

SPAIN

by Joaquin Martin Canivell

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GENERAL OVERVIEW

1. Political System.

Spain has 17 regional governments and a central government. The penal system is the responsibility of the central government except for Catalonia. The central government administers police functions, but Catalonia and the Basque region have local police.

There are three branches of government: executive, legislative, and judiciary. The judiciary is self-governed by the General Council of the Judiciary. The Council is composed of 20 members who are elected by the Legislative Chambers, and a president who is elected by the 20 members of the Council.

2. Legal System.

Spain has a European Continental legal system, requiring that behavior be defined as criminal and that the penal law assign a penalty to that behavior for it to be prosecuted (*nullum crimen sine lege, nulla pena sine lege*). The investigative stage of the penal process is carried out by a judge, and the suspect benefits from a system of procedural guarantees. Hearings are characterized by adversarial procedures, with a public attorney prosecuting on the basis of findings of the investigating judge, although calumny and slander cases are only prosecuted at the request of the presumptively offended person. Hearings are made public. Evidence is produced in the presence of the accused person, who is always assisted by legal counsel and by a translator if necessary.

3. History of the Criminal Justice System.

The Spanish penal system was developed during

the Middle Ages from local adaptations of its original Germanic heritage. In the 18th century, it was subjected to the influence of the rationalist thinkers who asked for the adoption of systematic rules which resulted, during the era of the French Revolution, in requests for the adoption of Penal and Criminal Procedural Codes.

The famous book, *Dei delitti e delle pene* by Beccaria, first appeared in 1764 and was translated into Spanish some ten years later. Although the book was opposed by some conservative authors at the time, it led to an enthusiastic movement culminating in the proposal to adopt a Penal Code.

In 1812, the Spanish patriots who, during the Napoleonic invasion (1808-1813) had taken shelter in Cadiz in the south of Spain, adopted Spain's first political Constitution. This liberal Constitution also included a proposal for the creation of a Penal Code, but the reestablishment of the absolutist King Ferdinand VII on the Spanish throne (1814) prevented the adoption of the Code. In fact, even the progressive 1812 Constitution was repealed. A liberal upheaval in 1820 led to the adoption of the first Spanish Penal Code in 1822. The Code was in force for only one year, after which the monarch resumed absolute rule.

In 1848, in a more moderate political situation, a new Penal Code was adopted, and since then, a Penal Code has always existed and been applied, with some interruptions during times of military rule. A Penal Procedural Code was adopted in 1881 and is still in force as of 1993. A draft of a new Penal Code, whose structure differed greatly from the existing Penal Code, was being studied by the Legislature in 1993.

## CRIME

### 1. Classification of Crimes.

\* Legal classification. There is a distinction between serious (*delitos*) and less serious (*faltas*) offenses. Serious offenses are indictable and less serious offenses are nonindictable.

The Penal Code includes as indictable offenses offenses against state security, fakes and falsifications, offenses against the administration of justice, offenses against sanitation and health (including drug offenses), behavior causing risk but not actual damage, offenses by public officers, offenses against individuals (murder, homicide, illegal abortions, bodily harm caused by assault and battery), sexual offenses, offenses against reputation (libel and slander), offenses against freedom and personal security, property offenses, and offenses committed recklessly and without intent.

Among the less serious, nonindictable offenses, the Penal Code includes violations of the public order, violations against individuals, and minor

property offenses, such as theft resulting in deprivation of less than 30.000 pesetas (\$200).

\* Age of criminal responsibility. The age of criminal responsibility is 16 years. Youngsters under this age accused of delinquent behavior are handled by the Juvenile Courts. Delinquents between 16 and 18 years old benefit from a mitigation in penalty. (Penal Code, Article 8.2 and 9.3).

\* Drug offenses. Growing, processing, trafficking, promoting and facilitating the consumption of toxic, stupeficient or psychotropic drugs, as well as simple possession with the intent to engage in such behavior, is punishable by 2 to 8 years in prison and a maximum fine of 100 million pesetas in fines (\$666,000) if the drug can cause important harm to personal health. In all other cases, the prison sentence can be set between 4 months and 4 years and the fine can be a maximum of 50 million pesetas (\$333,000).

These penalties can be increased for members of any permanent or temporary organization dedicated to the trafficking of drugs. They can be increased for health facility personnel who give drugs to minors or to persons undergoing treatment for drug addiction. And they can be increased when the quantity of drugs involved is significant. Penal Code, Articles 344 and 344 bis).

Individual consumption is not subject to penalty. An average of 3 days drug stock for individual consumption by drug-addicted individuals does not constitute illegal possession as ruled by the Supreme Court.

## 2. Crime statistics.

As of 1993, Spain had approximately 39 million inhabitants.

\* Murder. In 1991, 861 cases of murder and 982 cases of simple homicide were recorded. Attempts are included. However, the fact that 660 cases of murder recorded in Barcelona and 162 recorded in Madrid account for more than 95% of all the recorded murders in Spain in 1991 casts doubt on the accuracy of these statistics. (One must also consider that when the case is decided, many incidents of simple wounds are often deemed to be homicides because a killing intention exists. A suicide, which is not a punishable crime, can be initially classified as a homicide until the case is investigated and determined to be suicide.) Murder is described in the Penal Code as manslaughter qualified by certain circumstances such as lying in wait, premeditation, unnecessarily increasing the suffering of the victim, and using poison. (Penal Code, Art. 406).

\* Forcible Rape. In 1991, there were 1,902 cases of forcible rape reported by the State Secretary for General Security. Attempts are included. (Forcible

rapes numbered 1,724 in 1989 and 1,788 in 1990.) Forcible rape is described in the Penal Code as sexual intercourse with another person, either vaginal, anal or oral, using physical force or intimidation. The legal definition of rape includes the same behavior with persons mentally incapable of consent and with consenting minors under 12 years old. (Penal Code, Art. 429).

\* Serious property offense. There were 142,880 incidents of serious property crime recorded in 1991. Attempts are included. The Penal Code describes serious property offenses as the deprivation of movable property with purpose of illicit gain using physical force or intimidation. (Report of the State General Attorney, 1992; Penal Code, Art. 500 and 501).

\* Serious drug offense. The total number of persons detained for all drug offenses reached 28,581 in 1991. (Of the persons detained in 1991, 13% were non-Spanish, among which were 653 Moroccans, 565 Colombians, and 234 Italians.) The amount of confiscated drugs increased from 1990 to 1991 by 40.72% for cocaine and 49.48% for hashish, and decreased by 16.35% for heroine. (See also Crime, Drug Offenses).

\* Crime regions. Incidents of terrorism are found to be committed mostly in the Basque region. Many terrorist acts involve the murder of one or more persons, and are recorded separately from the homicide rate. In 1991, 100 cases of terrorism were resolved by the courts. In 1991, 73% of all serious property crime cases were recorded in the 5 largest cities of Spain.

## VICTIMS

### 1. Groups Most Victimized by Crime.

There was a victim survey administered in 1989, which consisted of interviews of household members in a sample designed to find the proportion of persons who were victims of crime during the previous 5 years. Of the persons interviewed, 36.2% had their car radio stolen, 7.6% had their car stolen, 23.5% were victims of vandalism, 5.7% were victims of burglary, and 9% were victims of serious property offenses. All 75 of the sexual attack victims in the survey were women. (Ministry of Justice).

### 2. Victims' Assistance Agencies.

There is an Association for the Assistance of Raped Women that is subsidized by the government. It has branches in several large cities and helps women in cases of rape by providing professional psychological care and shelter if necessary. The association also delivers lectures and short courses geared toward prevention to youngsters, parents,

professors and police. There is an Association for the Protection of Beaten Women with similar characteristics as the rape association.

### 3. Role of Victim in Prosecution and Sentencing.

The principal role of victims in prosecution is to testify and help identify presumed offenders. Victims are considered at sentencing only with regard to the way that the offender must compensate the victim. Victims are entitled to restitution, reparation and compensation. (Penal Code, Art. 101 and 111).

Public attorneys must request civil compensation for the victims of a criminal offense at the same time that they exercise penal actions, unless the victim wants to sue separately in a civil case at a later time. (Penal Procedural Code, Art. 108 and 111). The victim is also entitled to exercise both penal and civil actions in penal proceedings. If victims can demonstrate poverty, they also have the right to have an unpaid legal counsel appointed to them. (Penal Procedural Code, Art. 119).

### 4. Victims' Rights Legislation. Information not obtained.

## POLICE

### 1. Administration.

Most police in Spain are affiliated with the central government, except for the regional police, called "mossos d'esquadra" in Catalonia and "erchaintza" in the Basque Country. The regional police operate on the principle that it is better to have a police force composed of people belonging to the same region to deal with problems of public order. There are also local police in the cities and more populated towns, which primarily deal with local automobile traffic. Some of the police perform their duties in ports and frontiers to detect and prevent smuggling of such items as drugs, tobacco, and the smuggling of illegal immigrants, mostly from Africa, into the European Common Market).

### 2. Resources.

\* Expenditures. The 1990 annual expenditures for police were 262,627,447,000 pesetas (\$1,800,000,000).

\* Number of Police. In 1992, the number of police in the central government was 132,133. Local police personnel totaled 46,300. Women constitute a small portion of police personnel, although the number is increasing.

The central government has two types of police, the general police and the traditional "Guardia Civil" (civil guard), whose duties primarily include

policing rural areas, ports and frontiers, and controlling road traffic.

### 3. Technology.

\* Availability of police automobiles. The police have 9,300 cars available. The "Guardia Civil" also has an unreported number of cars and motor bikes. Most supervision of road traffic is carried out by two-officer patrols on motor bikes.

\* Electronic equipment. Most police cars have telephones which allow them to instantly check a person's identity with the central identification service from any place in the country. There are 18,900 radio phones available.

\* Weapons. The police have approximately 10,000 revolvers and 60,000 pistols. Approximately 10,000 bulletproof waistcoats are available to police.

### 4. Training and Qualifications.

To join the police, one must be a Spanish citizen, over 18 years old, and have a driving permit. An applicant must also meet educational requirements. The basic police must have a basic education certificate, the superior police must have medium university degrees, and police specialists, such as medical doctors and psychologists, must have related university degrees. Men must be taller than 1.70 meters and women must be taller than 1.65 meters. (Decree 1593/1988).

After passing law and sociology courses, recruits must spend a minimum of 3 months at a special police training school. The average time spent at the police school is 1 year, which includes 9 months of theoretical instruction and 3 months of practical training. In police schools, aspiring police officers are subjected to physical, psychometric and personality tests.

Promotions almost always require new examinations and serving a minimum specified time at the previous level. Annual training is also provided to update officers' professional knowledge and increase specialization.

### 5. Discretion.

\* Use of force. Police must detain any person who is suspected of participating in the commission of any act of delinquency, who has fled from prison or who commits a crime while being in detention or serving time in prison. They must also detain any person accused of crimes punishable by prison terms of more than 6 years or of lesser crimes if they believe the person will not appear before the court when summoned. (Penal Procedural Code, Articles 490 and 492).

\* Stop/apprehend a suspect. Information not obtained.

\* Decision to arrest. Information not obtained.

\* Search and seizure. Judicial warrants are required for entrance into private homes to search and seize incriminating material, unless the owner of the home grants permission or a crime is in process. (Spanish Constitution, Art. 18.2).

\* Confessions. Information not obtained.

6. Accountability. Minor infractions are dealt with by the police themselves; more serious offenses, by the courts.

## PROSECUTORIAL AND JUDICIAL PROCESS

### 1. Rights of Accused.

\* Rights of the accused at trial. Detained persons have the right to remain silent, to be informed immediately in a clear and understandable way of what they are accused, to ask for the production of evidence, to a speedy trial, to ask for legal counsel of their own choice, and to have counsel appointed "ex officio" in cases where they do not exercise the right to designate legal counsel. Interrogation without counsel is allowed only if, after 8 hours of notification to the local legal profession association, no lawyer has shown up and the detainee consents to the interrogation. Detainees also have the right to ask that family members or acquaintances be informed of the detention; to be assisted by an interpreter if necessary; to be assisted by a doctor; and if a minor, to have parents or persons with parental authority informed. (Penal Procedural Code, Art. 384, 520).

During the hearings, the accused has the right to remain silent; to be confronted with witnesses; to have evidence shown in their presence; to be defended by a lawyer speaking in his behalf; and to speak in the last moment after all the other participants in the hearing, so as to be able to add whatever fact or point he deems advantageous. (Penal Procedure Code, articles 688-739).

\* Assistance to the accused. From the moment of indictment, accused persons have the right to designate legal counsel. After the preliminary investigation, the dossier is sent to the court and if the accused person has not yet designated counsel, an "ex officio" counsel is appointed who is paid by the government. It is considered an honor by most lawyers to counsel and defend accused persons even if they are only paid a small fee. (Penal Procedural Code, Art. 384, 652).

## 2. Procedures.

\* Preparatory procedures for bringing a suspect to trial. The investigating judge is aided by the police in preparing the case for trial. The police may initiate investigatory procedures, but they must report the existence of the case to the judge in a maximum of 24 hours from the time they begin. The public attorney may also ask the judge to carry out investigatory steps. (Penal Procedural Code, Articles 284, 288 and 295).

Violations receive a short trial and major offenses receive a trial in two parts, consisting of an investigatory stage and a hearing stage. Hearings are open to the public and orally conducted, although written briefings are made and attached to the proceedings.

\* Official who conducts prosecution. Prosecution is a centrally organized function. All prosecutors are employees of the Ministry of Prosecution. They may be assigned to the high court, general courts, or lower courts; they are also assigned to specific geographic regions.

\* Alternatives to trial. As there are no alternatives to trial, the majority of cases are decided by trial. Accused persons may plead guilty at the beginning of the oral audience, and, if their lawyers agree, the case may be disposed of without hearings. But in cases where the public attorney requests a prison penalty of more than 6 years, the accused cannot plead guilty and must undergo hearing of the case. It is estimated that approximately 20% of all accused persons plead guilty.

It is also possible to drop the case when the alleged facts are not proven by investigation, when the facts are clearly not criminal, or when the suspected persons are obviously not responsible. In the last instance, cases are most frequently dropped when it is obvious that the suspect is mentally ill. (Penal Procedural Code, Art. 637).

\* Proportion of prosecuted cases going to trial. Most prosecuted cases go to trial, although many crimes are not prosecuted because the offenders are not known. Major offenses are proportionally more frequently brought to trial than minor offenses because of the greater success of the police investigations in those cases.

\* Pretrial incarceration conditions. Pretrial incarceration can only be decreed by the investigating judge. The judge must verify that the crime is punishable by more than 6 years in prison and that the suspect participated in the crime. Persons may be detained when the applicable penalties are shorter, if there is a risk they will flee or fail to appear before the judge when summoned.

Incarcerated persons have the right to have their cases heard prior to other persons. For cases in which a prison sentence exceeding 6 years is established, suspects must not be put into pre-trial incarceration for more than 2 years, except if there is a high likelihood that the person may flee if freed. (Penal Procedural Code, Art. 502, 503, 504).

\* Bail procedure. Persons incarcerated for crimes punishable by penalties lasting more than 6 years may be freed from pretrial detention on bail.

\* Proportion of pretrial offenders incarcerated. In 1990, there were about 13,303 inmates incarcerated while awaiting trial, comprising about 40% of the entire inmate population.

## JUDICIAL SYSTEM

### 1. Administration.

Minor violations of unruly conduct are decided locally by lay justices of the peace. All other violations are decided by professional judges. Major offenses with a maximum 6-year prison penalty are dealt with by single magistrate penal courts. All other major offenses are resolved by three member penal chambers which exist in all 50 provinces. Violation sentences and sentences pronounced by the single magistrate penal courts may be appealed to the provincial courts. Initial sentences on major cases that are announced by the provincial penal courts can be reviewed by the Penal Chamber of the Supreme Court.

### 2. Special Courts.

Exceptional courts are prohibited by sections of the Constitution (Art. 117.5, 6).

There are 70 juvenile courts, with 16 judges supervising the application of prison penalties and the situation of persons in pretrial incarceration.

Family courts exist, but deal solely with civil aspects of family affairs.

