors and judges. Yet we have no indications that prosecutors or judges have converted themselves to the socalled movement of new retributivism, emerging in the USA and Sweden (Von Hirsch, '82). When interviewed on their sentencing philosophy most Dutch prosecutors will declare themselves adherents to a philosophy which combines elements of utilitarian theories with some form of retributivism. In their decision making on individual cases however they seem to focus their attention almost exclusively on the defendants culpability*).

In our view this inconsistency is not due to insincerity on the part of the interviewed prosecutors. It is mainly due to the simple fact that the aims of punishment in general -meaning the aims of the criminal justice system as a system, including its subsystems like the police and the probation office- cannot be equated to the factors which play a role in the decision making in a particular case.

*) According to the law pretrial detention for crimes like burglary is to be ordered only on the grounds of the danger of recidivism or the possibility of escape. Research by the RDC has shown however that in practice the prosecutors decision to demand custody is primarily determined by the seriousness of the offense (Berghuis a.o., '81). This finding too indicates the predominance of the principles of retributivism or just desert over utilitarian considerations.

At the abstract level of the criminal justice system the social objectives of deterring potential offenders and rehabilitating convicts seem to be the principal ones. At the level of individual cases the prosecutors and judges, however, have to meet first of all the demand of fairness of both the defendant and society, that is the demand of measuring out pain in direct proportion to the defendants culpability. In our view this demand is not an academic philosophical construction but a vital element of the publics sense of justice. The leading priciple of sentencing seems to be that a defendant who is less to blame for his deeds should never be punished more severely and vice versa.

In some respects the problems facing the sentencer are familiar to any criminologist who has ever evaluated the work of students. Regardless of the current ideology on the aims of a criminology course any method of determining marks must meet the student's demand of fairness. For this reason many criminologists tend to base their marks on an evaluation of a limited number of objective aspects of the work. Although these aspects do not necessarily fully reflect the stated aims of the course, this approach is widely accepted.

The tendency to evaluate papers on the basis of a small number of objective aspects is primarily motivated by a concern to do justice to the students. It is strongly reinforced however by the severe time limits imposed upon the evaluator by his workload. No criminologist can afford to spend much time on the evaluation of the work of one particular student.

In this respect academic criminologists and 'sentencers' are affected in their work by similar factors. Both are working much of their time at an intellectual assembly line and suffer the ensuing symptoms of a highly economized and routinized way of information processing and problem solving.

The above presented findings and their tentative interpretation are not meant tc be a blueprint for a theory on the decision making processes of prosecutors or judges. In our judgement, however, they do throw a new light on the use of guidelines by "sentencers". The semi-standardized way in which experienced prosecutors prepare their decisions on most cases naturally limits their flexibility in adopting formal guidelines imposed upon them from above. The introduction of such guidelines implies that each prosecutor has to do away with his privately developed schemes and tariffs. Since these schemes directly reflect the prosecutors perceptions

of just desert, prosecutors will logically resist the adoption of such guidelines, regardless of their utilitarian objectives. The resistance of local prosecutors towards the drunken driving guidelines is therefore understandable.

On the other hand the highly standardized nature of most decision making processes of prosecutors seems also to argue in favour of the use of guidelines Guidelines which would reflect the common ground of the schemes and tariffs unconsciously applied by the majority of prosecutors would be effective means to harmonize sentencing demands. Such guidelines would require a minimal amount of adaptation from the individual prosecutors. Their development would also logically require the active and continuous involvement of the local prosecutors themselves. As a result of this their introduction will most probably be met with much less resistance than the prescriptive and more rigid guidelines issued by the prosecutors general in the sixties and seventies.

