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# Prosecutors as sentencers? Prosecutorial sentencing discretion re-imagined

## Prokuratorzy jako sędziowie? Prokuratorska swoboda decyzyjna na nowo wyobrażona

**Abstract:** Despite its growing influence, the sentencing discretion of continental European prosecutors has remained largely underexplored. This paper seeks to fill that gap by offering a systematic account of prosecutorial sentencing discretion in continental Europe. It identifies five core dimensions through which prosecutors exercise sentencing discretion, illustrating how prosecutorial decisions shape sentencing outcomes, both directly and indirectly. The study sheds light on the critical – yet often overlooked – role of prosecutorial hierarchy in guiding and constraining these decisions. Drawing on psychological, organizational and doctrinal perspectives, the paper identifies key sentencing mechanisms and explores their practical implications. In doing so, it provides a novel perspective on the role of continental prosecutors in sentencing and offers pathways for future research.

**Keywords:** public prosecution, sentencing, sentence recommendations, continental prosecution, prosecutorial discretion

**Abstrakt:** Swoboda decyzyjna prokuratorów w Europie kontynentalnej pozostaje w dużej mierze niezbadana, pomimo ich rosnącego wpływu na działanie wymiaru sprawiedliwości. Niniejszy artykuł stara się wypełnić tę lukę, oferując systematyczny opis prokuratorskiej swobody decyzyjnej w Europie kontynentalnej. Zidentyfikowano w nim pięć podstawowych wymiarów korzystania przez prokuratorów ze swobody decyzyjnej, ilustrując, w jaki sposób decyzje prokuratorskie kształtują wyniki wyroków sądowych, zarówno bezpośrednio, jak i pośrednio. Badanie rzuca światło na krytyczną – choć często pomijaną – rolę hierarchii prokuratorskiej w kierowaniu i ograniczaniu tych decyzji. Opierając się na perspektywie psychologicznej, organizacyjnej i doktrynalnej, artykuł identyfikuje kluczowe mechanizmy wydawania wyroków i bada ich praktyczne implikacje. W ten sposób zapewnia nowe spojrzenie na rolę prokuratorów w wydawaniu wyroków i oferuje ścieżki przyszłych badań.

**Słowa kluczowe:** prokuratura, wymierzanie kar, propozycje kar, prokuratorzy kontynentalni, swoboda prokuratorska

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## Introduction

For decades, scholarly discourse has pointed to the *enfant terrible* of the American criminal justice system: the prosecutor. What attracted scholars to prosecutors was their unique position in the criminal justice system, operating with seemingly unlimited discretion under non-existent oversight, together with the ability to single-handedly decide on the most pivotal issues of criminal proceedings (Thomas, Fitch 1976; Sklansky 2016; 2018). The questions of whether prosecutorial discretion should be limited and how quickly became central to the discussion (Sarma 2017; Sklansky 2018).

In continental Europe, prosecutors have largely eluded this scrutiny (Voigt, Wulf 2019). Today however, prosecutors – called by some "gatekeepers," "agenda-setters" or "judges by another name" (e.g. Weigend 2012: 389; Sklansky 2018: 503) – are becoming central figures of the criminal justice systems even beyond the American horizon, as their role in criminal proceedings has significantly expanded (Jehle, Wade 2006; Jehle, Smit, Zila 2008; Sklansky 2016; 2018). Still, this trend has not yet been fully reflected in European scholarly discourse.

Across the various areas in which European prosecutors exercise their power, sentencing remains among the most crucial and least studied. According to contemporary research, a sentence is not a product of the omniscient judge alone, but the result of a collaboration of several key criminal justice stakeholders (Albonetti 1991; Steffensmeier, Ulmer, Kramer 1998; Kim, Spohn, Hedberg 2015). Prosecutors are pertinent among them, having the power to choose from a broad palette of sentence-related actions. Most criminal cases in continental Europe are resolved through simplified procedures or dismissals, where prosecutorial assessments effectively determine the outcome (Krajewski 2012; Hodgson, Soubise 2016; Tonry 2024; 2025; Drápal, Plesničar 2025; Paolini, Kantorowicz-Reznichenko, Voigt 2025). Even in the minority of cases that proceed beyond these simplified pathways, the prosecutor's decisions continue to assert substantial influence over how the case ultimately unfolds. For instance, although prosecutors recommend specific sentences to judges, the effects of these recommendations are largely understudied (Johnson, Van Wingerden, Nieuwbeerta 2010; Kim, Spohn, Hedberg 2015).

Despite the critical role prosecutors play in sentencing, European scholars have been hesitant to comprehensively analyse their sentencing discretion, as most studies focus on prosecutors' decisions related to charges or procedural actions (Goldstein, Marcus 1977; Jehle, Smit, Zila 2008; Luna, Wade 2010). This paper seeks to address this gap by re-imagining prosecutors as actors with meaningful influence over sentencing. It examines three questions: (1) In which areas, and in what ways, do continental prosecutors exercise sentencing discretion? (2) How is this discretion shaped by the prosecutorial hierarchy? and (3) How do prosecutors' interactions with other sentencing actors affect the sentences that are imposed? Answering these research questions will help us gain a clearer understanding of

the role continental prosecutors play in sentencing and, in turn, better inform system design and the creation and implementation of sentencing policy. This paper is theoretical in nature; by synthesising the existing literature and integrating it with relevant theories, it seeks to offer a comprehensive conceptual basis for understanding European prosecutors as sentencers – an approach that has been previously lacking. To explore prosecutorial discretion and sentencing, we turn to the existing scholarship, not just to summarise what is known, but to highlight the critical gaps this paper addresses.

## 1. Current scope of knowledge

In recent decades, continental European prosecutors have become increasingly important criminal justice actors (Luna, Wade 2010). As continental jurisdictions have introduced new –and increasingly adversarial – tools, the gap between an inquisitorial and an adversarial system has narrowed. This effort to make the criminal process more efficient and flexible has led many countries, historically operating under the principle of legality, to adopt expediency (opportunity) tools (Ma 2002; Luna 2013). In effect, continental prosecutors, previously considered mere civil servants, have been vested with discretionary powers that are either completely new or importantly strengthened (Albrecht 2000; Luna, Wade 2010; Sklansky 2016; 2018; Ligeti 2019). For instance, in some jurisdictions a prosecutor may now dismiss a case for a lack of public interest, negotiate a sentence using plea-bargaining mechanisms or directly impose sanctions (e.g. by issuing a penal order) (Paolini, Kantorowicz-Reznichenko, Voigt 2025; Tonry 2025). The gap between the inquisitorial and adversarial prosecutor is thus closing.