### 3. Judges.

\* Number of judges. As of September, 1990, the number of professional judges was 2,607. A total approximation of 3,000 judges decide civil, penal, administrative and labor cases. The number of new judges increase by approximately 250 judges every year. This increase might be explained by the democratization of the country taking place in 1977, which prompted a dramatic increase in the social demand for judicial decisions.

There are 1,963 investigating judges, and most of them operate as civil court judges. There are 593 judges in the provincial courts, but they devote more time to civil cases than penal cases. The Penal Chamber of the Supreme Court is composed of 15

judges.

Only since the late 1970's have women begun to take judicial positions. Since the mid-1980s they have represented an average 50% of all new judges.

\* Appointment and qualifications. Judges are appointed by the central government after passing a strenuous examination. There are between 20 and 30 candidates for every judicial vacancy. Candidates must have a law degree, which involves 5 years of study at law schools. After passing the examination, they study at the Judiciary School in Madrid for an average of 1 year.

On average, judges attain judiciary positions at 25 to 30 years old. Most judges have never been practicing lawyers. Compulsory retirement has recently been increased from 68 to 70 years old, although voluntary retirement is possible at 65.

The independence of judges is guaranteed by their legal immunity. They cannot be obliged to change from one judicial position to another nor can they be dismissed except for legal reasons proven through disciplinary proceedings with procedural guarantees. The General Council of the Judiciary has handled about 1,500 yearly complaints, which have resulted in less than 10 sanctions.

#### PENALTIES AND SENTENCING

##### 1. Sentencing process.

\* Who determines the sentence? Decisions in penal cases are made exclusively by judges.

\* Is there a special sentencing hearing? There is no hearing for sentencing decisions other than the hearing of the case.

\* Which persons have input into the sentencing process? Psychiatrists, social workers, medical doctors and other professional specialists may be heard by judges, but their opinions are not binding. The Spanish Constitution has provisions for the participation of citizens in justice proceedings as members of juries (Art. 125), but a jury penal system has not yet been established.

##### 2. Types of penalties.

\* Range of penalties. Penalties include the following: prison sentences lasting from 1 day to 30 years, exile from 6 months to 20 years, suspension of public office, voting and eligibility rights and public honors from 1 month to 12 years, deprivation of driving permit from 1 month to 10 years, and fines from 5,000 to 100,000,000 pesetas (\$33 to \$666,000 ), and deprivation of Spanish citizenship for citizens not Spanish by birth.

The Penal Code provides for a maximum and minimum penalty in offense definitions. For instance, murder is punished with a prison sentence

between 20 and 30 years, rape is punished with a prison sentence between 12 and 20 years, and robbery which results in homicide carries a 20 to 30 year prison sentence. According to the Constitution (Art. 25), penalties consisting of deprivation of liberty must address the social rehabilitation and reintegration of inmates into society.

\* Death penalty. The death penalty was abolished by the present Constitution in 1978. When it was in existence, it was rarely imposed or carried out, being frequently commuted to long-term imprisonment. The Constitutional Court and the Penal Chamber of the Judiciary Supreme Court are presently very strict in the protection of human rights.

## PRISON

### 1. Description.

\* Number of prisons and type. As of August 1993, there were a minimum total of 83 prisons, 32 of which were used for sentenced persons and 36 for persons incarcerated pretrial. There were four maximum security prisons. Four prisons existed exclusively for women and another four only housed young offenders over 16 years old. There also existed one psychiatric penitentiary institution, one penitentiary hospital, and one open institution.

Each prison has medical wards. There are also observation and reformatory institutions, and open half-way and family houses for youth up to 18 years old, although these institutions are not considered prisons.

\* Number of prison beds. In August 1993, there were 30,862 prison beds.

\* Average daily/number of prisoners. The number of prisoners in 1990 totaled 33,537. (In 1988, the number of prisoners totalled 30,940.)

\* Number of annual admissions. In 1990, there were 14,703 admissions into the prison system. (In 1986 there were 15,172 persons admitted to prison; in 1988, 13,465 were admitted.)

\* Actual or estimated proportions of inmates incarcerated. The actual number of inmates in 1990, including detained persons awaiting trial for periods under 1 year, incarcerated by crime type:

Drug Crimes*	31,255
Violent Crimes**	5,967
Property Crimes***	63,014

\*Total persons incarcerated for drug crimes in 1987, 18,970; in 1988, 24,774; in 1989, 28,028. Many suspected of drug violations are foreigners.

\*\*Total persons incarcerated for violent crimes in 1987, 5,813; in 1988, 5,830; in 1989, 5,938.

\*\*\*Total persons incarcerated for property crimes in 1987, 63,496; in 1988, 62,791; in 1989, 64,777.

## 2. Administration.

The prison system is run from the Central government, with the only exception being Catalonia, where the autonomous regional government administers prisons located in the region.

\* Number of prison guards. In 1990, there were 26,111 prison officers, of which 668 were administrative personnel; 10,878 were engaged directly in guarding functions; and 2,191 were treatment personnel, such as psychologists, social workers, medical doctors, and teachers. Excluding Catalonia, there were 8,500 male and 1,321 female guards.

\* Training and qualifications. Admission to penitentiary positions is based on passing examinations which are held every year. University degrees are required to be placed in the higher technical jobs. In addition, personality tests are administered to the candidates, who must also submit themselves to medical examinations and drug tests. After succeeding in the examination, candidates attend practical training courses lasting 3 months. Every new recruit is taught by an experienced officer and is not allowed into the prison during the first 2 weeks of training.

At any given time, an average of 20% of prison personnel are attending job training courses which are continually mandated. Tuition is provided by the Spanish Penitentiary Research Institute, which publishes a periodical publication. There are also special treaties that allow prison personnel from Argentina, Chile and the United States of America to attend these classes offered by the institute.

\* Expenditure on prison system. In 1990, the total expenditures on prisons were 65,128,229,418 pesetas (\$440,000,000 or \$13,500 per inmate annually).

## 3. Prison Conditions.

\* Remissions. The prison sentence can be reduced if the inmate works. For every 2 days worked, 1 day of the sentence is taken off. However, this privilege is not granted if the inmate engages in bad behavior and/or attempts to escape. It is possible for inmates to be released after three-quarters of the imposed sentence has been served. In addition to

the reduction of time obtained through work, early release can occur if the inmate engages in good behavior and if there is reason to believe the inmate would behave well outside the prison. (Penal Code, Art. 98, 100).

\* Work/education. Work is a right and a duty for the inmate. Resocialization treatment cannot be imposed. The inmate keeps all personal rights not affected by the sentence, including social security and civil rights. The penitentiary administration must protect the prisoner's life, bodily integrity and health, which includes taking the prisoner out of the institution to receive medical treatment if necessary. Prisons for women must provide obstetrical and gynecologic services. They must also have facilities and wards in which the inmates may place their children of minor age. (General Penitentiary Law, Art. 3,26,36,38; Manzanares: 907)

\* Amenities/privileges. Institutions have special facilities for visits of family and close friends. These visits cannot occur more frequently than every 15 days. These private visits for legal and common-law spouses are allowed in special facilities and do not exceed five hours per visit. (General Penitentiary Law, article 53).

Leave is permitted in the case of the death or grave illness of a parent, a spouse, a son or daughter, or a sibling. Leave permits are also used as a means to prepare the inmates for living outside the institution after finishing the prison term. These types of permits must not exceed 7 consecutive days nor 36 or 48 days per year and are given according to the treatment phase of the inmate. To be granted a permit, the inmate has to have a record of good behavior and must have completed at least one-quarter of his sentence. (These kinds of permits are subject to a tremendous amount of public debate, because, in several cases, inmates on leave have committed new criminal offenses, among them some major sexual crimes followed by the murder of the victim.)

#### EXTRADITION AND TREATIES

\* Extradition. Most European countries that have an extradition treaty with Spain are included in the European Council Extradition Treaty of March 21, 1983, ratified by Spain in 1985.

In addition, bilateral extradition treaties exist between Spain and the following countries: Argentina (1987), Australia (1987), Bolivia (1990), Brazil (1988), Canada (1989), Colombia (1993), Costa Rica (1987), Cuba (1988), Chile (1992), China (1992), Czechoslovakia (1987), Dominican Republic (1981), El Salvador (1894), Guatemala (1895), Hungary (1985), Korea (1992), Liberia (1894), Mexico (1978), Monaco (1882), Paraguay (1919), Peru (1989),

Thailand (1983), Uruguay (1885), USA (1988),  
Venezuela (1894) and Yugoslavia (1980).

\* Exchange of prisoners. Spain is also a party to  
the treaty on the transfer of sentenced persons of  
the Council of Europe of 1983.

\* Specified conditions. There are legal provisions  
regulating extraditions in the Penal Procedural Code  
and a law on passive extradition.

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(additional information not available)□

## World Factbook of Criminal Justice Systems

France

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### GENERAL OVERVIEW

#### 1. Political System.

France has a centralized government, although it is decentralized to the extent that there are 22 regions, 95 departments, and 36,000 municipalities, each of which can derive benefits from the central government, while maintaining a certain amount of autonomy.

#### 2. Legal System.

The French legal system abides by the principal of unity of the civil and criminal justice system, which means that the same court can hear both criminal and civil cases.

#### 3. History of the Criminal Justice System.

The legal system in France has developed through several stages since the country's establishment. The stage of the Private Reaction characterized the legal system from the time France was founded up until the 16th century. The accusatory procedural system predominated judicial procedures at this time. The 16th century was marked by the stage of the Public Reaction, which established the inquisitorial system. This system was based on secret judicial procedures. Thus, repressiveness and arbitrariness in the judicial and legal procedure were characteristic of the regime before 1789. After the Revolution of 1789, a judicial system was established that was inspired by English law which enacted the principle of legality of offenses and punishments.

The stage of the Imperial Penal Law produced two written codes: the Code of Criminal Instruction of 1808 and the Penal Code of 1810. The Code of Criminal Instruction emerged from a blending of the inquisitory procedure and the accusatory

procedure. The Penal Code resulted in the creation of a list of definable offenses. A number of reforms followed the creation of these codes, which generally tried to individualize the punishment to the particular offender. Reforms included the development of a suspended sentence for juveniles in their early stages of delinquency, such as first-time offenders, stiffening of punishment for recidivists, probation, parole, and alternatives to imprisonment. In addition, reform measures were taken which strengthened the rights of the accused.

Substantial reform has taken place in the last few decades. In 1958, the Code of Penal Procedure replaced the Code of Criminal Instruction. On July 22, 1992, a new Penal Code was presented, which went into effect on March 1, 1994. The New Penal Code has retained the tripartite distinction of crimes, misdemeanors, and violations, which was first established by the Penal Code of 1810.

The Code also addresses some new issues such as corporate crime, the development of alternative punishments to the deprivation of liberty, and reinforcing the severity of punishments for criminals who have committed more serious offenses. It also includes definitions of new crimes, such as offenses wherein persons are placed in dangerous situations by others, ecological terrorism, sexual harassment, crimes against humanity, and genocide.

## CRIME

### 1. Classification of Crime.

\* Legal classification. Under both the Penal Law and Penal Procedure, there is a tripartite distinction of offenses based on their respective seriousness: crimes, misdemeanors, and violations. (New Penal Code, Article 111-1). There are distinctions between completed and attempted acts for crimes and misdemeanors, but not for violations.

Under the Penal Code, crimes and misdemeanors can incur a 20 year sentence and a 5 year sentence respectively. Violations can incur a 2 year sentence. However, in practice, sentence length is generally 10 years for crimes, 3 years for misdemeanors, and 1 year for violations.

Crimes are also classified into attacks against persons, attacks against property, and attacks against public security. Attacks against persons include intentional homicide (murder, assassination, infanticide), intentional violence (non-intentional death, harm resulting in a permanent injury), and rape (including rape with more than one offender, aggravating circumstances, simple rape, and rape of a minor under 15 years of age).

Attacks against property include theft, robbery, fraud, breach of trust, aggravated robberies, and vandalism. Attacks against the public security include counterfeiting.

\* Age of criminal responsibility. The age of criminal responsibility is fixed at 18.

\* Drug offenses. There were 66,775 drug offenses recorded in 1992. About 17% of the crimes and misdemeanors can be linked to drugs. (Minister of the Interior, 1993: 43).

### 2. Crime Statistics.

The following statistics on recorded convictions are derived from the Directory of Justice Statistics, 1989-1990. (Annuaire statistique de la justice 1989-1990).

\* Murder. A total of 625 intentional homicide convictions were recorded in 1990, of which 373 were recorded as murder, 212 as assassination, 15 as infanticide, and 25 as other homicides.

\* Rape. A total of 735 rape convictions were recorded in 1990.

\* Armed robbery. There were 800 armed robbery convictions recorded in 1990.

\* Serious drug offense. A total of 20,326 drug offense convictions occurred in 1990, including offenses such as trafficking, possession, selling and using drugs.

\* Crime regions. Information not available.

## VICTIMS

### 1. Groups Most Victimized By Crime.

Although no available statistics indicate the most victimized group, it is believed that the elderly and the young are more likely to be victimized.

### 2. Victims' Assistance Agencies.

The National Institute of Help for Victims and of Mediation at Paris (L'Institut National d'Aide aux Victimes et de Mediation a Paris-1'INAVEM), with its headquarters in Paris, was created in 1986. There are approximately 100 branches throughout France. The role of this institute is to receive, inform, and orient the victims of criminal acts.

### 3. Role of Victim in Prosecution and Sentencing.

One goal of sentencing is to address the material and moral losses of the victim. The decision to seek reparations for a crime is that of the person(s) who incur loss from the crime. The victim must establish that the crime fulfills three conditions: a) that the offense is punishable; b) that the offense attacked an interest that is penally protected; c) and that the damage incurred by the victim is in direct relation to the offense.

### 4. Victims' Rights Legislation.

The offender may have to compensate the victim for losses. If the offender is financially unable to do so, this compensation is provided by the state. A law of September 9, 1986 provides for the compensation of victims of terrorist acts. A law of July 6, 1990 allows victims to be compensated when the offense results in a disability where the victim loses more than one month off from work.

## POLICE

### 1. Administration.

The role of the police is generally to ensure that the laws are observed and enforced. Efforts are also directed at the prevention of delinquency. Police headquarters are in Paris.

The police force is under authority of the Minister of the Interior. At the top of the police hierarchy is the General Director of the National Police who oversees four divisions. The Central Division of General Information controls information services concerning political, economical, and social issues. The Central Division of the City Police is in charge of city law enforcement. The Central Branch of the Judiciary Police is in charge of coordinating the search for the most dangerous delinquents and the investigation of the most serious offenses. The Division of Territory Surveillance is in charge of State security.

In French society, the administrative police generally maintain peace and order, such as the regulation of traffic. A special squad of administrative police, the Intervention Group of the State National Police (Groupe d'Intervention de la Gendarmerie National) was created for anti-terrorist operations. In addition, municipal police contribute to law enforcement in the municipalities.

The State police force is under the authority of the Defense Minister. It fulfills the role of the administrative and judicial police in rural areas. There are also special customs police who work to control illegal entry of persons into the country to attack the public order.

## 2. Resources.

\* Expenditures. In 1994, 26,000,000,000 francs were allocated toward the police. Nineteen billion were allocated to the state police.

\* Number of police. As of 1993, there are approximately 126,000 police personnel, of which 15,846 were inspectors, 88,637 were peace agents, 3,750 were investigators, and 2,005 were superintendents. There were also an additional 35,000 Parisian police and 10,000 municipal police officers.

State Police personnel totaled 91,263, of which 2,621 were officers, 79,936 were under officers, and 12,319 were other types of police personnel.

## 3. Technology.

3.8 billion francs were spent on police technology and 2.26 billion francs were spent on State Police technology.

\* Availability of police automobiles. Information not available.

\* Electronic equipment. Information not available.

\* Weapons. Information not available.

## 4. Training and Qualifications.

Police personnel are recruited on a competitive basis. Training is given in specialized schools. Police recruits attend the Saint-Cyr School at Mont d'Or for 10 months, Inspectors attend the Canet-Cluse School for 6 months, and peace agents attend the Superior School for 6 months.

## 5. Discretion.

\* Use of force. Information not available.