5. THE DEVELOPMENT OF DESCRIPTIVE GUIDELINES

Parallel to the observational study, the RDC analyzed a large sample of criminal files which had been dealt with by the prosecutors of the courts in 1975. On the basis of the results from the studies of Wilkins a.o. (1978) in the USA and our own observational study it was assumed that the statistical relationships between the items of information about the defendant and his crime contained in the file and the prosecution decision or sentencing decision would reflect the schemes and tariffs underlying these decisions. In order to find these statistical relationships we used a technique of statistical analysis called stepwise regression analysis. This technique firstly identifies the item of information which explains most of the variance in the prosecution decision (is most closely related to it). Next it seeks the item (or variable) which explains most of the remaining variance and so on. This technique not only shows which variables have presumably most strongly influenced the prosecution decision but also the respective weights, accorded them. The results of one of these analyses are presented in table 2.

Table 2: Results of a stepwise regression analysis of the decision to prosecute cases of simple theft; dependent variable: prosecute no/yes

	standard partial coefficient of regression
Value of stolen property	+ .25
Previous offences	+ .15
Large firm (yes/no)	- .11
Age (low/high)	- .14

Multiple r = 39

As expected table 2 shows that the decision to prosecute cases of theft is dependent most strongly on the amount of damage and on the number of previous arrests. In addition to this cases of shoplifting from department stores and cases of theft by older people were easier dismissed. These factors can all be considered as operationalizations of the defendants culpability*).

The total amount of variance in the prosecution decision explained by these four factors is rather low (app. 16%). This is partly due to technical shortcomings of the applied analysis. Apart form that, high statistical relationships in this analysis were not to be expected. Such a result would imply that the local prosecutors would already have achieved a high degree of uniformity and constancy in their collective prosecution policy. With a view to the highly autonomous way in which such decisions are made by individual prosecutors such uniformity is rather unlikely.

If the statistical analysis would have shown almost no relationships between the objective information contained in the file and the proscutors decisions it would have been impossible to use the results for the construction of a guideline. However, when the analysis would have identified perfect correlations the construction of a guideline would have been superfluous. The task of developing descriptive guidelines is the difficult one of identifying the common elements in the otherwise greatly different ways of decision making of individual prosecutors.

*) Most thefts by old people seemed to have been committed on the spur of the moment

The above presented regression analysis solution for the prosecution decision on thefts can be viewed as a mathematical representation of the common elements in the schemes used by the individual prosecutors for making these decisions. If this representation would make sense to the prosecutors, it could be utilized by them as a model for reaching future decisions.

The results of such statistical analyses can be transformed into practical guidelines in several ways. The above presented findings have been transposed by us into a numerical guideline in a rather straightforward way*). The weight of the regression coefficients of the various factors represented in table 2 were transformed into a maximum score for each factor. After the total maximum score had been fixed at twelve for reasons of convenience, this meant that the strongest factor "value of stolen property" received a maximum score of four, the two second strongest factors (previous arrests and age) a maximum score of three and the least strong factor (type of victim) a maximum score of two. Subsequently the scores for each value of the factors was calculated on the basis of the crosstabulations between each of the factors and the prosecution decision. For each criminal case in our dataset a total score was subsequently calculated by adding up the scores for the four factors. From an analysis of the relationships between these scores and the prosecution decisions within our dataset, the critical value for the decision to prosecute or not appeared to be six. Above this value most cases had been prosecuted. An outline of this inductively constructed guideline is given in table 3. (page 12)

According to this guideline the case of an old lady with no prior arrests who has stolen a bar of chocolate from a department store would have a score of one point only and be dismissed definitely. The case of a young

*) The data have also been analyzed by means of a Canals analysis for categorical data with a set of six independent variables. This rendered a correlation coefficient of 48. Theoretically this technique offers good opportunities for the construction of a descriptive guideline. In practice however this approach appeared to be less efficient than the one followed by us.