Historically, continental prosecutors – especially when contrasted with their Anglo-American counterparts – form a distinct category, because their institutional status, scope of discretion and organisational structure tend to follow different logics. Across much of Europe, prosecutors operate within hierarchically structured institutions and are subject to formal or informal oversight (Tak 1999; Luna, Wade 2010). Unlike the relatively autonomous and locally elected American district attorney, continental prosecutors function within more bureaucratic frameworks, as professionalised civil servants (Tonry 2024). Moreover, their role has historically differed substantively: While Anglo-American prosecutors would play a central role in plea bargaining and exercise broad discretion over the selection of charges, continental prosecutors in inquisitorial systems often assumed different responsibilities, including oversight of the pre-trial investigations, and thus occupied a less dominant role in sentencing (Ma 2002; Luna, Wade 2010; Hodgson, Soubise 2016). As many continental systems adhere to the principle of legality (mandatory prosecution), prosecutors were required to bring charges

whenever the evidentiary requirements were met, limiting the prosecutors' ability to drop cases. These institutional differences merit a separate analysis of continental European prosecutors, one which this paper undertakes.

Against this backdrop, scholars have paid little attention to continental prosecutors as sentencers or agents influencing the sentencing process and outcome (Luna, Wade 2010). Prior research predominantly addresses the prosecutors' charging decisions or procedural powers (Luna, Wade 2010). By contrast, the sentencing actions of today's prosecutors extend well beyond a simple binary choice, encompassing a wide range of discretionary decisions and interactions with other stakeholders. The way that prosecutors come up with and enforce their sentencing strategy therefore goes largely unnoticed.

To date, the shift in prosecutorial sentencing powers has been documented primarily in two areas: penal orders and plea (sentence) bargaining. A penal order results from a simplified procedure in which the defendant is sentenced through a written verdict based solely on the evidence included in the dossier, thus avoiding a costly trial (Jehle, Wade 2006; Thaman 2012). The rules and use of penal orders vary across Europe: in some criminal justice systems – such as the Dutch, Swiss, Norwegian or Swedish ones – the prosecutor issuing a penal order holds the decision both to charge and to impose a sentence; in others – such as the German, Czech or Slovenian systems – the prosecutor cannot directly impose a sentence. In either case, the penal order presents a significant sentencing advantage for the prosecutor, who can avoid a trial and suggest a sentence, which the court will in most cases simply accept (Luna, Wade 2010; Thaman 2012; Luna 2013; Thommen 2023). Even in countries where penal orders are imposed by the court, the judge so heavily relies on the prosecutor's proposal that some authors consider penal orders a "prosecutorial case-ending" (Luna, Wade 2010: 1449) or an alternative to the American plea bargaining (Luna 2013).

Besides penal orders, a multitude of European systems have adopted plea bargaining, elevating prosecutors to central figures of the criminal justice system in order to make the system more efficient without adopting complex systemic reforms (Ma 2002; Langer 2004; Luna, Wade 2010; Luna 2013; Varona, Kemp 2020; Paolini, Kantorowicz-Reznichenko, Voigt 2025). Though they differ in specifics, most continental systems follow the typical plea-bargaining scenario: the defendant pleads guilty and, through negotiations with the prosecution, reaches a discounted sentence that is not contested (Luna 2013).

In terms of prosecutorial sentencing, scholars have also discussed various guiding measures, including sentencing guidelines and normal punishments (Lappi-Seppälä et al. 2001; Drápal, Van Wingerden 2018; Drápal, Plesničar 2025). Evidence from Czechia suggests that high-ranking members of the prosecutorial hierarchy, through their informal instructions, influenced the implementation of a policy for imposing fines (Drápal, Dusek 2023). Recent work on prosecutorial sentencing has tested the effect of quantity thresholds on sentence recommendations (Drápal, Šoltés 2024), analysed prosecutors' sentencing abilities and coping

strategies (Plesničar 2024) and highlighted the psychological impact of prosecutors' sentencing recommendations (Johnson, Van Wingerden, Nieuwbeerta 2010). Despite their efforts to capture the changing role of prosecutors, these studies each address only a single aspect of prosecutors' sentencing discretion and do not provide a complex theoretical framework. Thus, prosecutorial sentencing discretion and its implications in continental criminal proceedings remain unexplored.

Despite significant institutional changes, the role of the continental prosecutor remains conceptually underexplored. The key limitations of contemporary studies on the prosecutors' role in sentencing are threefold. First, they analyse only a handful of European countries, with most of the attention being directed towards Germany, Italy and France (Ma 2002; Luna, Wade 2010). This gap in scholarship – particularly in some regions of Europe – also limits the present analysis: relying on English-language sources inevitably excludes certain national perspectives, making future research published in English essential to bridge this gap. Second, most of these studies analyse one specific institution at a time (e.g. plea bargaining or penal orders), and they do not offer a "complex picture of prosecutorial adjudication across Europe" (Luna, Wade 2010: 1427). Third, these papers rarely consider the broader sentencing context, such as the power of other sentencing actors and interactions between them.

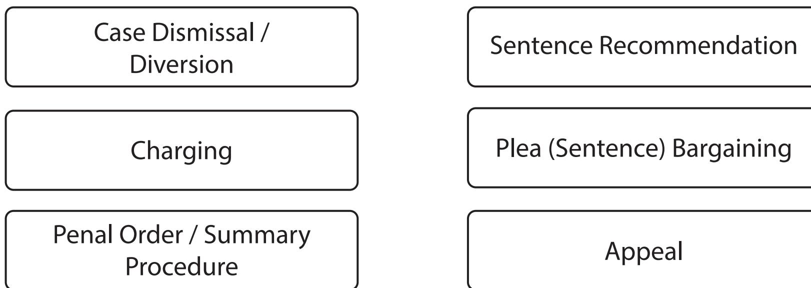
To fill this gap, I first analyse prosecutorial sentencing discretion and explore the different ways in which prosecutors act as agents of sentencing, while taking into account the role of the prosecutorial hierarchy. I then demonstrate what effects these sentencing actions have, using key psychological, organisational and doctrinal theories. To this end, I consider the discretionary actions of principal sentencing actors – prosecutors, defence attorneys/defendants and judges – and analyse their interactions in reaching the final sentence. In doing so, the paper offers a novel conceptual framework that identifies key dimensions of prosecutorial sentence-related decision-making, explains how these decisions interact with judicial and defence behaviour to influence sentencing and explores their significance for both institutional design and sentencing policy. Prior to modelling these interactions, the following section examines in detail the scope of prosecutorial sentencing discretion and the principal dimensions in which it operates within continental criminal justice systems.