\* Stop/apprehend a suspect. Police can stop and arrest an offender and bring him or her in front of the public prosecutor if they observe an offense that is in the process of being committed or has just been committed. This arrest can take place in a coercive manner, involving the search and seizure of witnesses and suspects. As long as they have informed the public prosecutor's office, police can keep suspects under observation for 24 hours. The length of observation increases to 48 or 96 hours in drug trafficking, drug use, and terrorism cases.

For crimes not directly observable by police, a preliminary investigation is conducted under the direction of the public prosecutor to obtain information on the reported offense. In these cases, suspects can be kept under observation only if there is evidence against them and this decision can only be made by a judiciary police officer. The law of August 24, 1993 guarantees that after 21 hours under observation, suspects have the right to request an attorney and the right to inform the family of the detention.

\* Decision to arrest. Police can arrest an offender if they observe an offense that is in the process of being committed or has just been committed.

\* Search and seizure. Search and seizure can occur during arrest, after the police have observed that a crime has just been committed or is about to be committed.

\* Confessions. Information not available.

## 6. Accountability. Information not available.

### PROSECUTORIAL AND JUDICIAL PROCESS

#### 1. Rights of the Accused.

\* Rights of the accused. The accused has the right to a self-obtained lawyer or to a lawyer chosen by the State. The accused also has the right to appeal the judge's decision. At appeal, the accused is brought in for temporary custody under the Chamber of Accusation. Under the law of August 24, 1993, the accused has the right to ask the President of the Accusation Chamber to suspend any sentence until a decision is made on the appeal. Finally, the accused has the right to be compensated for abusive custody.

\* Assistance to the accused. The accused has the right to the assistance of an attorney.

#### 2. Procedures.

\* Preparatory procedures for bringing a suspect to trial. Generally, the procedure by which a case is brought to court is more elaborate as the seriousness of the crime increases. There are two procedural stages preceding trial. In the police stage, the police conduct a preliminary investigation under the direction of the public prosecutor. This process involves a search for the suspect, a hearing of the suspect, and an

observation of the suspect, once arrested. During this investigation, the suspect is kept under observation for 24 hours, which can be lengthened under authorization of the public prosecutor. Another type of investigation takes place when the suspect is caught while committing the crime. Police officers can make observations at the scene of the crime and relate their information to the public prosecutor.

The judiciary stage can be initiated by either the Public Minister or the victim, although the Public Minister studies the legalities involved in the charges and prosecutes the suspect. The Public Minister decides whether the case should be brought before a judge (15%) or be disposed of alternatively (85%).

The victim can also initiate prosecution by bringing a civil suit against the suspect, forcing the public prosecutor to take action.

Under the Chamber of Accusation, preparatory instructions for the case are given to an examining magistrate who has the power to proceed with the examination of the suspect. (Under the law of August 24, 1993, the term "accuse" was replaced by the term "put under examination".) The magistrates can interrogate, confront, and bring warrants against the suspect. They can also arrest the suspect and bring him or her before judicial authority. Another set of instructions is given for the bringing of appeals.

The examining Magistrate reads the charge and the statement of the defense. Judges of the Correctional Court must explain reasoning for their decision.

\* Official who conducts prosecution. The Public Minister can prosecute a suspect.

\* Alternatives to trial. Suspects are not allowed to plead guilty.

\* Proportion of prosecuted cases going to trial. Information not available.

\* Pre-trial incarceration conditions. A person may be kept under observation if there is evidence against him or her. Pre-trial detention may be decided by the judge of instruction or the Chamber of Accusation. The accused can appeal this decision and request release or can use the provisional order of release.

\* Bail procedure. The accused can be released from pre-trial detention on bail. This decision is made by a judge of instruction or the Chamber of Accusation.

\* Proportion of pre-trial offenders incarcerated. In 1990, the number of pre-trial offenders totaled 20,789.

## JUDICIAL SYSTEM

### 1. Administration.

Police Court. Police Courts have jurisdiction over violations of the law that incur a punishment of less than 2 months imprisonment and a maximum fine of 25,000 francs.

Correctional Court. Correctional Courts have jurisdiction over offenses which can incur a maximum of 10 years imprisonment.

Assize Court. The Assize Court has jurisdiction over serious crimes that have possible life imprisonment sentences. The Assize Court sits on an ad hoc basis (not a permanent court). Its decisions are permanent and cannot be brought for appeal.

The Chamber of Correctional Appeals. The Chamber of Correctional Appeals hears appeals of decisions brought to it by the Police and Correctional Courts.

Supreme Court of Appeal. The Criminal Chamber of the Supreme Court of Appeal oversees the application of law in all courts. It verifies judicial decisions to ensure that the application of the law and the resulting sentences are sound, but does not actually hear any cases. Its judges determine the appropriate application of the law in a case, but do not draw any conclusions as to the facts of the case.

## 2. Special Courts.

Court for Children. This court hears cases involving minors charged with offenses that would be brought to the Police and Correctional Courts if they were adults (for instance, misdemeanors and violations).

Assize Court for Minors. This court hears cases involving minors charged with more serious offenses.

## 3. Judges.

\* Number of judges. In 1990, there were 5,796 judges, 50% of whom were women.

The Assize Court consists of three professional magistrates plus a jury of nine members. All other courts are operated solely by professional magistrates.

\* Appointment and qualifications. Judges are recruited and must compete for entry after 2 years of training at the National School of Magistrature.

## PENALTIES AND SENTENCING

### 1. Sentencing Process.

\* Who determines the sentence? The sentence is determined by the court. The judge that sets the punishment also decides how the punishment will be carried out.

\* Is there a special sentencing hearing? Information not available.

\* Which persons have input into the sentencing process? The accused, the victim, and the Public Minister can express their opinions at sentencing. Expert witnesses, such as psychiatrists, have a great influence. The court will generally abide by the conclusions of expert witnesses.

### 2. Types of Penalties.

\* Range of Penalties. Penalties generally range from fines for minor offenses to deprivation of liberty for serious offenses, although imprisonment can be used for misdemeanors as well as

more serious crimes. There are other punishments such as seizure of property, closing down of establishments, and community service.

A life sentence in prison is often given as punishment to the crimes of murder, assassination, parricide, poisoning, attack upon State security, and counterfeiting. Prison sentences are generally given for the crimes of rape, armed robbery, kidnaping of a minor, unlawful imprisonment, threats, assault, assistance of suicide, homicide, and forms of indecency (for instance, public indecency).

\* Death penalty. The death penalty was repealed by the law of October 9, 1981.

## PRISON

### 1. Description.

\* Number of prisons and type. There are five types of penal institutions. Central houses receive offenders who have been sentenced to more than 1 year in prison. Detention centers can also receive offenders with long sentences, but are orientated toward the re-socialization of offenders. Stop Houses receive offenders with less than a one year sentence. Penitentiary Centers are a hybrid of Stop Houses and Central Houses and receive offenders with both long and short sentences. Semi-liberty Centers house offenders who can be released for short periods of time to go to work, school, professional training, or undergo medical treatment.

\* Number of prison beds. As of 1990, there were a total of 49,186 prison beds.

\* Number of annual admissions. The number of admissions into closed environment prisons located in cities, during 1990, was 78,444, the number of releases, 75,193. The number of annual incarcerations in an open environment was 91,545, with an average length of detention of 6.6 months.

\* Average daily population/number of prisoners. As of January 1, 1990, there were a total of 137,757 persons in the prison population, of which 45,420 were in a closed prison environment and 92,337 were in an open environment. In closed prison environments, there were 43,400 men and 2,020 female inmates.

There were 43,913 inmates housed in city-located closed prison environments in 1990, of which 41,944 were men and 1,969 were women. Of these, 30,887 were French and 13,026 were foreigners.

\* Actual or estimated proportions of inmates incarcerated. Actual number of convictions of penal population in closed prisons located in cities in 1990.

Drug crimes	Information not available
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Violent crimes (Offenses against persons)	7,355
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Property crimes (Offenses against	
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property)	9,253
Other offenses (including offenses against public peace and the State)	7,189
Total crimes	23,797

## 2. Administration.

\* Administration. Prison administration is affiliated with the Minister of Justice and consists of the central administration service and exterior services. The prison central administration service is headquartered in Paris. Prison exterior services operate at both a regional and local level, along four areas of interest: the application of judicial decisions, reintegration, human resources, and general administration.

\* Number of prison guards. In 1990, there were a total of 21,866 prison personnel, of which 308 were in high-level administrative positions, 1,933 were in general administrative positions, 18,137 were watching staff (guards), 550 were technical personnel, 899 were educational personnel, and 100 were non-uniformed staff.

\* Training and qualifications. Information not available.

\* Expenditure on the prison system. In 1992, 27.8% of the budget for the Minister of Justice went toward prisons, totaling 5,029,398,244 francs. Each day of detention cost 252 francs per prisoner.

## 3. Prison Conditions.

\* Remissions. Inmates can apply for early release from the Penalty Application Commission. The reduction cannot exceed 3 months per year of incarceration and 7 days per month for incarceration over one year.

Time reduction is also permitted if the inmate passes an academic exam or completes university or professional studies. However, this form of reduction cannot exceed 2 months per year of incarceration.

Prisoners with life sentences can also obtain parole. The total reduction of sentence cannot exceed 20 days or a month per year of incarceration.

\* Work/education. Inmates are not obligated to work, although in principal, prisons are obligated to provide work for inmates to do. About 40% of the prisoners are provided with paid work.

\* Amenities/privileges. Prisons are humanized on a physical level by the availability of sanitary conditions for inmates and on a moral level, by allowing inmates to have family contact and to receive visits at pre-determined intervals. In some cases, such as the death or imminent death of a relative, inmates can leave confinement for short periods of time.

Educators, social workers, prison visitors, and clergy from a variety of religions participate in the rehabilitation of inmates.

## EXTRADITION AND TREATIES

\* Extradition. Bilateral extradition agreements exist with the following countries: South Africa, Algeria, Germany, Argentina, Australia, Austria, Belgium, Benin, Brazil, Burkina Faso, Cameroon, Canada, Central African Republic, Chili, Cyprus, Colombia, Congo, Ivory Coast, Cuba, Denmark, Djibouti, Egypt, Ecuador, Spain, United States, Finland, Gabon, Great Britain, Greece, Hungary, Iran, Ireland, Israel, Italy, Laos, Latvia, Liberia, Liechtenstein, Luxemburg, Madagascar, Mali, Panama, Netherlands, Peru, Poland, Portugal, Romania, San Marino, Senegal, Sweden, Switzerland, Chad, Czechoslovakia, Thailand, Togo, Tunisia, Turkey, Venezuela, Vietnam, Yugoslavia, and Zaire.

There are several multi-lateral extradition agreements in existence as well:

- International agreement against the white slave trade, signed May 18, 1904.

- Agreement on the repression of the white slave trade, signed May 4, 1910.

- Agreement on the repression of the women and children slave trade, signed September 30, 1921.

- Geneva agreement on counterfeit money, signed April 20, 1929.

- Agreement on the repression of illicit drug traffic, signed June 26, 1936. Protocol of December 11, 1946.

- Agreement for the prevention and repression of genocide (O.N.U.), signed December 9, 1948.

- Geneva agreement (prisoners protection, civil, injured, etc., in the case of armed conflict), signed August 12, 1949.

- Agreement on the trade of humans and prostitution of others, signed December 2, 1949.

- New York agreement on the status of refugees, signed September 11, 1952.

- Protocol relative to the status of refugees, signed January 31, 1967.

- European extradition agreement of Paris, signed December 13, 1957.

- Agreement of mutual aid on penal matter, signed April 20, 1959.

- Unique agreement on drugs, signed March 30, 1961. Amendment protocol, signed March 25, 1972.

- Tokyo agreement (offenses committed on board an airplane), signed September 14, 1963.

- European agreement concerning convicted persons on parole or probation, signed November 1964.

- The Hague agreement (capture of illicit airplanes), signed

December 16, 1970.

- Agreement on the physical protection of nuclear material (opening at the signature at New York and Vienna), signed March 3, 1980.

- Agreement on psychotropic drugs, signed February 21, 1971.

- Montreal agreement (civil security aviation), signed September 23, 1971.

- Strasbourg agreement (terrorism repression), signed January 27, 1977.

- Vienna agreement against illicit traffic of drug and psychotropic substances, signed December 20, 1988.

\* Exchange/transfer of prisoners. Information not available.

\* Specified conditions. Information not available.

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ITALY

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GENERAL OVERVIEW

1. Political system.

There is no federal government nor federal system of justice. All criminal laws are contained in the Penal Code and many other statutes. The Constitution of the Italian Republic (Art.73) states that all laws have to be published in the Gazzetta Ufficiale dello Stato, which is the Official Gazette of the State. These written mandatory statutes are effective throughout the nation. The statutes do not conflict with the Italian Constitution.

The different parts of the criminal justice system are part of a state system which operates all over the national territory through Districts and other minor territorial jurisdictions. These districts do not correspond to the 20 administrative districts (Regioni) into which the country is divided. Although each district has the power to make laws, providing they do not conflict with the Constitution, only the State has jurisdiction over substantive and procedural penal law. The administrative functions of the criminal justice system fall under the authority of the Minister of Justice (Ministro di Grazia e Giustizia).

The State government has three branches: Legislative, Executive, and Judiciary. A system of checks and balances allows each power to be separate and independent from the others.

Each branch of the State has specific powers and responsibilities in the criminal justice system. For instance, the Legislative branch has the power to develop laws, including penal law, directly or through laws enacted under delegate power. This branch also has influence on the two branches of Parliament: the Chamber of Deputies and the Senate of the Italian Republic. Any member of Parliament, of the Government or of particular institutions can present a bill to introduce a new law or modify an existing one to the Parliament for consideration. Citizens can take the same initiative by presenting petitions that are signed by at least 50,000 citizens. (Constitution, Art.71).

Parliament has the power to debate, pass, or reject all bills, with or without modifications. Once passed, the law is promulgated by the President of the Republic and published in the Official Gazette. Parliament may delegate legislative power to the Government for a specific project, such as the development of a substantive or procedural Penal Code, while providing the general principles and direction for the project. In urgent cases, the government can enact a law by decree (Decreto Legge), which takes effect immediately. This type of decree must be made into a law by the Parliament within 60 days, or it loses its validity. (Constitution, Art.71,76,77).

The Executive branch has the power to govern the nation. The Minister of Justice is in charge of the organization and functioning of the criminal justice system. Although the Minister cannot interfere with jurisdictional functions that pertain to the Judiciary Power, he does have the power to allocate the budget for the criminal justice system. He can also initiate disciplinary action against individual judges, although the final decision of disciplinary sanctions pertains to the Superior Council of the Judiciary. The Minister has the power to issue criminal justice directives and regulations and has the power to inspect criminal justice activities, except for cases which fall under the competence of the Superior Council of the Judiciary. (Constitution, Art.107,110).

The Judiciary branch is separate and autonomous from the other State branches. The Bench has the power to administer justice and enforce the law. (Constitution, Art.104).

## 2. Legal system.

Criminal procedure can be described as adversarial in nature. No informal justice system exists. The Italian legal system is based on written laws. Penal Law defines what specific behavior is criminal and what specific minimum and maximum penalties are provided. The basic principles of no penalty without a law (nulla poena sine lege) and no crime without a law

(*nullum crimen sine lege*) are stated in the Penal Code (Art.1) and in the Constitution (Art.25).

Other basic constitutional principles follow as well: a) legal responsibility rests solely on the acting individual; b) rules of penal law are not retroactive; c) no one can be sentenced without a fair trial (*nulla poena sine iudicio*); d) no one can be considered guilty until a final sentence has been pronounced; e) penalties cannot consist in treatment contrary to the sense of humanity and must tend to the rehabilitation of the offender; and f) personal freedom is inviolable and no one shall be deprived of it except under specific provisions of the law. (Constitution, Art.27).

The Bench (judiciary and prosecutors) is autonomous and independent from the political Legislative and Executive powers. A self-governed elective Board (*Consiglio Superiore della Magistratura*) of which two-thirds are a large majority of judges and prosecutors, is permanently in charge of all decisions concerning the Bench, such as recruitment, assignments, transfers, promotions, and disciplinary actions (judges and prosecutors cannot be removed). (Constitution, Art.104,107). The Constitution also states that judges are subjected only to the authority of the law (Art.101). The Legislative Power has the monopoly on the production of the Penal Law (directly or through laws enacted under delegate power).