Table 3: Example of a numerical guideline for the prosecution of thefts, based upon an analysis of current policies

A. Offence-factors	number of points
1. damage	
nil	0
under 50 guilders	+ 1
between 50 and 100 guilders	+ 2
between 100 and 250 guilders	+ 3
over 250 guilders	+ 4
2. victim	
large firm	0
not a large firm	+ 2
B. Offender-factors	
1. previous offences	
none	0
one prior conviction	+ 1
two prior convictions	+ 2
three or more prior convictions	+ 3
2. age	
65+	0
30-65	+ 1
22-30	+ 2
18-22	+ 3

0 - 2: very strong indication not to prosecute (i.e. definitely drop case);

3 - 5: strong indication not te prosecute;

6 - 8: indication to prosecute;

9 - 12: strong indication to prosecute

man of 20 with three prior arrests who has stolen a TV-set from a private house will have a score of 12 and be prosecuted definitely.

6. THE EXPERIENCES WITH DESCRIPTIVE GUIDELINES

The guideline presented above reflects the actual prosecution decisions of the approximately fourty prosecutors in the The Hague jurisdiction made in 1975. In order to test the capacity of this guideline to predict future decisions on petty thefts, a small experiment was conducted with the six prosecutors who deal with the cases reported by the municipal police force of The Hague. During four months in 1981 all new files concerning petty theft were primarily analysed by the RDC. The model decisions based upon the calculated scores according to the guideline were written on forms which were added to the files in sealed envelopes. The participating prosecutors were instructed to reach decisions on these cases in their own ways and check these afterwards to the model decisions. They were also asked to write down the reasons for their decisions on the form, when their decision deviated from the one suggested by the guideline.

A subsequent analysis showed 68% of the actual decisions had been made in accordance with the guidelines. A more detailed analysis showed that a substantial proportion of the decisions departing from the guideline had been taken by one particular prosecutor. This prosecutor appeared to have been a trainee who apparently had shrunk from the responsibility of dismissing cases. When his decisions were excluded from the analysis 78% of the remaining decisions appeared to have been in accordance with the model.

In view of the fact that the guideline had not been constructed on the basis of recent decisions of the participating prosecutors themselves these results are encouraging. Also, most of the reasons given for deviating decisions did not imply the use of different criteria but only a different weighting of the four factors used in the guideline.

The original guideline has been readjusted on the basis of the newly collected data from 1982. It was decided to split the factor "value of stolen property" into two different factors ("number of thefts"and "value of stolen property")*).

*) Defendants who had committed a series of small thefts were apparently viewed as more blameworthy than defendants who had only committed one rather serious theft.

The factor "age" was given a more nuanced scoring (with low scores for both the very young and the old). Lastly the new data suggested the extension of the guideline with a new factor: unemployment (cases of the employed had been dismissed more readily). This last factor is of course a rather controversial one and cannot be easily interpreted as an operationalization of culpability.

A first test of the new guideline showed a concordance between the acutal decisions and the model decisions of 74%. With the use of the orginal guideline the concordance would have been roughly the same. Since the new guideline is more extensive and requires more calculations, its superiority over the elder one can be disputed.

The revised guideline has been presented to the prosecutors of The Hague, who have decided to adopt it with some modifications. A relative low score for defendants between 18 and 21 year as suggested by the empirical findings was rejected. Also rejected was a positive score for unemployed defendants. At the request of some prosecutors this last aspect was replaced by the factor "drug addiction". Drug addiction showed a strong statistical relationship with unemployment. The readiness to prosecute thefts by drug addicts was motivated by their supposed need for help or treatment. The decision on this part of the proposed guideline underlines our point that descriptive guidelines should not be derived directly from empirical data on existing practices. They should always be based upon a normative assessment of such data by the prosecutors themselves.

The calculation of the scores will be made by legal clerks. If a prosecutor decides to deviate from the decision as suggested by this score, he will write down his reasons for doing so on a short form. These forms will be analysed by the RDC and the findings will be discussed during periodical meetings with the prosecutors. During 1983 similar descriptive guidelines will be adopted for all other important categories of crimes. Most likely other local offices will start similar projects as well.