## 2. Prosecutorial sentencing discretion re-imagined

Prosecutors exercise their sentencing discretion in several areas (as outlined in Figure 1). First, in the pre-trial stage, prosecutors decide whether to dismiss or pursue a case. In doing so, they determine whether the defendant should avoid sentencing altogether or face an alternative, quasi-punitive measure; depending on

the jurisdiction, these measures can more or less resemble sentences. For instance, in Slovenia, prosecutors can impose community service by means of diversion; in Belgium or the Netherlands, fines can be used as part of a conditional dismissal; French prosecutors can impose a financial penalty or community service (Jehle, Smit, Zila 2008; Hodgson, Soubise 2016; Weigend 2016; Boone, Pakes, Van Wingerden 2022; Brizioli 2022; Tonry 2024; 2025). In some Western European countries, these conditional dismissals are used very frequently (Weigend 2016; Tonry 2025), transitioning the sentencing power over to the pre-trial stage and onto the prosecutor.

**Figure 1.** Dimensions of prosecutorial sentencing discretion




Source: Author's own work.

Second, prosecutors take charging decisions that strongly constrain judges by determining the applicable sentencing range; while most European countries rely on the principle of mandatory prosecution, some prosecutorial discretion is typically maintained (Tak 1999; Hodgson, Soubise 2016). As charging decisions have been examined by other authors, they are discussed here only briefly.

Third, in most European countries, prosecutors can engage in some form of plea (sentence) bargaining (Paolini, Kantorowicz-Reznichenko, Voigt 2025). In recent years, plea bargaining has become a significant tool used by prosecutors to negotiate sentences, since it features in almost all continental European jurisdictions, in some form (Paolini, Kantorowicz-Reznichenko, Voigt 2025). Although prosecutors are usually unable to negotiate the charges, they have significant sentencing power to negotiate the sentence and determine what discounted sentence, if any, should be given. This discount is likely to vary across jurisdictions: in some countries, prosecutors are limited to applying pre-defined sentence discounts, whereas in others, the only constraint is the statutory sentencing range, often with possible exceptions (Langbein 1974; Paolini, Kantorowicz-Reznichenko, Voigt 2025).

Fourth, prosecutors can issue or request a penal order (Thaman 2012; Tonry 2024; 2025) or initiate summary proceedings (Ma 2002; Li 2008; Thommen 2023). If issued, a penal order allows the parties to avoid a trial, with guilt being determined from the dossier; the defendant may challenge the order and opt for a full trial, but

is otherwise sentenced on "take-it-or-leave-it terms," making the process simpler and cheaper while increasing prosecutorial influence (Langbein 1974: 457; Albrecht 2000; Hodgson 2020). Even in countries where prosecutors cannot directly issue a penal order, judges rarely challenge their evidentiary or sentencing claims (Luna, Wade, 2010). Bypassing the trial hearing limits the judge's firsthand impression, increasing their deference to the prosecutor's assessment.

Fifth, prosecutors in most continental European countries recommend sentences to the court. These recommendations are either voluntary (e.g. Slovenia) or mandatory (e.g. Poland, Czechia, Estonia or Moldova), can be binding or solely informative and can occur at the pre-trial or trial phase (Leifker, Sample 2010; Melcarne, Monnery, Wolff 2022; Drápal, Plesničar 2025). Prosecutors typically recommend the appropriate type of sentence (e.g. fine, community service or imprisonment) and its severity (e.g. the amount of the fine, number of hours or length of imprisonment) (Hodgson, Soubise 2016; Drápal, Dusek 2023). During the trial phase, in addition to presenting the main narrative of the crime and the evidence, prosecutors – e.g. in France, the Netherlands, Slovenia, Czechia or Poland – recommend a sentence in their closing speech, before the court reaches its verdict (Langbein 1974; Johnson, Van Wingerden, Nieuwbeerta 2010; Krajewski 2012; Hodgson, Soubise 2016; Drápal, Plesničar 2025). This "final" sentence recommendation should account for any changes or information that could not be reflected earlier. Even when not strictly binding to the judge, these recommendations likely influence sentencing significantly, as they provide specific numerical guidance in jurisdictions where such guidance is largely absent (Johnson, Van Wingerden, Nieuwbeerta 2010; Hodgson, Soubise 2016; Pere, Lahti, Sutela 2018; Drápal, Plesničar 2025). Sentence recommendations are thus a strong tool for influencing the sentencing process, and this tool is fully in the hands of prosecutors.

Additionally, prosecutors – e.g. in Czechia – may negotiate a sentence even during a trial hearing (Ščerba 2023). This process may seem redundant, given that the investigation has already been carried out and the case has already burdened the court. However, prosecutors may be willing to use this process to obtain convictions in weak cases, even if it means giving the defendant a discounted sentence, as conviction rates – and not sentence punitiveness – are used to measure continental prosecutors' success (Luna, Wade 2010).

Finally, after a sentence has been imposed, prosecutors can typically appeal it; this gives them yet another way in which they can influence the sentencing outcome. In practice, line prosecutors will compare the recommended and imposed sentences and determine whether the difference between the two is significant enough to justify an appeal, considering their previous experience with the appellate court (Baum 2009; Roberts, Petzsche 2025). Additionally, appeals can be filed for other reasons, for instance, those related to the facts of the case which influenced the sentence.

Recognising the relevance of all dimensions of prosecutorial sentencing, this paper centres on prosecutors' power to recommend sentences: an influential yet

insufficiently examined power whose drivers and effects remain largely unclear. The process of crafting a sentence recommendation is likely similar to that of imposing a sentence. The decision-maker (here, the prosecutor) considers a multitude of factors (e.g. the seriousness of the crime or the criminal history of the accused) and decides on the type and length of the sentence, while trying to achieve certain sentencing aims (Drápal 2024).

The prosecutors' ability to consider all factors and take a principled decision is limited, as continental systems rarely provide guidance beyond a statutory range (Drápal, Plesničar 2025). The actions of continental prosecutors – including recommending or negotiating a sentence – take place within a hierarchical structure (Bibas 2010). Hierarchical accountability mechanisms such as internal guidelines or instructions thus come into play, guiding prosecutors on general sentencing principles or rules for specific offences (Tak 1999; Luna, Wade 2010; Wright, Miller 2010; Krajewski 2012; Hodgson, Soubise 2016; Bowman, Lowrey-Kinberg, Gould 2024). Two levels of prosecutorial hierarchy enter this equation: head/chief prosecutors and higher-tier prosecutors (Albrecht 2000). Head prosecutors – responsible for managing their office – can exert substantial influence, particularly in less centralised systems (Ma 2002; Bibas 2010). By reviewing recommendations and instructing line prosecutors on sentencing principles, head prosecutors can effectively steer office-level sentencing practices and enforce sentencing policy (Tak 1999; Krajewski 2012). For example, in Czechia, head prosecutors have the authority to review each recommendation and modify it as they deem appropriate (Žibřidová, Drápal 2023). Higher-tier (e.g. regional- or state-level) prosecutors likewise shape sentencing: they may direct subordinate offices, formulate or enforce policy or even take on lower-level cases themselves (Luna, Wade 2010; Krajewski 2012). However, head prosecutors may also choose not to intervene, whether out of respect for prosecutor autonomy or due to a view that intervention is ineffective, to workload pressures or to simple inactivity.