The Constitution prescribes the general norms of the penal system. No law can conflict with the Constitution. The Constitutional Court (*Corte Costituzionale*) is in charge of evaluating the conformity of specific rules of the Penal Law to the Constitution.

### 3. History of the criminal justice system.

Although the origins of Italian penal legislation can be traced back to Roman and middle age canonic law, its general principles derive from the French Enlightenment. These principles include clarity of the law, no punishment without trial, proportionality between crime and punishment, definitions of crime and punishment based on a system of written laws and fixed penalties, and the elimination of secret accusations. The dissemination of these principles is commonly ascribed to the influence of Cesare Beccaria's *Treatise On Crimes and Punishments*. Actually, these principles were part of the general reformist approach and judicial enlightenment expounded by various thinkers even before Beccaria had published his *Treatise*. For example, in his *"Spirit of Laws"* (1764), Montesquieu had already written in favor of clarity of the law, not to mention Voltaire's ardent opposition to secret accusations. (Newman and Marongiu, 1990: 333). (*Dei Delitti e delle*

Pene, Livorno, 1764).

The new principles of the French Revolution are affirmed in the 1791 and 1795 French Penal Codes and eventually in the Napoleon Code of 1810. All subsequent Italian Penal Codes bear the mark of French influence. (For instance, the Penal Code of the Kingdom of the Two Sicilies of 1819 (Codice Penale Regno delle due Sicilie), the code of the Duchy of Parma of 1820 (Codice del Ducato di Parma), the regulations concerning crimes and punishment in the Papal States of 1832, (Regolamento dei delitti e delle pene per gli Stati della Chiesa), the Codice Penale Sardo (Albertino), Sardinian or Albertine because it was promulgated by the King Carlo Alberto di Savoia (Penal Code, 1839), the Codice Penale Toscano (Penal Code of Tuscany 1853 and the 1859 Codice Penale Sardo, which replaced the 1839 Sardinian Penal Code. After the unification of Italy (1861), the 1859 Sardinian Penal Code (with minor modifications) came gradually into force in the entire Italian territory, with the exclusion of the former Grand Duchy of Tuscany.) In 1889, a general Penal Code for the new Kingdom of Italy was promulgated by the Ministry of Justice, Zanardelli. (Antolisei, 1985).

In 1919, a commission chaired by Enrico Ferri was appointed in order to forward a proposal of revision of the Zanardelli Penal Code. This revision project, named the Project of Penal Code or the Ferri Project (Progetto di Codice Penale or Progetto Ferri) was completed in 1921, but it was rejected because it was considered too radical due to its acceptance of Positive and Social Defense School principles. (Antolisei, 1985).

In 1925, another commission, chaired by the jurist Arturo Rocco, Professor of Penal Law and Procedure, put forward a new project which resulted in the Italian Penal Code, known as the Rocco Code. (Penal Code, The Official Gazette (supplement) n. 253, October 28, 1930. Effective on July 1, 1931. (Gazzetta Ufficiale (supplemento) n. 253 del 28 ottobre 1930, entrato in vigore il primo luglio 1931.) This Code, linked with the Code of Penal Procedure (Code of Penal Procedure, The Official Gazette (supplement) n. 254, October 29, 1930. Effective on July 1st, 1931. (Codice di Procedura Penale, Gazzetta Ufficiale (supplement) n. 254 del 29 ottobre 1930, entrato in vigore il primo luglio 1931).) which became effective at the same time, has subsequently been modified in order to conform to the principles of the Republican Constitution (Constitution of the Italian Republic, The Official Gazette, n. 289 Dec. 27, 1947. Effective on January 1st, 1948 (Costituzione della Repubblica Italiana, Gazzetta Ufficiale n. 289, del 27 Dicembre 1947. Entrata in vigore il primo Gennaio 1948.)), but is essentially unchanged in its basic structure and is still in force in Italy. The linked Code of Penal Procedure was in force until 1988. (Antolisei, 1985).

Significant criminal justice legislation.

The most significant legislation that has affected the criminal justice system was the 1988 promulgation of a new Code of Penal Procedure. (President's of the Republic Decree, September 22, 1988 n.447, in ordinary supplement no.1 to the Official Gazette of the State, general series no. 250, October 24, 1988. (D.P.R. (Decreto del Presidente della Repubblica) 22 settembre 1988 n.447 in supplemento ordinario n.1 alla Gazzetta Ufficiale dello Stato, serie generale, n. 250, 24 ottobre 1988). The new Code represented a substantial shifting from the old inquisitorial system to a modern adversarial system.

The most important innovation of this new legislation concerns the admission of evidence that, as a rule, can be obtained only during the course of an oral and public trial, in front of the judge (acting as a third party) on the basis of witnesses' cross-examination and other kinds of proof legally presented in the Court. The trial is conducted by the prosecution and defense on a parity basis.

The former inquisitorial procedure had allowed the admission of evidence obtained both in the course of the trial and in the preliminary investigation (istruttoria) stage. The preliminary investigation was typically characterized by secrecy concerning documentation of the pre-trial investigation. An investigating judge (giudice istruttore) was in charge of collecting criminal evidence as well as conducting direct examinations of the witnesses. During the trial, the examination of witnesses was conducted by the Chief Judge.

Although the new Italian Code of Penal Procedure is similar to the adversarial English and American systems, its system of written laws still retains important differences when compared with the Anglo-American system, such as the obligatoriness of penal action. (obbligatorietà dell'azione penale).

The obligatoriness of penal action is sanctioned by the Constitution (Art.112). According to this provision, the Public Prosecutor (Pubblico Ministero), when becoming acquainted with the commission of a crime (notizia criminis), is legally bound to start the investigation and, if there is enough circumstantial evidence, to take penal action against the alleged culprit of that particular crime. The Italian Prosecutor is therefore without discretionary power to withhold prosecution. Prosecution is not simply a right, but a duty of the Italian Public Prosecutor. (Code of Penal Procedure, Art.358,405).

However, certain crimes can only be prosecuted under specific conditions; penal action cannot be taken unless a specific requirement is

met. Crimes prosecutable by initiative of the offended person (reati perseguibili a querela dell'offeso), can range from forcible rape to personal minor injury and can be prosecuted only if the offended person requests the Public Prosecutor to proceed against someone for the alleged commission of a crime. Excluding rape and similar sex offenses, this request can be withdrawn, which essentially eliminates the crime. (Penal Code, Art.120,152; Code of Penal Procedure, Art.340)

For crimes allegedly committed by members of the two branches of Parliament (Camera dei Deputati and Senato della Repubblica), a special authorization of the Parliament is required in order both to carry out certain types of investigation procedures (search and seizure, wire tapping) and to arrest or otherwise limit their personal freedom. That is, another condition of prosecutability (procedibilita) can be the authorization to proceed (autorizzazione a procedere). (Constitution, Art.68; Code of Penal Procedure, Art. 343,344).

Up until October 1993, a similar authorization was required to bring members of the Parliament to trial. This provision was revoked and under a modification of Article 68 of the Constitution, the judiciary is now free to prosecute the members, although they cannot be arrested or imprisoned until a final sentence of guilt has been pronounced.

## CRIME

### 1. Classification of crimes.

\*Legal classification. All criminal offenses (reati) are divided by the Penal Code (Codice Penale) into two broad categories: delitti, which are serious offenses and contravvenzioni, which are less serious offenses. The two categories (The crime categories are described in the second and third books of the Italian Penal Code entitled, Libro Secondo: Dei Delitti in Particolare and Libro Terzo: Delle Contravvenzioni in Particolare, respectively) are also used to help to classify special law statutes (drugs, prostitution, weapons, bankruptcy, pollution, hunting, traffic, customs, tax evasion, Military Code in wartime and in peacetime). The distinction between delitti and contravvenzioni crimes is based on the seriousness of the crime and on the severity of punishment. Although they are both punishable by imprisonment and/or fine, the sentences for delitti are more severe than those for the contravvenzioni. (For delitti crimes, the penalty is 15 days to 24 years imprisonment, and as much as 30 years or life

imprisonment in special cases. For contravvenzioni crimes, the penalty is 5 days to 3 years imprisonment. As a rule, sentences for contravvenzioni are served in different types of prison facilities than those used for delitti. Fines vary considerably and can amount to 500,000 U. S. Dollars for serious drug offenses. (Penal Code, Art.22,23.25).)

The Penal Code generally classifies each crime under a specific heading: a) Crimes against the Nation (delitti contro la personalita` dello Stato), (for example, espionage, assassination of the President, armed bands, terrorism). b) Crimes against public authority (delitti contro la pubblica amministrazione), (for instance, corruption, bribery, embezzlement of public property by an officer). c) Crimes against judicial authority (delitti contro l'amministrazione della giustizia), (for example, Perjury, to suborn a witness). d) Crimes against religious feelings and against the feelings of pity towards the dead (delitti contro il sentimento religioso e contro la pietà dei defunti), (profanation of a tomb, offenses against religion). e) Crimes against the public order/breach of the peace (delitti contro l'ordine pubblico), (for instance, criminal association, particularly of the mafioso type). f) Crimes against public safety (delitti contro l'incolumità pubblica), (poisoning food, water and drugs, arson, provoking a railway or air disaster). g) Crimes against public faithfulness (delitti contro la fede pubblica), (forgery and counterfeiting). h) Crimes against public economy, industry and commerce (delitti contro l'economia pubblica, l'industria e il commercio), (commercial fraud). i) Crimes against public morality (delitti contro la moralità pubblica e il buon costume), (rape, indecent exposure). j) Crimes against the family (delitti contro la famiglia), (bigamy, incest). k) Crimes against the person/violent crimes (delitti contro la persona), (murder, assault, non-ransom kidnapping, defamation). l) Crimes against property (Delitti contro il patrimonio), (theft, money laundering, robbery, extortion, ransom kidnapping). (The Penal Code considers the violent crimes of robbery, extortion, and ransom kidnapping as property crimes because their main intent is to gain property.)

\*Age of criminal responsibility. The age of criminal responsibility is 18 under the Penal Code (Art.85), which also states that a person is chargeable with a crime only if mentally competent at the time of its commission. Over the age of 18, a person is considered fully chargeable with a

crime unless a mental evaluation ordered by the judge finds the person mentally incompetent due to a mental disease, deaf-mutism, or chronic intoxication from alcohol or drug abuse.

(Mentally incompetent individuals who commit serious crimes are considered socially dangerous and must undergo compulsory hospitalization in a special mental institution for offenders (ospedale psichiatrico giudiziario). (Penal Code, Art. 222).) In these cases, usually no criminal sanction is imposed. Instead, compulsory hospitalization in a special mental institution for insane offenders is provided as a safety measure, except in minor offense cases. (Penal Code, Art.88,95,96,222; Code of Penal Procedure, Art.220).

A person can also be considered criminally liable, if as the result of a psychiatric examination, he or she is found partly mentally incompetent because of mental disease, chronic intoxication deriving from alcohol, drug abuse, or deaf-mutism. (Penal Code, Art.88,89,95,96). In that case, in addition to the penal sanction, compulsory hospitalization is provided as a safety measure. For minor offenses, release under surveillance may be imposed as an alternative measure. (Penal Code, Art.219).

A person under 14 years old is not considered mentally competent and therefore cannot be charged with any crime. If mentally competent, a person between 14 and 18 years old is considered legally responsible, although a more lenient criminal sanction is imposed. (Penal Code, Art.97,98).

\*Drug offenses. The personal use of drugs has recently been decriminalized. Following a national referendum, a new law does not permit imprisonment for drug-related activities involving personal use only. In these cases, only administrative sanctions, such as revoking a driving license or passport, can be imposed. However, producing, selling or trafficking drugs are considered very serious crimes. Criminal association with drug offenses is alone punishable by a maximum prison sentence of 30 years. Illegal drugs include opium and its derivatives (morphine, heroin), cocaine and its derivatives, amphetamine, synthetic drugs, cannabis, and hashish. (According to international agreements, all narcotics (and nonnarcotic dangerous drugs) whose manufacturing and distribution is prohibited or restricted, are listed in the Official Gazette, October 9, 1990.) (Official Gazette, Oct.31, 1990, June 5, 1993).

## 2. Crime statistics.

The definitions of the following crimes (reati) are provided in the Penal Code. The number of crimes reported by police to the judiciary were collected by the Institute of Statistics (ISTAT). (National Institute of Statistics, Yearbook of

Statistics: Crimes reported by the Police to the judicial authority according to the type of offense, years 1987-1991. The 1992 figures are taken from ISTAT, press release, March 17, 1993. (Istituto Nazionale di Statistica ((ISTAT, Annuario Statistico o: Delitti denunciati all'Autorita giudiziaria dalle forze dell'ordine (Polizia di Stato, Carabinieri e Guardia di Finanza) per specie del delitto, anni 1986-1992).) Excluding homicides, ISTAT sources do not specify whether attempts are included.

\*Murder. In 1992, there were a total of 1,461 incidents of murder (Omicidio) and 1,851 incidents of attempted murder (Tentato omicidio). (Figures for the number of murders in prior years: 1,096 (1987); 1,255 (1988); 1,563 (1989); 1773 (1990); and 1,916 (1991). Figures for the number of attempted murders in prior years: 15,900 (1987); 1,586 (1988); 1,759 (1989); 1,959 (1990); and 2,197 (1991). In 1991, the rate for murders and attempted murders recorded was 3.31 and 3.8 per 100,000 population, respectively.) The figures for murder/intentional homicide do not include infanticides. (Penal Code, Art.56, 575-577).

\*Rape. In 1992, there were 806 incidents of forcible rape (Violenza carnale) reported by police. (The number of rapes recorded for prior years: 871 (1987); 865 (1988); 687 (1989); 687 (1990); 733 (1991). The rate of rapes recorded in 1991 was 1.26 per 100,000 population.) (Penal Code, Art.519).

\*Burglary. In 1992, the police reported 193,170 incidents of burglary, (Furto aggravato), in the home. (The number of burglarly incidents which took place in the home, recorded for prior years: 158,305 (1987); 160,860 (1988); 175,408 (1989); 210,835 (1990); and 206,216 (1991). In 1991, the rate for recorded burglaries was 357.09 per 100,000.) (Penal Code, Art.624- 625). Burglary in private houses is reported here as a serious property crime because it is routinely punished more severely than other forms of aggravated theft (pocket picking), which is typically punishable by 1 to 6 years in prison under the Penal law.

\*Serious drug offense. In 1992, there were 42,164 incidents of drug offenses (Produzione, commercio di stupefacenti) reported by police. (The number of drug offenses recorded for prior years: 21,590 (1987); 31,079 (1988); 30,180 (1989); 30,691 (1990) and 40,421 (1991). The rate of drug offenses in 1991 was 69.99 per 100,000.) These incidents include the offenses of growing, manufacturing, selling or distributing drugs. (Official Gazette, Oct. 31, 1990).

\*Crime regions. Organized crime conducts illegal activities over portions of the territory in at

least three regions: Sicilia (Mafia), Calabria (N'drangheta) and Campania (Camorra). Although each organization has a different history, structure and modus operandi, their main illegal activities (which often involve violent crime) are similar, ranging from extortion and drug trafficking to corruption. (Art. 416 of the Penal Code defines these activities in detail. For example, criminal association of the mafioso type (associazione per delinquere di tipo mafioso) providing severe penalties of up to 15 years in prison for involvement in the association alone. The law also has special prosecuting and sentencing provisions for this type of crime, which includes kidnapping and drug offenses.

In prosecuting these cases, some evidence obtained from outside sources may be admitted, including evidence gathered during the trial or in the pre-trial investigation stage. The pre-trial investigation stage and pre-trial incarceration can extend past the limits normally provided by the law.

Convicted defendants of this crime also are allowed less privileges than other convicted criminals. However, the accused is entitled to a penalty reduction and other privileges if he or she decides to cooperate with the justice system by producing evidence that can be used to effectively fight organized crime. (Official Gazette, August 7, 1992.) The Penal Code (Art.416) defines these activities in detail and provides for a 15 year maximum prison sentence for such crimes.

A specific form of rural criminality can be found in the central-eastern mountainous area of inner Sardinia, which has a high rate of violent crime that includes homicide, assault, bombing, rustling and ransom kidnapping.