7. SUMMARY AND DISCUSSION

The office of the public prosecutor possesses a central position within the criminal justice system of the Netherlands. Although it is formally organized hierarchically the national guidelines on the sentences to be demanded for drunken driving and other categories of crimes have been met

with much opposition by local prosecutors. Observational studies of the Research and Documentation Centre of the Ministry of Justice on the actual decision making processes of local prosecutors have clarified the roots of the resistance towards guidelines imposed by the central authorities. At the same time these studies have refuted the traditional notion that judicial decision making cannot for intrinsic reasons be standardized by any means. In fact, on the level of the individual prosecutor the information processing and problem solving concerning the more frequent categories of cases appeared to be process of checking some fixed indicators of culpability according to a pre-existing scheme and matching the penalty to the outcome according to a tariff. This largely unconscious tendency seems to have been reinforced by the necessity of flow production. Pressed by deadline, several prosecutors show a distinct tendency towards result thinking: the willingness to consider new and possibly deviant information declines rapidly after an image of the case has been constructed and an appropriate scheme has been applied.

These findings have inspired us to advocate the introduction of a new type of guidelines. The new guideline would have to reflect primarily the collective wisdom of the local prosecutors themselves instead of the sentencing philosofies or policy considerations of the central authorities. Such guidelines might therefore be characterized as descriptive guidelines. Since their substance reflects the common ground of the schemes and tariffs currently applied by the individual prosecutors they will be more agreeable to its users and therefore be more effective.

The envisaged descriptive guidelines are being used experimentally by the local prosecutors of The Hague with the assistance of the Research and Documentation Centre of the Ministry of Justice. The prosecutors have agreed to take guidance from a numerical guideline on the prosecution of thefts which has been developed by means of an emperical study into their past decisions. The guideline is not binding. Decisions departing from the model decision will be evaluated however periodically in joint meetings.

In our view the use of descriptive guidelines implies the institutionalization and coordination of the existing tendency towards standardized decision making on sentences. This formalization of an existing practice seems to have several advantages.

The construction of formal guidelines will first of all stimulate the verbalization and articularization of the various schemes and tariffs presently applied unwittingly by individual prosecutors. By this process the actual considerations for prosecution and sentencing decision will become subject to peer review and public criticism. Gradually a "grounded theory" on sentencing might evolve, which will presumably be different from the current academic philosophies of sentencing.

The introduction of guidelines will also serve several important policy goals. Disparities in prosecution decisions and sentences will be reduced within the jurisdictions of disctrict courts by the adoption of guidelines by local offices of the public prosecutors. After several local offices have adopted their own guidelines a spontaneous process of convergence might occur. Presumably this process will be strongly promoted by the central authorities. In principle, however, each local office should be free to adapt its own guidelines to local attitudes and policies.

At present the criminal justice system faces the dual problem of exponential increases of serious crime on the one hand and substantial cuts into its budget on the other. In this situation the need to control the input to the criminal justice system (and to its prison system in praticular) seems more urgent than ever. Descriptive guidelines in particular guidelines for the demanding of pretrial detention, seem to be a most welcome policy instrument during this period of economic recession.

The introduction of descriptive guidelines will probably increase the efficiency of the decision making by prosecutors on individual cases. The use of such guidelines seems a more efficient working method than the application of semiconscious schemes and tariffs based upon previous decisions. Also the utilization of information will become less biased by initial impressions of the case.

Probably the preparation of most routine decisions can be delegated to legal clerks after a set of guidelines has been adopted. The out of court task of the prosecutor will then be restricted to the processing of cases to which no guidelines can be applied.

Consequently more time can be spend on the somewhat neglected task of giving guidance to the investigation departments of the police forces. For this task too clear prosecution guidelines will prove to be a valuable iif not indispensalbe tool.

Because of its many positive functions the adoption of prescriptive guidelines seems to have major potentials for enhancing the rationality and efficiency of the criminal justice system.

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