In theory, prosecutors have the least hierarchical control once a case goes to trial. Continental prosecutors enjoy broad autonomy in court, illustrated by anecdotes of them reading or dozing during hearings (Langbein 1974; Fassler 1991). On paper, this allows prosecutors at trial to recommend a sentence independently of their superior's preference (Krajewski 2012). Still, head prosecutors can shape trial conduct in advance. For instance, they may set baseline sentences or signal the acceptable size of a sentence discount. Moreover, after-the-fact review is similarly powerful, as the expectation of how decisions will be reviewed drives line prosecutors to align with the head prosecutor's – perhaps assumed – views (Tak 1999; Bibas 2010). Therefore, despite the saying that "the pen is tied but the tongue is free," a tightly-controlled tongue may not be free after all (Vouin 1970: 487). Furthermore, head prosecutors can also influence appeals by formulating explicit criteria or cultivating implicit expectations about when appeals should be filed.

Ultimately, while the prosecutors' discretion remains central, the hierarchical structure above them profoundly shapes how that discretion is exercised (Levine,

Wright 2012). The influence of head and higher-tier prosecutors thus represents one of the most powerful – and least transparent – forces in continental sentencing. Despite that, scholars have offered surprisingly little analysis of its implications for sentencing. Two barriers explain this gap. First, national prosecution services lack transparency, leaving their internal rules largely inaccessible to anyone without insider knowledge. Second, even with substantial insider knowledge, scholars quickly run up against a lack of relevant empirical data, as most systems either do not record detailed prosecutorial actions or do not share them with researchers (Krajewski 2012). As a result, although hierarchical oversight grants substantial power to shape prosecutorial behaviour, we lack reliable ways to assess whether that power is used in line with systemic principles (Sarma 2017). Analysing prosecutorial discretion in isolation provides an incomplete picture. Instead, examining how prosecutors' decisions interact with those of other criminal justice actors is a necessary next step. We turn to that task in the following section.

## 3. Interactions among sentencers: Theory

Various actions of and interactions between criminal justice actors – prosecutors, judges and defence attorneys – are involved in reaching a criminal sentence. Among these stakeholders, prosecutors are vital. In this section, I focus on the relationship between the sentences recommended by the prosecutor and those which are imposed, building on major psychological, organisational and doctrinal theories. Based on a careful review of the literature, I draw on established theories such as anchoring, as well as underexplored but relevant concepts like judicial discounting and going rates, to capture the nuances of sentencing interactions. These theories – some commonly used in sentencing research and others less so – help provide a more accurate account of how these interactions unfold. Nevertheless, any such account will inevitably be limited in certain respects. I argue that these theories do not operate in isolation, but rather interact and only present an accurate image of the sentencing process if it is considered as an organism – an organism we now turn to study.

### 3.1. Psychological theories

Given that the previous scholarly efforts to disentangle the relationship between sentencing recommendations and eventual sentences rely heavily on the psychology literature, I first consider psychological theories. In the past, criminologists would identify the role of sentence recommendations as one that relies primarily on the assimilation anchoring effect (Tversky, Kahneman 1974; Enough, Mussweiler 2001; Englich 2006; Kim, Spohn, Hedberg 2015). Assimilation anchoring,

a cognitive phenomenon, suggests that numerical arguments (such as sentence recommendations) significantly influence the decision-maker (here, the judge), and that the initial number – even if it is clearly irrelevant – is assimilated into the outcome (Englich, Mussweiler, Strack 2006). In the context of prosecutorial sentencing, sentence recommendations formulated in a given case likely strongly influence the judge when deciding on the appropriate punishment (Johnson, Van Wingerden, Nieuwbeerta 2010; Kim, Spohn, Hedberg 2015).

Scholars have outlined four principal mechanisms behind the anchoring effect: insufficient adjustment, conversational inferences, numeric priming and selective accessibility (Mussweiler, Strack 1999). The insufficient adjustment model captures how judges, even when actively revising a proposed sentence, rarely adjust far enough, leaving the final decision systematically biased (Tversky, Kahneman 1974). Conversational inferences suggest that judges treat a prosecutor's recommendation as an implicit signal about what constitutes a reasonable sentence, yet the anchoring persists even when such recommendations are arbitrary (Mussweiler, Strack 1999; Englich, Mussweiler, Strack 2006). Numeric priming suggests that since the decision-maker pays more attention to the initial number, this number becomes more accessible to the decision-maker's mind (Jacowitz, Kahneman 1995). Finally, the selective accessibility model illustrates how a prosecutor's anchor can tilt a judge's attention to information that is consistent with it (Mussweiler, Strack 1999); for instance, a high recommendation can highlight aggravating circumstances of the case while diminishing mitigating ones. The term "anchoring," however, simply signals the nature of the effect without clarifying how it occurs or what drives it (Mussweiler, Strack 1999). Further inquiry into the underlying mechanisms and processes related to prosecutorial sentencing recommendations is thus necessary.

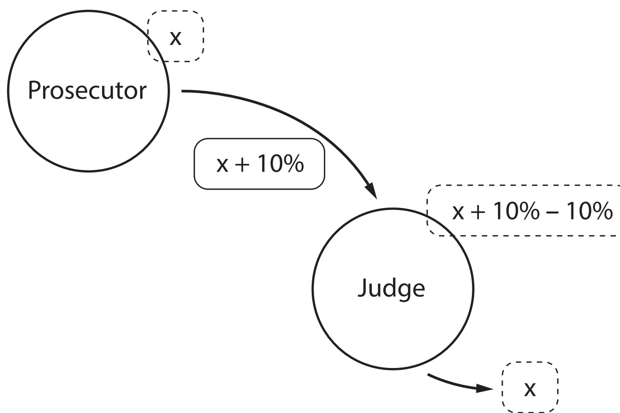
Contrary to traditional anchoring contingent on an irrelevant anchor, a sentence recommendation is surely not (and should not be) irrelevant: the recommendation reflects the seriousness of the crime and other facts of the case, the characteristics of the offender, the personal convictions of each prosecutor, local prosecutorial policies, the realistic expected outcome and other factors. Considering that the prosecutor is an expert and can gauge the appropriate sentence – based on the dossier – better than any other actor, one might argue that their numerical guidance is unproblematic or even good, as it shifts some of the decision-making into the hands of a well-informed prosecutor. However, just like judges, prosecutors likely struggle to translate qualitative ideas into quantitative (numerical) decisions (Hans, Reyna 2011; Teichman, Zamir 2014). As a result, deciding on a sentence using many qualitative factors without clear guidance can be difficult.