## VICTIMS

1. Groups most victimized by crime. Information not available.

2. Victims' assistance agencies.

Compensation for up to 100,000 USD is provided through a state fund for victims of organized crime or terrorism. A special compensation fund for victims of extortion has been established by the State. Victims who have suffered property damage from not complying with extortion requests (for example, if a store was bombed because of not paying racketeers) may be entitled to compensation through a state fund. The fund is administered by a state controlled insurance company (INA, Istituto Nazionale delle Assicurazioni) and is under the supervision of the Minister of Industry and Trade. (Official Gazette,

October 25, 1990, January 2, 1992).

Compensation for needy victims of crime is also provided by the Department of Prisons with money coming from private donations and from a 30% deduction of the pay received by convicted working prisoners. Victims can be compensated for any kind of damage they have suffered, whether it be moral, medical, mental, or property. Offenders are obliged to give restitution and pay for damages they may have caused to the victim(s). (Official Gazette, August 9, 1975, October 25, 1990; Penal Code, Art.185).

A law also provides for the granting of free legal aid to needy victims. (Official Gazette, July 30, 1990).

### 3. Role of victim in prosecution and sentencing.

Victims have the right to be informed about judicial proceeding developments, to produce evidence at any stage of criminal prosecution, to oppose the request by the Judge for the Preliminary Investigation, (Giudice per le Indagini Preliminari or G.I.P) for dismissal of the case, and to designate defending counsel to protect their rights.

Victims' assistance associations (environmentalist associations) can join the victim at trial with the victim's consent. (Code of Penal Procedure, Art.91).

Prosecutors and defending counsel play two distinct roles to protect the victims' rights. Prosecutors do not directly protect victims' rights since their main intent is to protect the public interest by seeking prosecution against alleged offenders. However, they indirectly protect victims' rights in that, if defendants are convicted, victims are entitled to compensation. Victims' defending counsel, on the other hand, are directly in charge of protecting the rights of victims. Alleged offenders' defense attorneys do not protect victims' interests, but rather, seek acquittal for their clients.

### 4. Victims' Rights Legislation.

Crime victims can claim compensation for damages incurred during the trial stage under the Penal Code (Art.185) and the new Code of Penal Procedure (Art.74,90,101,394,396).

## POLICE

### 1. Administration.

There are three main state police corps in Italy: the State Police (Polizia di Stato), the Carabinieri, and the Finance Guard (Guardia di

Finanza). The Carabinieri and Finance Guard (employed mainly in the investigation of financial crimes) is a military corps, under authority of the Ministry of Defence and of the Ministry of Finance, respectively. The State Police is a civil corps under authority of the Ministry of the Interior and is responsible for all functions listed in the United Nation's definition of police (prevention, detection, investigation, and apprehension of alleged offenders). There also exist local police corps with limited jurisdiction (rangers, city police, traffic police, railway police, coast guard).

The Code of Penal Procedure state the functions of the investigating police. (Articles 55-59). Appointed police officers (ufficiali di polizia giudiziaria) from all police corps carry out criminal investigation functions (funzioni di polizia giudiziaria). under direction of the judicial authority in the criminal investigation departments (sezioni di polizia giudiziaria). In addition to the criminal investigation departments located at the Public Prosecutor's offices, there are also criminal investigation services (servizi di polizia giudiziaria) which are established all over the country at the local Carabinieri, State Police and Finance Guard stations. Criminal investigative services are directly and exclusively used for the Public Prosecutor for particular criminal investigations. The Central Operating Service (Servizio Centrale Operativo) coordinates all police criminal investigation activities under the authority of the Chief of Police and the Ministry of the Interior.

The Ministry of the Interior has recently established a special agency of criminal investigation, called the DIA (Direzione Investigativa Antimafia) to be in charge of organized crime investigations. The DIA is directed by a high ranking Carabinieri, State Police or Chief Finance Guard Officer. This interforce structure is used by the National Antimafia Prosecuting Attorney (Procuratore Nazionale Antimafia), who is also the head of the National Antimafia Prosecutor Office (Direzione Nazionale Antimafia). (Official Gazette, November 6, 1991; December 31, 1991)

## 2. Resources.

\*Expenditures. For fiscal year 1994, the Italian State budget entered the following expenses, which include the investigating police expenses for all three police corps:

- a) 8,030 billion lire for the State Police (Ministry of the Interior)
- b) 5,915 billion lire for the Carabinieri (Ministry of Defense)
- c) 3,608 billion and 744 million lire for the Finance Guard (Ministry of Finance). (Official Gazette, December 28, 1993).

It should be noted that investigating police functions comprise only a fraction of all police activities (military police, rangers, traffic, secret services, witness protection programs, public order). Police officers of all corps may serve different functions while in service. This makes it difficult to distinguish the expenses for investigating police from general police expenses.

\*Number of police. As of Dec. 31, 1990, the total number of police, including the State Police, Carabinieri and Finance Police, and the criminal investigation police, was 241,429, of which 234,729 were male and 6,700 were female. (On Dec. 31, 1986, the total number of police personnel, including the Polizia di Stato, Carabinieri, and Guardia di Finanza, and the polizia giudiziaria, was 215,186.) (Fourth United Nation Survey of Crime Trends and Operations of Criminal Justice Systems, 1992).

As of Dec. 31, 1990, the total number of police personnel was 200,660, of which 189,240 were male and 11,420 were female. Sworn/uniformed police comprised 192,817 of this total and civilians comprised 7,843. (On Dec. 31, 1986, the total number of police personnel was 183,393, of which 179,242 were male and 4,151 were female. Sworn/uniformed police comprised 177,371 of this total and civilians numbered 6,022.)

### 3. Technology.

\*Availability of police automobiles. Information not available.

\*Electronic equipment. Information not available.

\*Weapons. Handguns, automatic weapons and batons are commonly carried on sworn uniformed police officers. Individually, police officers are issued one Beretta 92 SB double action semiautomatic pistol, cal 9 mm. Parabellum (8 or 15-shot) as a personal weapon for the duration of their service.

There are also ordinary and special party armaments which are not personal and must be returned when not on duty. Ordinary armament is generally available to all police officers for ordinary team activities such as patrolling. Special armament requires special training and is generally only available to special squads, such as anti-kidnapping and anti-terrorist squads.

Types of ordinary party armament (armamento ordinario di reparto) include: a) Rubber or plastic cylindrical internally hollow nightstick with an overall length between 40 to 60 centimeters or 19 to 24 inches; b) Beretta PM 12S fully automatic submachine pistol, cal. 9 mm. Parabellum; c) Semiautomatic plus slide-action 12 Gauge shotgun; and d) a fully automatic, semiautomatic, or bolt action rifle, cal. 5.56 mm

or 7.62 NATO mm.

Types of special party armament (armamento speciale di reparto) include: a) Beretta 92 SB double action semiautomatic pistol, cal 9 mm. Parabellum (8 or 15-shot); b) Revolver (cal. 38 Special, 357 Magnum, 9 mm. Parabellum); c) Beretta PM 12S fully automatic submachine pistol, cal. 9 mm. Parabellum; d) Fully automatic (or semiautomatic, or bolt action) rifle, cal. 5.56 mm or 7.62 NATO mm.; e) Machine gun; f) Hand grenades, which can also to be launched with the rifle; g) Explosives of various types; and h) Self-propelled weapons (bazooka).

Both ordinary and special party armament includes other weapons and accessories, such as bullet-proof vests, training pistols and rifles, cal 4.5 mm. air guns, light and smoke devices, helmets, silencers, night vision binoculars and scopes, various types of knives, and narcotizing weapons. (Official Gazette, May 2, 1986)

#### 4. Training and qualifications.

To become a senior officer or executive in the state police, a masters of law degree is required. In the military structure (Carabinieri and Finance Guard) it is required to attend the military academy and the scuola ufficiali. The Scuola di Perfezionamento per le Forze di Polizia provides the highest level of specialization for police officers of all police corps. All state police corps have schools and training programs for police personnel. A clean record and good moral qualities are required to join the police.

#### 5. Discretion.

\*Use of force. Police may use force and/or deadly force in self defense to drive back acts of violence, to overcome resistance to authority, or to prevent the occurrence of very serious crimes (slaughter, homicide, kidnapping, robbery), providing that there is an immediate danger of the occurrence of these crimes and that the police reaction is proportionate to such danger. (Penal Code, Art.52,53).

\*Stop/apprehend a suspect. The law requires police to arrest and incarcerate a person if caught in flagrancy (arresto obbligatorio in flagranza) (in the act of committing a crime) or immediately after the crime's commission, if the crime is punishable by a 5 to 20 year prison sentence or life imprisonment. An arrest is also required for other serious crimes including: 1) crimes against the state; 2) devastation and ransacking; 3) crimes against public safety; 4) reduction to slavery; 5) serious forms of aggravated theft; 6) robbery, extortion; 7) illegal manufacturing, smuggling, selling, letting have, possessing, or carrying in a public place of

illegal weapons, especially military weapons; 8) serious drug crimes; 9) crimes of terrorism and subversion, secrecy, mafioso, military and political illegal associations; and 10) criminal association with the intent to commit some of the aforementioned crimes (for example, number 1,2,3,4,6,7 and 9). These crimes are listed in the Code of Penal Procedure and have attached penalties such as 3 to 10 years of imprisonment. (Code of Penal Procedure, Art.380).

The police have facultative power to arrest and incarcerate a suspect, if caught "in flagrancy" (arresto facoltativo in flagranza), for crimes punishable by more than 3 years in prison, with a 5 year maximum if the crime is unintentional. Facultative arrest powers are also in force for other crimes such as: 1) embezzlement of public property by an officer; 2) corruption of a public officer; 3) threat or violence to a public officer; 4) commerce and supply of bad food or drugs; 5) corruption of a minor; 6) assault provoking a personal injury; 7) theft; 8) aggravated damaging; 9) fraud; and 10) misappropriation of private funds or property. Generally these crimes are punishable by more than 6 months to 5 years in prison and are listed in the Code of Penal Procedure (Art.381).

Police may also arrest and incarcerate a person suspected of having committed a crime for which the law provides a minimum penalty of no less than 2 years in prison and a maximum of more than 6 years in prison, even if the suspect is not caught in flagrancy such as crimes involving weapons or explosives. Arrest and incarceration may be imposed if there is relevant circumstantial evidence of guilt before the Public Prosecutor starts the investigation, or if there is danger that the suspect will escape and there is no time to get a warrant signed by the Public Prosecutor. (Code of Penal Procedure, Art.384).

In all cases (mandatory and facultative "arresto" or "fermo"), the police must immediately notify the Public Prosecutor, the defense attorney and the suspect's family of the arrest (Code of Penal Procedure, Art.386,387). Within 48 hours, the Public Prosecutor must request the Judge for the Preliminary Investigation (G.I.P.) to fix a hearing in order to confirm the arrest within the next 48 hours. If the 48 hour terms are not met, the arrest loses its validity and the arrested person is set free (Code of Penal Procedure, Art.391).

The G.I.P summons the defendant, the defense attorney and the prosecutor for the special validation hearing. At this hearing, the G.I.P. examines the prosecutor's conclusions concerning the motives of the arrest and the defendant is questioned in the presence of his attorney. The G.I.P. then decides on the legitimacy of the arrest and issues an order of release. (Code of Penal Procedure, Art. 274). After arrest,

procedures to process the suspect further in the criminal justice system are specifically and formally provided by the Code of Penal Procedure.

After the arrest has been made and reported to the judge, all subsequent procedural decisions are made by the judge or prosecutor.

\*Decision to arrest. The majority of arrests are made while the suspect is committing a crime in "flagrancy" in which a warrant is obtained.

\*Search and seizure. For the purpose of collecting criminal evidence, as a rule, a search requires a warrant signed by the judge. In particular cases of emergency connected with serious crimes (for example, kidnapping, drug offenses) the police may search or seize property without a warrant (*motu proprio*). In this case, police must give notice of the searching/seizing within 48 hours to the prosecutor who is bound to verify its legitimacy. Illegal searching and seizing of property by police officers is punished by law as an abuse of power. (For example, an illegal body search (*peruisizione e ispezione personali arbitrarie*) can result in sanctions taken against the police officer. (Penal Code Art.609).) Illegally obtained evidence is not admissible in a case. (Code of Penal Procedure, Art.191,244-265).

\*Confessions. The law provides that all statements, including confessions, made in the presence of police officers or at any stage of judicial proceedings are invalid, when obtained by coercion. Also, the mere confession of a crime does not amount to full evidence of guilt. (Code of Penal Procedure, Art.63-65,192).

## 6. Accountability.

Complaints against alleged illegal police behavior are filed according to the same procedures provided for an alleged violation of the Penal Law. Complaints can be filed directly at the Public Prosecutor's Office or at any investigating police office. There is no state-independent board to process complaints, nor are there "watchdog" committees.

## PROSECUTORIAL AND JUDICIAL PROCESS

### 1. Rights of accused.

\*Rights of the accused at trial. The Convention for the Safeguard of Human Rights and the annexed Protocol is, for all purposes, part of the Italian Legal System in that no national law can conflict with its provisions. (The Convention and Protocol

have been signed by all government members of the Council of Europe and are in force in Italy as a State law.) It states that persons have the right to an independent and impartial trial in an impartial tribunal and the right to life, liberty, safety and property. (Convention for the Safeguard of Human Rights and of Fundamental Liberties, November 4, 1950; Protocollo, Art.1,2,5,6).

The Convention also states that the accused has the right to a public trial, with some exceptions, within an adequate period of time, to be informed of the nature and content of the accusation, to cross examine witnesses for the prosecution, to subpoena witnesses for the defense, the right to counsel, and the right to be presumed innocent. The Italian Constitution also provides for general principles such as the inviolable rights to liberty and counsel and the equality of all citizens before the law. (Constitution, Art.3,13,24; Protocollo, Art.5,6).

Principles similar to those found in the Italian Constitution and the Convention for the Safeguard of Human Rights can also be found in many sections of the Penal Code and Code of Penal Procedure. For instance, the accused has the right to be fully informed of the charge and of the existing evidence against him or her, and to be informed of the source of the evidence, such as the identity of the claimant(s), unless this would be detrimental to the investigation. The accused also has the right to remain silent and is considered not guilty until a final sentence has been pronounced. Uncertainty about the guilt of the accused due to insufficient or contradictory evidence can result in a judgement of full acquittal. The accused also has the right to be present at trial, to confront opposing witnesses, and to have all witnesses cross-examined by the defense attorney. (Code of Penal Procedure, Art. 65,474,486,498,499,530; Constitution, Art.27).

In addition, the accused has the right to be tried by a judicial panel or by a single judge, depending on the type of court, according to territorial jurisdiction where the crime has been committed. The accused cannot be removed from the "natural judge", meaning, from the judge who is competent to try the case, under law. The accused may not be tried twice for the same crime and has the right to be tried in a fair trial, that is, by an independent and impartial tribunal. (Code of Penal Procedure, Art. 65,649; Constitution, Art. 25,27).

\*Assistance to the accused. The accused has the right to select and employ a defense attorney in order to get legal assistance and to produce evidence in his/her defense at any stage of judicial proceedings, including the arrest and investigation stage. If the accused does not designate a defense attorney, a counsel is appointed by the Court. This applies to all

crimes of all types of severity. The law states that indigents must be provided with counsel. The Bar Association Nation provides a roster of available attorneys who are legally bound to provide defense counseling. A Bar Association Nation exists in each district; therefore, many rosters of attorneys are available. If eligible, the accused can select and employ a defense attorney at state expense, under law. Eligibility is determined on the basis of personal or family income. (Code of Penal Procedure, Art.97,190; Constitution, Art.24; Official Gazette, July 30, 1990).

## 2. Procedures.

\*Preparatory procedures for bringing a suspect to trial. The Public Prosecutor conducts the pre-trial investigation either directly or indirectly by employing the investigating police. An investigation takes place to establish whether there is enough circumstantial criminal evidence to prompt penal action. Depending on the type of crime, the investigation must be completed within a legally fixed period of time. (Code of Penal Procedure, Art.326,358)

If the prosecutor does not find probable cause after the investigation, he or she requests the Judge for the Preliminary Investigation (G.I.P) to dismiss the case. If cause is found, the prosecutor formally charges the defendant with the commission of the crime and requests the G.I.P to commit the defendant for trial. (Code of Penal Procedure, Art.405,408,416).

After the G.I.P. holds a hearing, he or she issues an order for trial or, in case of unsupported charges, pronounces a no case judgement (nolle prosequi). In the lowest court level, the Public Prosecutor is in charge of signing or not signing the indictment. (Code of Penal Procedure, Art.424,554).

Two other forms of trial are the direct trial (guidizio direttissimo) and the immediate trial (giudizio immediato). In direct trials, the Public Prosecutor can order the accused to be brought up to trial within 48 hours, if he or she was caught in the midst of committing a crime. In immediate trials, the accused may be brought directly to trial without the preliminary hearing, if during the preliminary investigation there is clear evidence of guilt.

\*Official who conducts prosecution. The prosecution of the accused is conducted by the Public Prosecutor. In the trial stage, prosecution and defense are in a position of parity. Similar to a judge, the Public Prosecutor is a career official (public servant) considered to be a part of the Bench although the prosecutor is not a judge.

The distinction between prosecutors and

judges is based on the different functions of the prosecutor and the judge, who are both considered magistrates. The Italian magistracy is divided into the inquiring magistracy (*magistratura requirente o magistracy*), who are the public prosecutors, and the judging magistracy (*magistratura giudicante*), who are the judges. The prosecutor is in charge of conducting the investigation and prosecution while the judge passes judgement on the case and imposes a sentence. (The terms magistrate and magistracy refer to all judges and prosecutors, independent of their level, competency and jurisdiction.)

\*Alternatives to trial. The accused does not have the right to plead guilty to a lesser offense (plea bargain). (The inadmissibility of a plea bargain in the system is based on the principle of the *obbligatorietà dell'azione penale*, which allows no discretion in prosecution. Once acquainted with the commission of a crime, the judicial authority is legally bound to take action against that particular crime and cannot choose to seek prosecution to a lesser charge in exchange for a plea of guilt. In other words, discretionary or selective enforcement does not exist in the system. The prosecutor has no discretionary power to engage in plea bargaining. The crimes prosecutable by the initiative of the offended person (*reati perseguibili a querela*) also adheres to this rule.) In the case of a miscarriage of justice, compensation for damages is provided. In addition, there are 3 pre-trial alternatives: 1) Short trial (*guidizio abbreviato*). Upon a defendant's formal request, the case is decided in the course of the preliminary hearing on the basis of findings of the preliminary investigation, providing that the Public Prosecutor agrees with it. If found guilty, the defendant is entitled to a reduction of one-third of the penalty provided for the crime (for instance, 6 years in prison instead of 9). The reduction applies to all crimes except those incurring a life sentence. This alternative addresses the problem of lengthy trials. It was originally introduced to save both money and time.

2) Imposition of specific penalty. (*applicazione della pena su richiesta delle parti*). The prosecution and defense can jointly ask the judge for the imposition of a specific penalty on which they both agree, as long as the suggested penalty does not exceed 2 years in prison, even when reduced to one-third of the time. If the defendant does not commit the same kind of *delitto* for 5 years after the sentence or *contravvenzione* crime for 2 Years, the offense is legally extinguished. (Although this is informally called bargain (*patteggiamento*), it is entirely different from the plea bargain known in the United States court system.)

3) Penal decree of condemnation (decreto penale di condanna). For minor crimes punishable with fines and/or prison up to 3 months, the Public Prosecutor, by decree, can request the G.I.P to condemn the defendant to pay a fine, the amount of which is reduced up to 50% of the minimum amount provided by law. The decree is issued without hearing the defendant (inaudita altera parte), who can always oppose the G.I.P decision, in which case the decree loses its validity and the defendant goes to trial.

A cash settlement for contravvenzioni crimes can also be reached (Oblazione nelle contravvenzioni punite con pene alternative). In these cases the defendant may be permitted to pay 50% of the maximum amount of the fine provided by law for that particular contravvenzione, plus legal expenses. (Code of Penal Procedure, Art.314,444-448,459; Penal Code, Art.162).

\*Proportion of prosecuted cases going to trial. The majority of prosecuted cases for serious crimes go to trial, notwithstanding the use of pre-trial alternatives in the new Code of Penal Procedure. Approximately 20% of all cases are resolved by pre-trial alternatives, while 80% go to trial. It had been expected that the use of new non-trial alternatives would result in 80% of all cases being resolved without a trial.

\*Pre-trial incarceration conditions. The Judge for the Preliminary Investigation (G.I.P.) can opt for pre-trial incarceration, or precautionary custody (custodia cautelare), at the request of the Public Prosecutor. Except in cases of mandatory or facultative arrest, pre-trial incarceration is permitted only when a person is accused of a crime carrying a maximum penalty exceeding 3 years in prison and when at least one of the following conditions is present: 1) Danger of counterfeiting, destruction of evidence; 2) Danger of escape; and 3) Danger of committing more crimes of the same kind. (Code of Penal Procedure, Art.274).

Precautionary custody is permitted when other sanctions such as a prohibition against leaving the country or town, daily check-ins at the police station, and house arrest are deemed insufficient.

\*Bail procedure. Bail is not allowed in the penal system.

\*Proportion of pre-trial offenders incarcerated. As of December 31, 1992, there were 47,588 prisoners. The total number of convicted offenders in prison serving a sentence were 19,855 (41.7%). The total number of incarcerated pre-trial offenders who were awaiting trial was 26,444 (55.6%). (The total number of prisoners awaiting trial includes all prisoners awaiting a

final sentence, such as those who are awaiting a first instance judgement and all convicted prisoners who appealed against decisions at any stage of a criminal proceeding.) This figure does not include the 1,289 (2.7%) offenders subjected to safety measures in prison who were not awaiting trial. (National Institute of Statistics, April 5, 1993).

## JUDICIAL SYSTEM

### 1. Administration.

Except for the lowest court level (the Pretura) with a single judge (Pretore), courts consist of a judicial panel made up of a number of stipendiary judges (giudici togati). In the Court of Assizes and Court of Assizes of Appeal (Corte d'Assise e nella Corte d'Assise d'Appello) the judicial panel consists of stipendiary and popular judges (giudici popolari). There is no jury.

The Pretura. The Pretura is a trial court and operates in the first stage of legal proceedings. It has the jurisdiction to try criminal cases carrying a maximum penalty of 4 years in prison and cases involving: a) violence or threat to a public officer; b) insulting a judge at trial; c) aggravated violation of an official seal; d) aiding an abetting; e) abuse/maltreatment; f) aggravated brawl; g) manslaughter (non intentional homicide); h) aggravated housebreaking; i) aggravated theft; l) aggravated fraud; m) receiving stolen goods. The prosecution is conducted by the Public Prosecutor at the Pretura (Pubblico Ministero presso la Pretura). (Code of Penal Procedure, Art.7,51).

The Court of Assizes. The Court of Assizes (Corte d'Assise) has jurisdiction to try crimes carrying a maximum penalty of 24 years in prison or life imprisonment, and other serious crimes. The Prosecution is conducted by the Public Prosecutor at the Court of Assizes (Pubblico Ministero presso la Corte d'Assise). (Code of Penal Procedure, Art.5,51).

The Tribunal. The Tribunal (Tribunale) has jurisdiction over all other crimes. The prosecution is conducted by the Public Prosecutor of the Tribunal (Pubblico Ministero presso il Tribunale). The prosecution for organized crime (Mafia), ransom kidnapping, drug trafficking and related crimes is conducted by the Anti-mafia Public Prosecutor. (Procuratore Distrettuale Antimafia). (Code of Penal Procedure, Art.6,51).

Court of Appeal. Appeals against Tribunal and

Pretura decisions are decided by the Court of Appeal (Corte d'Appello). Appeals against Court of Assizes decisions are decided by the Court of Assizes of Appeal (Corte d'Assise d'Appello). In the appeal stage, prosecution is conducted by the Attorney General at the Court of Appeal (Procuratore Generale presso la Corte di Appello). (Code of Penal Procedure, Art.51,593-605).

Court of Cassation. The Court of Cassation (Corte di Cassazione), which is the third stage of proceedings, decides appeals concerning questions of formal legitimacy. The Prosecution is conducted by the Attorney General at the Court of Cassation (Procuratore Generale presso la Corte di Cassazione). (Code of Penal Procedure, Art.606).

## 2. Special Courts.

Juvenile Court. Juvenile criminal courts have jurisdiction on crimes committed by minors between 14 and 18 years old. The court consists of 2 stipendiary judges and 2 honorary judges (psychologists or experts in juvenile crime). There is a Court of Appeal for juveniles, with the same judicial panel composition for appeals.

## 3. Judges.

\*Number of judges. As of July 21, 1993, there were 8,174 judges in active service, of which 5,982 were male and 2,192 were female. (Ministry of Justice).

\*Appointment and qualifications. All judges and prosecutors are non-elective, stipendiary public officers. A Masters of law degree is a necessary qualification. They are selected through public national competitions and begin serving after a period of training as uditori giudiziari under the supervision of experienced judges. (Constitution, Art.106).

## PENALTIES AND SENTENCING

### 1. Sentencing process.

\*Who determines the sentence? The judge decides the guilt and sentence in all cases.

\*Is there a special sentencing hearing? There is no special sentencing hearing. Passing sentence and the determination of guilt occur simultaneously. At the end of the trial, the judge immediately pronounces the verdict. The judge must issue the sentence in writing, explaining judicial and factual motivation, and have it made public within a maximum term of 90

days after the verdict, but usually within 15 days.

\*Which persons have input into the sentencing process? Psychiatrists, as expert witnesses for both prosecution and defense, have input into the sentencing process when an issue of mental incompetency, disease, or defect is considered in order to exclude or diminish criminal responsibility. However, the judge is not bound to accept the opinion expressed by expert witnesses.

## 2. Types of penalties.

\*Range of penalties. The principal penalties (pene principali) used are prison, including life imprisonment, and fines. Secondary penalties (pene accessorie), which are always inflicted in connection with the principal penalties, are basically forms of legal interdiction or disqualification (prohibition against holding public and private office, forfeiture of parental authority). As a rule, all property crimes are punished by imprisonment and fine. (Penal Code, Art.18-20).

If the penalty does not exceed 2 years in prison and the convicted person has no previous criminal record, the judge may suspend the sentence for a period of 5 years for a delitto or 2 years for a contravvenzione. If the convicted person does not commit a delitto or a contravvenzione within these periods of time, the criminal offense is extinguished. (Official Gazette, November 30, 1981; Penal Code, Art.167).

When pronouncing a sentence for minor crimes, the judge may substitute imprisonment with substitute sanctions for short-term imprisonment (sanzioni sostitutive delle pene detentive brevi). These sanctions are: a) Semi-custody (semi-detenzione): only the night is spent in prison; b) Release under control (liberta` controllata): a number of restrictions are imposed, such as not leaving town or daily check-ins at the local police station; and c) Pecuniary sanction/fine (pena pecuniaria).

After a final sentence of conviction has been pronounced, another judicial panel, the Tribunal of Surveillance (Tribunale di Sorveglianza), which consists of 2 stipendiary judges and 2 experts who are not judges (psychiatrists, psychologists, pedagogists, and criminologists) may apply alternative measures to detention (misure alternative alla detenzione). The principal measures of this kind are: a) probation (affidamento in prova al servizio sociale); b) House arrest (detenzione domiciliare); and c) Semi-liberty (regime di semiliberta`): only the night is spent in prison. (Official Gazette, August 9, 1975).

In addition to these penalties, which are

inflicted as penal sanctions if a person is found guilty of a crime, the penal law provides for the imposition of safety measures (misura di sicurezza), on socially dangerous individuals. According to the Penal Code, a person is socially dangerous if he or she has committed a crime and there is a strong likelihood that he or she will commit another crime in the future, given the characteristics of the offense and the offender. The concept of social dangerousness is based on the prediction of recidivism. (Constitution, Art.25; Penal Code, Art.203).

Safety measures are also imposed on individuals who are not criminally liable, or if liable, are susceptible to lesser penalties because they were found totally or partially mentally incompetent at the time of the crime due to mental disease, chronic intoxication deriving from alcohol, or drug abuse or deaf-mutism. The Penal Law determines the minimum length of enforcement for each safety measure but not the maximum. Safety measures cannot be revoked unless the judge decides that the subjected person is no longer socially dangerous. (Penal Code, Art.207,208).

There are generally three types of safety measures: custodial, non-custodial, and patrimonial. Custodial safety measures include confinement on a prison farm or labour facility, which is used mostly for persistent, habitual, or professional offenders and for offenders "prone to crime". It also includes compulsory hospitalization, and confinement in a reformatory for juvenile offenders. (Penal Code, Art.215,216,219,222,223).

A non-custodial safety measure could mean being released under surveillance, where the judge prescribes a number of measures that the offender is required to follow. In addition, the offender may be prohibited to reside in certain municipal or provincial districts or to frequent pubs and other facilities in which alcoholic beverages are served. If the offender is an alien, he or she may be expelled from the country. (Penal Code, Art.215).

Patrimonial or property safety measures include a process whereby the offender deposits a sum of money as a guarantee of good behavior throughout the application of a non-custodial safety measure. The security is returned if the offender does not commit a crime which requires arrest. If the offender does not deposit any security, the judge will substitute this measure with release under surveillance. Another patrimonial safety measure involves the seizure of property. After conviction, the judge may order that objects used for the commission of the crime or that constitute its product or profit must be confiscated. (Penal Code, Art.219,236,238).

While technically, these safety measures are not penalties, but rather a protective device,

they are subject to the general judicial principles which regulate penalties.

\*Death penalty. The death penalty is not allowed, except in case of war, under the military law. (Constitution of the Republic, Art.27).

## PRISON

### 1. Description.

\*Number of prisons and type. As of July 16, 1992, there were 154 district facilities for male prisoners awaiting trial (Case circondariali maschili) and 6 female facilities (Case circondariali femminili). There were 27 penitentiaries for convicted male prisoners serving a sentence (Case di reclusione maschili) and 2 female penitentiaries (Case di reclusione femminili). There were also 2 facilities for working prisoners serving for safety measures (Case di lavoro), 2 mental hospitals for offenders (Ospedali psichiatrici giudiziari), 1 semi-custody facility in which only the night is spent in custody (Istituti per semiliberi), 1 national facility where prisoners under psychological observation participate in re-education and rehabilitation programmes (Istituti nazionali di osservazione), and 4 prison facilities for drug addicts (Case di reclusione per tossicodipendenti). (Ministry of Justice, 1993: 224).

\*Number of prison beds. In 1987, the total number of prison beds was 36,776. The total number of prison beds in juvenile facilities was 827. (In 1986, the total number of prison beds was 36,053. The total number of prison beds in juvenile facilities was 705.) (Fourth United Nations Survey, 1992).

\*Average daily population/Number of prisoners. As of July 16, 1992, the annual average population of prisoners was 44,133, while the Italian prison capacity was 33,883 inmates. (The annual average population of prisoners for prior years: 31,170 (November 30, 1991); 31,676 (1990); 35,187 (1989); 35,222 (1988); and 33,865 (1987), while the Italian prison capacity was at 30,986 (November 30, 1991); 29,836 (1990); 29,779 (1989); 29,560 (1988); and 39,139 (1987). The decrease in prison capacity between 1987 and 1988 is partly due to the suppression of a number of prison facilities, but mostly due to the redefinition of the standards of capacity provided by the Ministry of Health. (Decree of the Minister, November 23, 1988; Ministry of Justice, 1993.) (Ministry of Justice, 1993: 221).

On December 31, 1992, there were 47,316 prisoners, of which 44,748 were male and 2,568 were female. (The total number of prisoners for prior years: 35,469 (male=33,577; female=1,892) (1991); 25,931 (male=24,568; female=1,363) (1990), 30,680 (male=29,270; female=1,410) (1989), 31,382 (male=29,800; female=1,582) (1988), and 31,773 (male=30,183; female=1,590) (1987).) (Ministry of Justice of Italy, 1993: 40.)

\*Number of annual admissions. In 1992, there were a total of 93,774 admissions into Italian prisons. In 1991, there were 80,234 admissions, of which 74,355 were male and 5,879 were female. (The number of admissions for prior years: 57,738 (male=53,307; female=4,431) (1990); 83,600 (male=76,715; female=6,885) (1989), (male=81,757; female=7,984) (1988), and 85,875 (male=78,544; female=7,331) (1987).) (National Institute of Statistics, April 5, 1993).