Moreover, research suggests that when confronted with a difficult or complex decision, individuals tend to prefer inaction over action, as making an active choice often brings a greater sense of responsibility and more intense regret if the outcome is negative (*omission bias*) (Kahneman, Tversky 1982; Spranca, Minsk, Baron 1991; Teichman, Zamir 2014). In the context of sentencing, the prosecutor's initial (pre-trial) numerical recommendation likely plays an even more crucial role,

as it serves as a standard that the prosecutor and judge are very likely to uphold at trial. Therefore, the less guidance these decision-makers receive, the larger the potential impact of the sentence initially recommended by the prosecutor.

Furthermore, interactions between sentencers complicate the process. As suggested by the judicial discounting theory, prosecutors likely recommend sentences that are slightly more punitive than what they want the judge to impose; the idea is that prosecutors generally expect judges to not match the recommended sentence, but instead impose a slightly more lenient one (Krajewski 2012).

**Figure 2.** Judicial discounting interaction (prosecutor to judge)




Source: Author's own work.

Why would judges do that? One obvious reason is to minimise the risk of the defence appealing their decision. In some jurisdictions, judges might also try to maximise the chances of both parties waiving their right to an appeal or to a written justification of the verdict (Drápal 2024). Another key argument driving the judge to impose a slightly lower sentence than recommended is the expectation that the prosecutor has already inflated the recommended sentence (by, let's say, 10%). This results in a puzzling situation (as illustrated by Figure 2). The prosecutor wants the judge to impose X, therefore recommends X + 10%. However, the judge, who repeatedly goes through such interactions, refers to the sentences imposed in similar previous cases ("going rates"); they already know what X is, and therefore they impose X. The last actors – the defence attorney and defendant – have limited impact, as the organisational structure of sentencing offers them little means to bridge this gap.

These psychological effects become tangible in the courtroom. The counter-recommendation of the defence attorney also plays an important role, as it adds another dimension (anchor) to the context in which the judge imposes the final sentence. Behavioural research suggests that decisions are contextual: individuals take different decisions when another – although irrelevant – piece of information

is provided to them (Teichman, Zamir 2014). These psychological phenomena – typically the compromise effect and the contrast effect – lead decision-makers to (1) choose the more moderate option instead of the radical one and, (2) when comparing the outcome to another option, to intuitively consider attributes that are rather irrelevant (Simonson, Tversky 1992). This makes the defence attorney's sentence-recommending strategy largely unpredictable and unintuitive.

Although it might seem logical to ask for a significantly lighter sentence or acquittal, research suggests that it might not be an effective strategy; if the counter-recommendation is too far from the original suggestion, the judge will likely disregard it altogether and only consider the prosecutor's side moving forward (Teichman, Zamir 2014). More importantly, given that in most of Europe defence attorneys make recommendations in their closing arguments on both guilt and sentencing, requesting an acquittal while simultaneously suggesting a lenient sentence (in case of a guilty verdict) undermines the request (Roberts, Petzsche 2025). Therefore, it may be unfeasible for the defence to present a specific numerical counter-recommendation.

Moreover, the prosecutor being the first one to recommend a sentence also places the defence at a disadvantage. Merely responding to an existing anchor means never acting independently, but offering an already biased counter-recommendation (Englich, Mussweiler, Strack 2005). Even if the defence attorney uses this as part of the sentencing strategy, the implicit psychological effects persist.

In sum, given the guiding effect of their sentence recommendation, a prosecutor can significantly influence the sentencing process and outcome, both knowingly (strategically) and unintentionally.

### 3.2. Organisational theories

Let's consider now the organisational aspects of sentencing. Given that the key criminal justice actors – judges, prosecutors and, to some extent, defence attorneys – are repeat players, their experiences influence their expectations, inform their future behaviour and shape the interactions between them (Bibas 2012); some scholars have described this as a "non-cooperative game where prosecutors play first and judges second" (Melcarne, Monnery, Wolff 2022: 12). As repeat players, prosecutors try to maximise the probability of a favourable sentencing outcome (i.e. a sentence imposed in accordance with the prosecutor's recommendation) and minimise the risk of appeal for sentence-related reasons. Over time, typical crimes are matched with typical punishments, eventually establishing "going rates" for common crimes (Leifker, Sample 2010; Luna 2013).

Building on these organisational patterns, the next step is to model the prosecutors' sentencing strategies at different stages of a case. In the pre-trial phase, the prosecutor will likely recommend a more punitive sentence, expecting a subsequent judicial discount. At this stage, the prosecutor typically cannot tailor the recom-

mendation to the particular judge assigned to the case. However, during the trial phase, the prosecutor can adjust the final (post-trial) recommendation based on the presiding judge. For instance, knowing that a particular judge often substantially reduces sentencing recommendations, the prosecutor may feel compelled to propose a higher sentence than they normally would, perhaps contributing to a somewhat cyclical inflation. On the contrary, if the judge is known for solely rubber-stamping prosecutors' recommendations, the prosecutor should be more careful with how high their recommendation is. Either way, most likely, the first sentence recommendation will be less judge-specific (although it can and will still be court-specific) and will leave space for future post-trial adjustment. The post-trial final recommendation will then factor in the individual judges (panel) as well.

When recommending a sentence for a penal order, prosecutors must consider both the types of cases eligible for this simplified procedure and the sentences that can be imposed without a trial (i.e. in some countries, incarceration cannot be imposed via penal order). Suppose a prosecutor can recommend a low, medium or high sentence; the choice will depend on the case and the prosecutor's prior experience with the court. In Scenario A, the case is likely to end in a penal order. If the court typically exercises its own discretion, the prosecutor may recommend a higher sentence, whereas if the court usually rubber-stamps recommendations, a slightly lower sentence may be strategic, minimising the risk of appeal or trial. In Scenario B, the outcome is uncertain, around 50–50. Strong evidence, such as clear video footage or definitive test results, may prompt a harsher recommendation because – from the prosecutor's perspective – a tougher recommendation provides a stronger starting point in the event the case goes to trial; conversely, moderate cases with weaker evidence might lead to a more lenient recommendation, aiming to secure a penal order without the scrutiny of a trial. Even when the evidence is imperfect, prosecutors act under the principle of legality, and in borderline cases the defence likely cannot fully assess the strength of the case, making them more likely to accept a "reasonable" offer than to undergo a trial. In Scenario C, a penal order is unlikely due to the seriousness of the case or procedural constraints. Here, the prosecutor recommends a more severe sentence, leaving room for the judge to adjust in light of trial developments or a guilty plea. Ultimately, the extent to which these recommendations shape the final sentence hinges on the judge's response; however, the set of options available to the judge is largely determined by the prosecutor (Melcarne, Monnery, Wolff 2022).

### 3.3. Doctrinal theories

Sentence recommendations are suggestions which the judge can follow or not (Krajewski 2012; Melcarne, Monnery, Wolff 2022). However, even if they are not bound by it, judges tend to follow the recommendation for two main reasons. First, they see the prosecutor as a civil servant who communicates a sentencing

strategy set out by the criminal justice system (Krajewski 2012). An example of this mechanism was the effort to impose more fines in Czechia: knowing that prosecutors were recommending significantly more fines than before because they were instructed to do so by the head of the prosecution service, judges were more willing to accept these recommendations (Drápal, Dusek 2023). Second, judges are likely to follow recommendations that align with their own sense of a just punishment.[1]

Typically, the sentence ultimately imposed will be slightly lower than the recommended one, due to the above-mentioned judicial discounting effect and the expected inflation of the prosecutor's recommendation (Krajewski 2012; Roberts, Petzsche 2025). In systems with a more politicised prosecution service and a strict hierarchy, we can expect judges to impose less punitive sentences in order to correct for the overly political influence. Finally, judges can impose even more punitive sentences if the recommendation does not match the seriousness of the crime or does not reflect a principle that the judge considers crucial (Roberts, Petzsche 2025). All in all, even when sentencing recommendations are not in any way binding, they do serve as a starting point from which the judge is less likely to substantially divert.

Finally, one's (self-)perception as a sentencing actor – a prosecutor or judge – is an important factor guiding one's discretionary actions. In most of Europe (e.g. Germany, France, Poland or the Netherlands), prosecutors would typically be seen as civil servants whose main role is to follow the rules communicated through the state's regulations and/or the prosecutorial hierarchy (Luna, Wade 2010; Dechepy-Tellier 2024). If a prosecutor perceives themself merely as a rule-follower without discretion, they will likely closely follow the legal standards and hierarchical instructions. In turn, the judge might consider the sentence recommended by lawmakers (communicated perhaps via sentencing guidelines) more binding – especially if reached through a transparent process – than a discretionary decision of a single line prosecutor (Krajewski 2012; Drápal, Dusek 2023). On the other hand, if prosecutors are seen more as rule-makers, they will – as individuals – take more initiative and be more willing to use their discretion. The effect of going rates will likely be weaker, whereas the effect of an individual prosecutor may be stronger. However, as the judge will likely consider this prosecutor more as a peer criminal justice actor, the recommendation will serve merely as a suggestion that can be freely adjusted, in turn strengthening the influence of the judge.

Likewise, consider the judge's (self-)perception of their role. If the judge is strictly a law-follower, in the absence of specific regulatory guidance they will more likely comply with the practice previously established by the prosecution, thus strengthening the effect of going rates. In turn, the prosecutor, expecting the judge to solely follow the law and previous practice, will be more likely to appeal a decision in which the judge clearly overstepped these limits. On the other

[1] Here, the author draws on anecdotal evidence from interviews with judges and prosecutors conducted as part of a separate research project.

hand, if the judge self-identifies as a rule-maker, they will feel more comfortable taking discretionary decisions, particularly in terms of the type of sentence and its punitiveness, for reasons not only limited to its lawfulness. However, with no other specific numerical guidance, the judge will still be (possibly unknowingly) heavily influenced by the prosecutor's recommendation and their sentencing decisions will echo those of the prosecutor. If the prosecutor perceives the judge to be a rule-maker, they will more likely accept the sentence even if it does not correspond with their recommendation, understanding that the final product is the result of judicial discretion.

## Conclusion

The sentencing discretion of continental prosecutors has long escaped sustained scholarly attention. In recent decades, however, prosecutors have become central figures shaping sentencing outcomes. In this paper, I bridge this gap by providing a novel, systematic theoretical account of sentencing discretion as exercised by prosecutors in continental Europe. In doing so, I contribute to the existing literature in the following ways.

As illustrated, the effects through which prosecutors' sentence recommendations influence the sentence outcome are manifold and extend far beyond the previously documented anchoring effect. Prosecutors exercise sentencing discretion across multiple procedural stages and dimensions, offering judges specific numerical guidance in an otherwise abstract process. These sentence recommendations, shaped by both psychological and organisational mechanisms, become powerful instruments translating prosecutorial strategies into judicial outcomes. Sentencing unfolds as a courtroom game in which prosecutors and judges, as repeat players, operate with shared rules and expectations and thus gain an advantage over defence attorneys and defendants; this dynamic gives prosecutors greater sentencing influence than is often recognised – and perhaps more than is appropriate.

This analysis situates prosecutorial sentencing discretion within a broader framework of institutional hierarchy. Prosecutorial hierarchies emerge as crucial accountability mechanisms that shape sentencing strategies and levels of punitiveness across offices. However, such hierarchical control should not be assumed to automatically enhance consistency. Rather, its effects are contingent on local prosecutorial practices, internal communication styles and the broader normative context. Without empirical scrutiny, hierarchical interventions may just as easily reinforce disparities as reduce them.

Moreover, the ambiguity of prosecutorial internal decision-making remains one of the central challenges to understanding their role as *de facto* sentencers. The problem lies not solely in sentencing outcomes, but in the process itself: decisions about sentence recommendations are taken with limited transparency, external oversight or empirical evaluation. Future research should thus focus on

documenting and analysing these internal practices systematically, beginning with national-level studies capable of capturing local variations in prosecutorial behaviour.

Comparative research is particularly promising. By extending the analytical lens beyond a handful of well-documented Western European jurisdictions to include Central and Eastern Europe and the European South, scholars could develop a far richer empirical picture of prosecutorial influence. Collecting and analysing data on prosecutors' sentence recommendations – currently unavailable in most continental systems – would allow for a systematic evaluation of how prosecutorial practices affect sentencing disparities. Such data would also clarify whether prosecutors act as stabilising agents promoting consistency or, conversely, as amplifiers of disparity in sentencing.

Finally, sentencing patterns and norms – especially informal "going rates" negotiated between prosecutors and judges – remain critical yet underexplored components of this dynamic. Understanding how these patterns interact with organisational hierarchy, cognitive mechanisms and institutional rules is essential for building a more transparent and just sentencing system.

In sum, this paper conceptualises prosecutorial sentencing discretion in continental Europe. By identifying the mechanisms through which prosecutors shape sentencing outcomes, it provides a theoretical foundation for future empirical research. However, identifying a potential strong effect entails scrutinising it in detail, both theoretically and empirically. These are steps that future studies will have to take.

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## References

Albonetti C.A. (1991). 'An integration of theories to explain judicial discretion.' Social Problems 38(2), pp. 247–266.