\*Actual or estimated proportions of inmates incarcerated. Information not available.

## 2. Administration.

\*Administration. All prisons are administrated by the State. The General Direction for Prevention and Penalty Institutes (Direzione Generale degli Istituti di Prevenzione e Pena) is a state agency, under the authority of the Ministry of Justice whose head is usually a judge (Direttore Generale).

\*Number of prison guards. There are a total of 28,721 penitentiary police (prison guards), of which 751 are marshals (marescialli), 2,034 are sergeants and vice-sergeants (brigadieri and vicebrigadieri), and 25,936 are guards (Appuntati e guardie). (Ministry of Justice, 1993: 189).

\*Training and qualifications. Information not available.

\*Expenditure on prison system. Total prison system expenditures include personnel salaries, functioning expenses such as goods and services for the sustenance of the inmates, and ordinary maintenance of the buildings. It does not include the costs of the penitentiary building. The total expenditure for 1991 was 2,277,791 million lire, while the average daily cost per prisoner was 200,212 lire. (In 1990, expenditures totalled 1,994,197 million lire, while the average daily cost per prisoner was 172,477 lire.)

## 3. Prison conditions.

\*Remissions. There are instances in which a prisoner may get time off for good behavior or parole. A convicted prisoner who participates in

a re-education program is entitled to early release from prison (Liberazione anticipata) amounting to a reduction of the length of imprisonment equivalent to 45 days for each 6-month period spent in prison. For example, a 5-year prison sentence would allow for a maximum reduction of about 15 months, resulting in 3 years and 9 months of actual time served. (Official Gazette, August 9, 1975).

A convicted prisoner who has served part of the prison sentence and whose behavior is such that one can regard him as reformed, can be released under a number of specific conditions which, for serious crimes, are very strict. (Penal Code Art.176,177).

\*Work/education. Inmates are required to work. However, prison work is not considered forced labor and it is remunerated. Under certain conditions, working outside the prison is permitted.

Prisoners may also attend classes. Specific provisions have been established in order to facilitate university studies.

\*Amenities/privileges. Visits are allowed on a weekly basis. Inmates are allowed to communicate by telegraph, in writing (and by phone with some restrictions). They can also participate in group therapy and educational/vocational programs. Medical and psychological assistance is provided by law and takes place according to the specific conditions of prison facilities. (Official Gazette, August 9, 1975).

## EXTRADITION AND TREATIES

### \*Extradition.

The law permits extradition of both suspected and convicted criminals to and from other countries. Extradition treaties exist between Italy and the following countries: Argentina, Australia, Austria, Bahamas, Belgium, Bolivia, Brazil (imminent), Canada, Czechoslovakia, Cipro, Costa Rica, Cuba, Denmark, Finland, France, Germany, Greece, Hungary, India, Ireland, Israel, Kenya, Lebanon, Lesotho, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Morocco, Netherlands, New Zealand, Norway, Paraguay, Poland, Portugal, Romania, San Marino, San Salvador, Singapore, Spain, Sri Lanka, South Africa, Sweden, Switzerland, Tunisia, Turkey, Uruguay, United Kingdom, United States, the Vatican City, Venezuela, and Yugoslavia (Croatia and Slovenia). (Pisani and Mosconi, 1993).

In 1991, there were 172 extraditions made to Italy from other countries and 89 extraditions made from Italy to other countries. (Extraditions

made to Italy from other countries and from Italy to other countries for earlier years were, respectively, 106 and 39 (1990); 90 and 45 (1989); 113 and 38 (1988); and 124 and 48 (1987). (National Institute of Statistics, 1991).

\*Exchange and transfer of prisoners. Prisoners cannot be exchanged but they can be transferred in order to serve their sentence in other countries or transferred from other countries to serve their sentence in Italy. Transfer of prisoners is permitted according to the provision stated in the treaties. The transfer of prisoners is permitted among the following countries: Austria, Bahamas, Belgium, Bulgaria, Canada, Cipro, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia Republic, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom, and the United States. (Pisani and Mosconi, 1993).

\*Specified conditions. There are some legal limitations to extradition. For example, extradition can be permitted only if expressly provided by international conventions. It is not permitted for political crimes or if there is reason to believe that the suspect or convict will be subjected to persecution or discrimination because of his or her race, religion, sex, nationality, language, political opinions, personal or social conditions, or that he or she will be subject to cruel, inhuman or degrading penalties (including death penalty), and/or treatment, or that his or her basic human rights will be violated unless otherwise arranged in the international conventions. Extradition procedures are provided by the Code of Penal Procedure. (Constitution, Art.10,26; Code of Penal Procedure, Art.696-722).

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## WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Hungary

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Criminalistics

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### GENERAL OVERVIEW

#### 1. Political System.

The Hungarian Republic is administratively divided into 19 counties plus the capital, Budapest. The political administration is centralized and has jurisdiction over the local governments.

The Courts are an independent unit consistent with the theory of the separation of powers. The Parliament elects the President of the Supreme Court. The Head of the Justice Department appoints the Presidents of the individual courts on the basis of the recommendations of judges working in those courts.

The Prosecution is a self-contained agency, independent of the government. The Chief Public Prosecutor is the head of the centrally-organized prosecution unit. S/he is elected by Parliament for a 5-year term and is accountable solely to the Parliament.

The Police have general investigative powers.

The Prosecution, Customs Police, Border Guards, and the investigating agency of the army can carry out investigations in other legally specified areas. In theory, the head of police is the National Chief Commissioner of Police, although in practice it is the Chief's criminal deputy. The National Chief Commissioner of Police is subordinate to the Head of the Department of Internal Affairs. Local police branches operate independently of the local governments. The judicial system is organized according to the 19 administrative counties plus Budapest. Each county has its own court.

#### 2. Legal System.

Hungarian law is derived from the Roman-Germanic family of law. This helps to explain the significant codification of the different branches of law (for instance, criminal law). Hungarian law bears some similarity to German-Austrian law, in terms of its criminal law and criminal proceedings. (*Les grands syst,mes de droit contemporains*, Paris, Dalloz, 1974.)

### 3. History of Criminal Justice System.

Hungary's geopolitical position--that is, the fact that Hungary occupies the Carpathian Basin and is situated in the middle of Europe--has determined both its history and the history of its criminal law. The development of the Hungarian legal system in the Middle Ages was not significantly different from the general evolution of European law. For example, the Hungarian Constitution issued in 1222, the Golden Bull, had the same function as the English Magna Carta of 1215. Both documents comprised the basic tenets of their country's Constitution, both sought to assure and consolidate the freedom of their nation, and both established the rights of the nobility against their King's power.

From the beginning of the 18th century, Hungary was a part of the Hapsburg Empire, although it abided by its own legal system. Before the revolution of 1848, Hungary's legal system was based on the three-volume book of common law, compiled and written by Lord Chief Justice Istv n Werb"czy in 1517. (The Hungarian translation for the three-volume book of common law: *Triprtitum opus juris consuetudinarii incytit regni Hungariae per Magistrum Stephanum de Werbocz.*)

The modern criminal law and justice system of the country was established in the second half of the 19th century. The unified state courts and the Royal Prosecution were started in 1872. The first criminal law code and the first criminal proceedings code was contained in the 1878 (Part V) and the 1896 (Part 33) statutes respectively. These statutes were in effect, with minor modifications, until the end of the Second World War. With the formation of the party-state in 1948, Socialist law ruled. During this period, Hungary abided by two criminal law codes (the 1961:V and the 1978:IV acts) and three criminal proceedings codes (1951:III, 1962:8, and 1973:I acts).

Hungary has not drafted a new criminal law code since 1990. Rather, the existing codes have been significantly modified to meet the requirements of the European Human Rights Convention and the requirements of a constitutional state.

## CRIME

### 1. Classification of Crimes.

\*Legal classification. Hungarian law differentiates between felonies and misdemeanors, depending on the seriousness of the crime. Felonies are intentional crimes that can result in sentences of more than 2 years imprisonment. All other crimes are misdemeanors. All unintentional crimes (for example, nonintentional homicide) are misdemeanors. All intentional crimes that have a penalty of less than 2 years of imprisonment are misdemeanors.

Hungarian law also includes civil offenses, which comprise offenses mainly against public administration. However some criminal offenses, such as property crimes involving objects of small value (under 4000 HUF), are placed in this category as well. Civil offenses fall under the jurisdiction of various administrative agencies, local governments or traffic police, but not the courts.

\*Age of criminal responsibility. Persons under 14 years old cannot be held criminally responsible.

\*Drug offenses. Drug offenses are dealt with in the 4th Title of the 16th chapter of the penal code under section 282 and 282(A) (drug abuse) and 283 (causing pathological addiction). According to section 283 "...persons who by breaking official regulations produce, obtain, keep, offer, hand over, market, import or export drugs" and carry them through the territory of the country or sell them within the country are committing a crime and can be punished by imprisonment for up to 2 years. The imprisonment is from 2 to 8 years if the drug-related crime is obviously part of an ongoing trade in drugs as defined by official regulations or if the offender is armed or is charged with using a juvenile or if such a juvenile receives drugs. The punishment is 5-15 years imprisonment if a significant amount of drugs are involved or if the growing, production, obtaining, marketing and selling of drugs is undertaken within the framework of a criminal organization. Accordingly, persons who provide the finances or materials or aid in the preparation of drugs are also indictable. Two years' imprisonment or a fine can be imposed on persons who possess a small amount of drugs. It is a misdemeanor to advocate drug use publicly and can be punished by 2 years imprisonment.

Section 282(A) states that growing, producing, obtaining and keeping drugs for one's own personal use or committing a non-serious drug-related crime are not indictable, providing that one can certify by the time the verdict is passed that one has received treatment for drug addiction for at least 6 months without interruption.

Under the first paragraph of section 282, it is a crime to sell or use drugs that are defined

by the official regulations laid down in the text of the law. This official regulation is the 1/1968 (V.12) decree issued by the Department of Internal Affairs and the Department of Health, which lists the substances classified as drugs in Hungary. It was based on the Unified Drugs Treaty of 1961 and the 1971 treaty involving so-called psychotropic substances. In addition to more common drugs (opium, heroin, morphine, cocaine) this decree lists other basic ingredients of medicine and dangerous psychotropic materials.

The crime of causing pathological addiction (Sect. 283) occurs when a person over 18 years old assists a person under 18 years old in abusing drugs or tries to persuade him/her to use drugs. This crime is a felony, punishable by up to 3 years imprisonment.

## 2. Crime Statistics.

The following crime statistics are taken from the first and second volumes of the Unified Criminal Statistics of Police and Prosecution 1992, which are issued by the Data Processing Office of the Department of Internal Affairs and the Computer Centre of the Prosecution.

\*Murder. In 1992, there were 435 recorded intentional homicides. Attempts are included.

\*Rape. In 1992, there were 738 cases of rape recorded.

\*Theft. In 1992, there were 91,957 cases of burglary recorded.

\*Drug offenses. In 1992, there were 152 drug-related crimes recorded.

\*Crime regions. In 1992, 29.7% of the crime reported by the public prosecution was committed in the capital of Budapest. Following Budapest, the county of Hajdu-Bihar had the highest rate of crime (546.4 crimes per 10,000 residents). In particular, Hajdu-Bihar county had the highest property crime rate among all counties (454.3 crimes per 10,000 residents), although it has significantly fewer property crimes than some districts in the capital (for example, there were 1,678.1 property crimes per 10,000 residents in the 5th district, 1,120.0 in the 8th district, and 876.8 in the 7th district).

## VICTIMS

### 1. Groups Most Victimized by Crime.

The most vulnerable age group for homicide and other violent crimes is between 29 and 59. In addition, 62.5% of homicide victims are men and 34.6% are women. 69.5% of the victims of bodily harm are men and 39.5% are women. Infants and juveniles constitute 46.2% of the victims of forcible rape. 17.2% of robbery victims are women. (Gorgenyi, 1992).

Further research on the victimization of children in families revealed that 48.8% of all victims were boys and 51.2% girls. About 30% of

all victims were Gypsies. No other information on the ethnic origin of the victims was available. (Kerezsi, 1991).

## 2. Victims' Assistance Agencies.

The international fund for victims' assistance, the "White Ring", has recently begun operations in Hungary. The Hungarian branch is ESZTER, and is aimed at assisting the female victims of forcible rape.

## 3. Role of Victim in Prosecution and Sentencing.

Essentially, the victim has a two-fold role in the prosecution and sentencing processes. First, the victim can initiate criminal proceedings by filing a report with the police. Second, the victim's testimony can be used as evidence for the court to consider when establishing a statement of facts.

The victim has the right to provide information against persons, to take part in the court procedures, and to initiate the asking of questions at the trial. In the case of certain crimes victims can act as private prosecutors. In addition, the victim is allowed the opportunity to make civil law claims during the criminal proceeding.

## 4. Victims' Rights Legislation.

Information not obtained.

## POLICE

### 1. Administration and Organization.

The centralized state-police force of the Hungarian republic operates under a strictly hierarchical system that runs parallel to the military hierarchy. At the top of the hierarchy is the National Police Administration (NPA) whose head is the Chief Police Commissioner, with a rank of Police General. The NPA has two chief administrative sections: criminal and public security. The directors of these sections are deputies of the Chief Police Commissioner. The following central executive agencies are directly subordinate to the NPA: Economic and Information Chief Administration, the Republic Guards, the Police Troop Force, the Special Police Service (anti-terrorist service), the Airport Security Service, the Special Service against Organized Crime and Drugs, and the Economic Crimes Police.

There are 19 county police organizations plus the Budapest police headquarters, each of which is directed by a police commissioner. There are 198 provincial police stations which function as subordinates to the territorial police headquarters. Each of these provincial stations is directed by a police superintendent.

### 2. Resources.

\*Expenditures. The annual expenditure on policing was 36 billion forints for 1993. Approximately 75% of expenditures is allocated toward wages, material accounts for the other 25%.

\*Number of Police. In 1990, 45,399 people were employed by police organizations, of which 29,727 were uniformed police officers and 25,672 worked in plain clothes. The number of men in the police force was 34,140; the number of women, 11,259.

As of 1993, there were 24,000 uniformed police working in traffic and public security forces. The criminal police forces employ about 8,000 persons (detectives, investigators, criminal technicians).

### 3. Technology.

\*Availability of police automobiles. The ratio of police to automobiles is 9:1.

\*Electronic equipment. The police have the use of a unified computer-aided dispatch system and a radio communications system.

\*Weapons. On-duty police officers carry a baton, gun and radio as basic equipment. Officers on special deployment missions may also use bulletproof vests, combat helmets and machine guns.

### 4. Training and Qualifications.

There are three educational levels in Hungary: elementary school, secondary school, and university or college. Two years of secondary school training is needed to become a police officer. In addition to secondary school training, 3 years (6 semesters) of college training is required to become a police officer of a higher rank.

### 5. Discretion.

\*Use of force. Police may use force with advanced warning. Force can be used against people who resist the police. Police may use their weapons in order to prevent a serious crime from occurring, to catch a person who is suspected of having committed a serious crime, or to protect their lives, corporal integrity, or personal freedom from an attack or from threatening behavior.

\*Stop/apprehend a suspect. The police can initiate criminal proceedings if they have a well-founded suspicion that a crime has been committed.

\*Decision to arrest. The Police can hold persons in custody if the criminal act is witnessed, if their identity cannot be established, if there are

conditions requiring pretrial incarceration, or if the court has ordered them to be arrested and put into custody. There are no legal alternatives to arrest.

\*Search and seizure. The Police can search persons or property when there are grounds to believe that the search can lead to the capturing of a criminal or the procuring of important information, such as material evidence, about a crime.

\*Confessions. Persons cannot be forced to testify, although suspects are given a chance to give their testimony. However, persons can be questioned as witnesses if they have information necessary to understand the facts of a case.

#### 6. Accountability.

The Police handle citizen or departmental complaints against officers when the complaints are likely to result in disciplinary action. The Prosecution handles the complaint if it is likely to have criminal repercussions.