Albrecht H.-J. (2000). 'Criminal prosecution: Developments, trends and open questions in the Federal Republic of Germany.' *European Journal of Crime, Criminal Law and Criminal Justice* 8(3), pp. 245–256.

Baum L. (2009). *Judges and their Audiences: A Perspective on Judicial Behavior*. [Princeton]: Princeton University Press.

Bibas S. (2010). 'The need for prosecutorial discretion.' *Temple Political & Civil Rights Law Review* 19(2), pp. 369–376.

Bibas S. (2012). *The Machinery of Criminal Justice*. Oxford: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780195374681.001.0001

Boone M., Pakes F., and Wingerden S. van (2022). 'Explaining the collapse of the prison population in the Netherlands: Testing the theories.' *European Journal of Criminology* 19(4), pp. 488–505. https://doi.org/10.1177/1477370819896220

Bowman R., Lowrey-Kinberg B., and Gould J. (2024). 'An integrated model of prosecutor decision-making.' *Law & Society Review* 58(3), pp. 452–480. https://doi.org/10.1017/lsr.2024.24

Brizioli S. (2022). *Restorative Justice and Mediation in PIF Crimes. National Report, Slovenia*. Perugia: Università degli Studi di Perugia.

Dechepy-Tellier J. (2024). 'The public prosecutor's office in the French legal system.' *DPCE Online* 62(1), pp. 311–336. https://doi.org/10.57660/dpceonline.2024.2082

Drápal J. (2024). *Justifying Punishment: Perspectives from Post-Communist Europe*. Abingdon: Routledge.

Drápal J. and Dusek L. (2023). 'Law or authority: How penal elites shape sentencing policy by non-binding interventions.' *SSRN Electronic Journal* [Preprint]. https://doi.org/10.2139/ssrn.4619030

Drápal J. and Plesničar M. (2025). 'Sentencing elsewhere: Structuring sentencing discretion in post-communist Europe.' *European Journal on Criminal Policy and Research* 31, pp. 251–270. https://doi.org/10.1007/s10610-023-09568-4

Drápal J. and Šoltés M. (2024). 'Sentencing decisions around quantity thresholds: Theory and experiment.' *Journal of Experimental Criminology* 20(4), pp. 1323–1367. https://doi.org/10.1007/s11292-023-09568-8

Drápal J. and Wingerden S. van (2018). 'Doporučení pro stání zástupce jak navrhovat tresty: Je možné se inspirovat z nizozemské úpravy? [Recommendations for prosecutors on how to propose sentences: Can inspiration be drawn from the Dutch system?]. *Státní zastupitelství* 6, pp. 9–14.

Englich B. (2006). 'Blind or biased? Justitia's susceptibility to anchoring effects in the courtroom based on given numerical representations.' *Law & Policy* 28(4), pp. 497–514. https://doi.org/10.1111/j.1467-9930.2006.00236.x

Englich B., Mussweiler T., and Strack F. (2005). 'The last word in court – a hidden disadvantage for the defense.' *Law and Human Behavior* 29(6), pp. 705–722. https://doi.org/10.1007/s10979-005-8380-7

Englich B., Mussweiler T., and Strack F. (2006). 'Playing dice with criminal sentences: The influence of irrelevant anchors on experts' judicial decision making.' *Personality and Social Psychology Bulletin* 32(2), pp. 188–200. https://doi.org/10.1177/0146167205282152

Enough B. and Mussweiler T. (2001). 'Sentencing under uncertainty: Anchoring effects in the courtroom.' *Journal of Applied Social Psychology* 31(7), pp. 1535–1551. https://doi.org/10.1111/j.1559-1816.2001.tb02687.x

Fassler L.J. (1991). 'The Italian Penal Procedure Code: An adversarial system of criminal procedure in continental Europe.' *Columbia Journal of Transnational* Law 29, pp. 245–280.

Goldstein A.S. and Marcus M. (1977). 'The myth of judicial supervision in three 'inquisitorial' systems: France, Italy, and Germany.' *The Yale Law Journal* 87(2), pp. 240–283. https://doi.org/10.2307/795651

Hans V.P. and Reyna V.F. (2011). 'To Dollars from sense: Qualitative to quantitative translation in jury damage awards.' *Journal of Empirical Legal Studies* 8(s1), pp. 120–147. https://doi.org/10.1111/j.1740-1461.2011.01233.x

Hodgson J. (2020). *The Metamorphosis of Criminal Justice: A Comparative Account*. Oxford: Oxford University Press.

Hodgson J. and Soubise L. (2016). 'Understanding the sentencing process in France.' *Crime and Justice* 45(1), pp. 221–265. https://doi.org/10.1086/685538

Jacowitz K.E. and Kahneman D. (1995). 'Measures of anchoring in estimation tasks.' *Personality and Social Psychology Bulletin* 21(11), pp. 1161–1166.

Jehle J.-M. and Wade M. (2006). *Coping with Overloaded Criminal Justice Systems: The Rise of Prosecutorial Power Across Europe*. Berlin, Heidelberg: Springer. https://doi.org/10.1007/978-3-540-33963-2

Jehle J.-M., Smit P., and Zila J. (2008). 'The public prosecutor as key-player: Prosecutorial case-ending decisions.' *European Journal on Criminal Policy and Research* 14(2–3), pp. 161–179. https://doi.org/10.1007/s10610-008-9078-3

Johnson B.D., Wingerden S. van, and Nieuwbeerta P. (2010). 'Sentencing homicide offenders in the Netherlands: Offender, victim, and situational influences in criminal punishment.' *Criminology* 48(4), pp. 981–1018. https://doi.org/10.1111/j.1745-9125.2010.00210.x

Kahneman D. and Tversky A. (1982). 'The psychology of preferences.' *Scientific American* 246(1), pp. 160–173. https://doi.org/10.1038/scientificamerican0182-160

Kim B., Spohn C., and Hedberg E.C. (2015). 'Federal sentencing as a complex collaborative process: Judges, prosecutors, judge–prosecutor dyads, and disparity in sentencing.' *Criminology* 53(4), pp. 597–623. https://doi.org/10.1111/1745-9125.12090

Krajewski K. (2012). 'Prosecution and prosecutors in Poland: In quest of independence.' *Crime and Justice* 41(1), pp. 75–116. https://doi.org/10.1086/665611

Langbein J.H. (1974). 'Controlling prosecutorial discretion in Germany.' *The University of Chicago Law Review* 41(3), pp. 439–467. https://doi.org/10.2307/1599175

Langer M. (2004). 'From legal transplants to legal translations: The globalization of

plea bargaining and the Americanization thesis in criminal procedure.' *Harvard International Law Journal* 45(1), pp. 1–64.

Leifker D. and Sample L.L. (2010). 'Do judges follow sentencing recommendations, or do recommendations simply reflect what judges want to hear? An examination of one state court.' *Journal of Crime and Justice* 33(2), pp. 127–151. https://doi.org/10.1080/0735648X.2010.9721290

Levine K.L. and Wright R.F. (2012). 'Prosecution in 3-D'. *Journal of Criminal Law and Criminology* 102(4), pp. 1119–1180.

Li C. (2008). 'Adversary system experiment in continental Europe: Several lessons from the Italian experience.' *Journal of Politics and Law* 1(4), pp. 13–21.

Ligeti K. (2019). *'The place of the prosecutor in common law and civil law jurisdictions.'* In D.K. Brown, J.I. Turner, and B. Weisser (eds.) *The Oxford Handbook of Criminal Process*. Oxford: Oxford University Press, pp. 138–163. https://doi.org/10.1093/oxfordhb/9780190659837.013.9

Luna E. (2013). 'Prosecutor king.' *Stanford Journal of Criminal Law and Policy* 1(48), pp. 40–103.

Luna E. and Wade M. (2010). 'Prosecutors as judges.' *Washington and Lee Law Review* 67(4), pp. 1413–1532.

Ma Y. (2002). 'Prosecutorial discretion and plea bargaining in the United States, France, Germany, and Italy: A comparative perspective.' *International Criminal Justice Review* 12(1), pp. 22–52.

Melcarne A., Monnery B., and Wolff F.-C. (2022). 'Prosecutors, judges and sentencing disparities: Evidence from traffic offenses in France.' *International Review of Law and Economics* 71(2), 106077. http://doi.org/10.1016/j.irle.2022.106077

Mussweiler T. and Strack F. (1999). 'Comparing is believing: A selective accessibility model of judgmental anchoring.' *European Review of Social Psychology* 10(1), pp. 135–167. https://doi.org/10.1080/14792779943000044

Paolini G., Kantorowicz-Reznichenko E., and Voigt S. (2025). 'Plea bargaining procedures worldwide: Drivers of introduction and use.' *Journal of Empirical Legal Studies* 22(1), pp. 27–75. https://doi.org/10.1111/jels.12406

Pere P., Lahti T., and Sutela M. (2018). 'Sentences and prosecutors' demands for aggravated drunk driving in Finland.' *International Journal of Comparative and Applied Criminal Justice* 42(2–3), pp. 157–175. https://doi.org/10.1080/01924036.2017.1413988

Plesničar M.M. (2024). 'The challenges of being imperfect: How do judges and prosecutors deal with sentencing disparity.' *Frontiers in Sociology* 9, 1488786. https://doi.org/10.3389/fsoc.2024.1488786

Roberts J.V. and Petzsche A. (2025). 'Sentencing procedures under the adversarial and inquisitorial models of justice: A comparative analysis.' *Criminal Law Forum* 36, pp. 329–349. https://doi.org/10.1007/s10609-025-09506-5

Sarma B. (2017). 'Using deterrence theory to promote prosecutorial accountability.' *Lewis & Clark Law Review* 21(3), pp. 573–634.

Ščerba F. (2023). 'Využitelnost dohody o vině a trestu a prohlášení viny v jednotlivých stadiích trestního řízení' [The applicability of plea agreements and guilty pleas at different stages of criminal proceedings]. *Acta Universitatis Carolinae*

*Iuridica* 69(3), pp. 115–129.
Simonson I. and Tversky A. (1992). 'Choice in context: Tradeoff contrast and extremeness aversion.' *Journal of Marketing Research* 29(3), pp. 281–295.
Sklansky D.A. (2016). 'The nature and function of prosecutorial power.' *Journal of Criminal Law and Criminology* 106(3), pp. 473–520.
Sklansky D.A. (2018). 'The problems with prosecutors.' *Annual Review of Criminology* 1(1), pp. 451–469. https://doi.org/10.1146/annurev-criminol-032317-092440
Spranca M., Minsk E., and Baron J. (1991). 'Omission and commission in judgment and choice.' *Journal of Experimental Social Psychology* 27(1), pp. 76–105. https://doi.org/10.1016/0022-1031(91)90011-T
Tak P. (1999). 'East meets West aspects of prosecution in countries in transition.' *European Journal of Crime, Criminal Law and Criminal Justice* 7(4), pp. 412–432.
Teichman D. and Zamir E. (2014). *'Judicial decision-making: A behavioral perspective.'* In E. Zamir and D. Teichman (eds.) *The Oxford Handbook of Behavioral Economics and the Law*. Oxford: Oxford University Press, pp. 663–702. https://doi.org/10.1093/oxfordhb/9780199945474.013.0026
Thaman S.C. (2012). *'The penal order: Prosecutorial sentencing as a model for criminal justice reform?.'* In E. Luna and M. Wade (eds.) *Prosecutor in the Transnational Perspective*. Oxford: Oxford University Press, pp. 156–175.
Thomas C.W. and Fitch W.A. (1976). 'Prosecutorial decision making.' *American Criminal Law Review* 13(3), pp. 507–552.
Thommen M. (2023). *'Penal orders and abbreviated proceedings.'* In *Elgar Encyclopedia of Crime and Criminal Justice*. Cheltenham: Edward Elgar Publishing.
Tonry M. (2024). 'Why mass incarceration is uniquely American.' *Crime and Justice* 53(1), pp. 347–389.
Tonry M. (2025). 'How and why Western Europe avoided mass incarceration.' *Crime and Justice* 54, pp. 453–500. https://doi.org/10.1086/737410
Tversky A. and Kahneman D. (1974). 'Judgment under uncertainty: Heuristics and biases: Biases in judgments reveal some heuristics of thinking under uncertainty.' *Science* 185(4157), pp. 1124–1131.
Vouin R. (1970). 'The role of the prosecutor in French criminal trials.' *The American Journal of Comparative Law* 18(3), pp. 483–497. https://doi.org/10.2307/839340
Weigend T. (2012). *'A judge by another name? Comparative perspectives on the role of the public prosecutor.'* In E. Luna and M. Wade (eds.) *Prosecutor in the Transnational Perspective*. Oxford: Oxford University Press, pp. 377–391.
Weigend T. (2016). 'No news is good news: Criminal sentencing in Germany since 2000.' *Crime and Justice* 45(1), pp. 83–106.
Wright R.F. and Miller M.L. (2010). 'The worldwide accountability deficit for prosecutors.' *Washington and Lee Law Review* 67(4), pp. 1587–1622.
Žibřidová A. and Drápal J. (2023). 'Role vedoucích státních zástupců a jejich aprobační pravomoc v otázce navrhování trestů' [The role of head prosecutors and their approval authority in sentencing]. *Státní zastupitelství* 5, pp. 8–19.