### PROSECUTORIAL AND JUDICIAL PROCESS

#### 1. Rights of the Accused.

\*Rights of the accused. The accused has the right to be questioned and heard by the court. The court may pass a verdict only after hearing the plea of the accused. The Hungarian legal system does not give special treatment to suspects who plead guilty. Guilty pleas are considered to be evidence which can be used in decisionmaking about the case. The accused has the right to remain silent or to speak in his/her own defense; the right to learn about the case (for instance, to examine case documents and to be present at the trial); the right to make suggestions or comments in regard to case proceedings; and the right to have defense counsel present at the criminal proceedings.

The law determines whether the case will be heard by a judge or judicial panel, depending on the seriousness of the crime. The accused has no influence in this decision. There is no jury system in Hungary.

\*Assistance to the accused. Certain cases require the accused to have the services of defense counsel (for example, if the crime is punishable by more than 5 years imprisonment; the accused has already been incarcerated; the accused is deaf, dumb or blind; or if the accused does not speak Hungarian). The court will appoint a public defender if the accused cannot afford to hire a defense attorney or when the court deems it necessary. The court must inform the accused of the right to counsel.

## 2. Procedures.

\*Preparatory procedures for bringing a suspect to trial. Before any public trial, an investigation is carried out by the Police or an investigating agency. The private prosecution of a case, however, usually begins with a formal accusation in court. An investigation is carried out only if the court orders it.

An investigating agency can hold the suspect in custody for 72 hours while the investigation is being conducted. The suspect can be held for pretrial incarceration indefinitely but only when ordered by the court.

The 17th chapter of the Criminal Trial Procedure regulates summary proceedings. In all private prosecution cases or, at the suggestion of the public Prosecutor, the court may reach a case decision without a proper trial and order the accused to pay a fine, be suspended from employment, be deprived of a driving license, or be expelled from their home. For nonserious crimes in which the facts of the case are clear, or the accused pleads guilty, or the aim of punishment can be reached without having a trial, the law states that fines or other types of supplementary punishment can be used. The presiding court must pass judgement in every case involving an accusation.

\*Official who conducts prosecution. Most cases are prosecuted by the official Prosecutor. In cases of non-serious crimes, as enumerated in the law, the injured party can act as a private prosecutor.

\*Alternatives to trial.

Information not obtained.

\*Proportion of cases going to trial. The majority of criminal cases go to trial. There are no statistics which show the percentage of cases which involve guilty pleas.

\*Pretrial incarceration conditions. The accused may be kept under pretrial incarceration if he has committed a crime that is punishable by imprisonment and: a) has previously escaped or is likely to escape; b) might upset/prevent further court proceedings if left at liberty; c) has committed another crime punishable by imprisonment while free during the proceedings; or d) is likely to commit another crime.

\*Bail procedure. Bail does not exist in Hungary.

\*Proportion of pre-trial offenders incarcerated. As of December 31, 1992, 4,272 prisoners were awaiting trial.

JUDICIAL SYSTEM

1. Administration.

There are three levels of criminal courts (from lowest to highest): local courts, county courts, and the Supreme Court.

2. Special Courts.

The Hungarian court system is unified. There are no special juvenile or military courts. However, there are councils for juveniles and military personnel that have jurisdiction in certain relevant situations.

3. Judges.

\*Number of judges. As of October 1993, there were 2,028 official judges in Hungary, of which 96 worked in the Supreme Court, 749 worked in the county courts, and 1,183 worked in the town (local) courts.

In 1990, there were 2,233 judges (including junior judges) of whom 1,425 were women and 808 were men. This ratio has not changed significantly since that time. No data exists regarding the ethnic origins of judges.

\*Appointments and qualifications. Official judges are appointed by the President of the Hungarian Republic and are required to have a university law degree, have two years of post-graduate studies, and pass a special judge-prosecutor examination. The Head of the Justice Department initially proposes an appointment. Lay assessors (people's judges and members of courts of first instance), are elected.

PENALTIES AND SENTENCING

1. Sentencing Process.

\*Who determines a sentence. Either a judge or judicial panel determines the sentence. Sentences are determined in session chambers where only judges may be present.

\*Is there a special sentencing hearing.

Information not obtained.

\*Which persons have input into the sentencing process?

Information not obtained.

2. Types of Penalties.

\*Range of penalties. The principal punishments used include deprivation of liberty (imprisonment), public labor, and fines. Supplementary punishments include prohibition from participating in public affairs, prohibition from driving a motor vehicle, local banishment (a

Hungarian citizen may be banished from a city or village), expulsion (a foreign citizen may be expelled from Hungary), confiscation of property, and fines.

In 1992, 32.2% of criminal convictions resulted in prison sentences, 0.1% resulted in public labor, 43.9% resulted in fines (as the sole principal punishment) and 22.8% resulted in supplementary punishments being used as the sole principal punishment.

\*Death penalty. In 1990, the Constitution Court found the death penalty to be unconstitutional (23/1990 Act X.31). The last execution in Hungary took place on July 14, 1988.

## PRISON

### 1. Description.

\*Number and type of prisons. There are a total of 33 correctional institutions. There are 14 national prisons, 8 are maximum/medium level correctional institutions, 5 medium/minimum level institutions, and 1 juvenile correctional institution. There are also 2 health institutions and 17 county institutions. Twelve correctional institutions run factories.

\*Number of prison beds. There are 16,223 prison beds and 608 beds in health institutions for a total of 16,831 prison beds.

\*Average daily population/number of prisoners. As of December 31, 1992, the total number of prisoners was 15,913, of which 15,117 were male and 796 were female. The daily average number of prisoners in 1992 was 15,699. Prisoners are not registered by ethnic origin.

\*Number of annual admissions. The number of annual admissions in 1992 was 18,424.

\*Actual or estimated proportions of inmates incarcerated.

Information not obtained.

### 2. Administration.

\*Administration. The National Prison Administration is the central directing organization of the Hungarian correctional institutions. There are two kinds of correctional institutions: national and county.

\*Prison guards. As of October 31, 1993, there were 6,634 prison staff members, of which 5,314 were guards and 1,320 were civil employees. There is no information on the gender and ethnicity of prison guards.

\*Training and qualifications. A nonuniformed employee is required to have an elementary or secondary education, a noncommanding officer must have at least a secondary or university education, and a commanding officer must have a university education.

\*Expenditure on the prison system. The total expenditure on the prison system per year is 6.7 billion HUF.

### 3. Prison Conditions.

\*Remissions. Remissions are not possible, but inmates may get time off for good behavior after serving a certain part of their prison sentence.

\*Work/Education. Prisoners are required to work. While educational and vocational programs are important parts of daily prison life, prisoners are not required to attend classes.

\*Amenities/Privileges. Prisoners may receive visitors once a month. As a reward, they may be allowed to leave the prison for a certain period of time (for instance, a weekend). Prisoners are provided individual and group therapy and medical care.

### EXTRADITION AND TREATIES

\*Extradition. Criminals and suspects can be extradited to or from other countries, which include Bulgaria, the Czech and the Slovak Republics, Poland, Rumania, the countries of the Commonwealth of Independent States, United Kingdom, Ireland, Spain, Cyprus, Greece, Mongolia, Syria, Algeria, Austria, Egypt, the former Yugoslavia, Vietnam, Italy, Turkey, Sweden, North Korea, Cuba, Albania, Belgium, France, and Tunisia.

\*Exchange of prisoners. Information not obtained.

\*Specified conditions. There are no general conditions that govern the extradition agreements; they are all specifically bilateral.

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#### GENERAL OVERVIEW

##### 1. Political system.

The Federal Republic of Germany is a federal state created by the German Federal Constitution (Grundgesetz, Art. 20 (1)). Germany consists of 16 states (Länder) each with their own constitution. Articles 70 et seq. of the constitution allocate legislative powers between the federal government and the states. The general rule is that a power not expressly granted the federal government (expressed in Articles 70, 71 and 73 of the Grundgesetz) is retained by the state, making the states relatively autonomous.

The federal government and the states have concurrent jurisdiction (police powers, cultural issues, local government matters, the application of civil and criminal law). Federal laws establish a framework for the individual states. For instance, the federal law concerning the correctional system and its administration (Strafvollzugsgesetz) serves as a model to the states. The states that have not adopted their own correctional law use the federal law as their guideline. If any conflict arises between a federal law and that of a State (Article 31 of the constitution) the federal law prevails. Germany's Federal Constitutional Court, the highest court on constitutional matters, has held that the States have limited sovereign powers of their own that are not derived from the powers of the constitution.

Members of parliament and the chancellor are elected officials. The chancellor defines the country's political strategies. While the Federal

Republic of Germany also has a president who serves as head of the state, this role more nearly resembles that of a dignitary, with little political power. However, the president does maintain power to veto legislative bills. The constitution, also referred to as the Basic Law, divides the powers of the judiciary, legislative and executive branches.

There are numerous political parties and alliances in German politics. The two major parties include the CDU (Christian Democratic Union), and the SPD (Social Democratic Party). Others of lesser significance in terms of their representative strength in parliament are the FDP (Free Democratic Party) and the Greens (Alternative-List). Within the last few years right-wing political parties have also gained in strength.

While the Penal Code, Strafgesetzbuch, herein referred to as the StGB, and the Code of Criminal Procedure Strafprozeßordnung, herein referred to as the StPO, are federal codes, making their application consistent nationwide, the administration of the criminal justice system (police, courts and correctional institutions) are matters left to the individual states. 1 Special state laws govern the regulation of police matters as well as the prosecution of cases. 2 German law requires the prosecutor to play a neutral role. The prosecutor is obliged to consider evidence which will both incriminate and exonerate the accused. The appointment of judges also differs from state to state, keeping within the concept of state autonomy in regards to criminal and juvenile justice administration. (Karstedt, 1992).

## 2. Legal system.

Laws are created by the Bundestag or Lower House of the German parliament. The upper house (Bundesrat) is a representative body of the states based on their population. The upper house must approve the laws made by the lower house and has veto power in matters concerning the states (for instance, taxes). The legal system is guided by federal laws which apply nationwide. Those specifically applicable to the criminal justice system are the Penal Code (StGB) and the Code of Criminal Procedure (StPO). Other laws which concern the criminal justice system are the Betäubungsmittelgesetz or BtMG (drug statutes), the Betäubungsmittel-Verschreibungsverordnung (drug prescription regulation) (BtMVV), Straßenverkehrsgesetz (StVG) or traffic laws, and the Gesetz über Ordnungswidrigkeiten (OWiG) or laws governing administrative or regulatory offenses. A further fundamental source of law is the Constitution or Grundgesetz, herein referred to as the GG.

The Federal Constitutional Court, the highest

court in the land, can review and challenge the constitutionality of all statutes, including those that incorporate international treaties into German law (Heinz, 1992; 2).

The German constitution reflects a mixed dualist/monist approach. Federal constitutional law supersedes all other laws. International treaties may only be incorporated into domestic law by a statute adopted by the Federal Parliament (Article 59(2) of the Federal Constitution). They then become binding law in Germany which will supersede state laws and have the same force as all other federal laws except the constitution. European Community law is directly binding within the Federal Republic of Germany without the necessity of further incorporation acts. The European Community institutions' "Decisions" and "Regulations" are directly applicable (Heinz, 1992; 2-3).

### 3. History of criminal justice system.

The Federal Republic of Germany was founded on May 23, 1949 with the declaration of the Constitution. Germany remained divided into eastern and western sectors under allied control until it regained total sovereignty with unification on October 3, 1990.

The basis for Germany's modern day statutory law is the "Penal Code for the German Empire" codified in 1871. 3 Prior to the establishment of the German Empire in 1871, each German state had its own penal code. The 1871 penal code was influenced by the French Penal Code of 1810, the Bavarian Penal Code of 1813 as well as the Prussian Penal Code of 1851. Retribution was the dominant philosophy and heavy emphasis was placed upon prevention through punishment. Satisfaction with the penal code was short-lived and as early as 1882 F. v. Liszt in his "Marburg Programme" called for reform of criminal sanctions with an emphasis on prevention through special deterrence which emphasizes deterring the offender, not the offense. (Eser, 1989; 3).

While the Penal Code of 1871 remained relatively intact for over 100 years, it did undergo substantial modifications and reforms such as the registering of served sentences (1920), the creation of a special juvenile criminal law (1923), and the introduction of fines to suppress short-term prison sentences (1921-1924).

The Nazi era introduced sweeping and harsh reforms with an emphasis upon general deterrence through extreme severity (the death penalty). These reforms left the basic penal code intact but introduced punishment on order of the Führer.

After the war and during the time that Germany remained divided into allied sectors, the new Federal Republic of Germany, created in 1949, began the task of overhauling the legal system. A serious attempt was made by the "Grand Criminal

Law Commission" whose membership consisted of legal scholars, practitioners and politicians. They created a reform draft, "Draft of a Penal Code," in 1962 which failed to secure adoption by the Federal Assembly because of its weakness in formulating a criminal policy with regard to the sanctioning system. The major failure lay in its emphasis on punishment and retribution and its conservative view and rigidity on sexual mores.

This failed attempt to pass a penal code by the Federal Assembly led to the creation of a second reform group, the Special Committee on Criminal Law Reform, comprised of German and Swiss legal scholars and criminologists. This more successful attempt, presented as the "Alternative Draft of a Penal Code", recommended restricting the application of criminal law to socially harmful conduct and emphasized restructuring the sanction system to fit the philosophy of rehabilitation. Legal reforms introduced the notion that general deterrence could never be used as a philosophical basis for individual punishment. (Eser, 1989; 8).

Significant legislation introduced reform in partial steps, the main elements contained in five Criminal Law Reform Acts beginning in 1969. The Criminal Law Reform Acts emphasized restructuring the sanctions to make them more conducive to the rationale of rehabilitation. Certain acts were decriminalized and others replaced with a more practical working definition. A second major reform was the permanent restriction on short-term prison sentences and the introduction of the fine. Additionally, changes were introduced in the general law as well as in the alternative sanctions which could be applied. Due to societal change and emphasis upon certain acts, the German government also passed legislation concerning environmental and economic crimes, hostage-taking and aircraft hijacking (Eser, 1989; 23).

One last significant piece of legislation was the Act on the Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity. The Unification Treaty Act of August 31, 1990 (Einigungsvertragsgesetz) replaced, in large part, the laws of the former German Democratic Republic with those of the Federal Republic of Germany. Limited exceptions, however, allowed laws from the former East German penal code to exist in the former eastern states (Council of Europe, 1992:32; Jescheck, 1991; X).

## CRIME

### 1. Classification of crimes.

\* Legal classification. Criminal offenses can be categorized as Verbrechen, crimes or felonies, and Vergehen, misdemeanors. Less serious offenses have, through a lengthy reform process, either

been decriminalized, upgraded into misdemeanors, or reclassified as Ordnungswidrigkeiten, regulatory or administrative offenses. A Verbrechen is an act which is punishable by a minimum prison sentence of 1 year. A Vergehen is punishable by a sentence of less than one year or a fine. Verbrechen comprise serious crimes involving severe injury or extensive property damage or loss (for instance, homicide, rape, robbery, arson) while Vergehen are offenses such as simple assault, theft, vandalism. Ordnungswidrigkeiten include disturbing the peace, illegal practice of prostitution, illegal assembly, possession of materials to make and distribute forged documents or money.

\* Age of criminal responsibility. Persons who commit an offense while under the age of 14 are not held criminally liable for their offense. Criminal liability attaches at the age of 14. A juvenile is one who, at the time of the act, has reached the age of 14 but is not yet 18. A separate category exists for young adults between the ages of 18 and not yet 21 (JGG, 1(2)). A young adult, based upon mitigating circumstances, may be dealt with by a juvenile court.

\* Drug offenses. Drug statutes and regulations specifically spell out the drugs which are prohibited or controlled by German law because of their potentially addictive effects or danger to the population. 4 By law, the Federal Minister for Youth, Family and Health may, without confirmation from the Bundestag, alter the current list of drugs. 5 Anyone not licensed, who cultivates, imports, buys or sells, prescribes, manufactures or possesses an illegal drug is subject to punishment under the BtMG (punishment may range from a fine or probation to incarceration usually for a period of not less than 2 but not more than 4 years) (BtMG, ss 29-36). Federal statistics on drug violations are collected for the following drugs: heroin, cocaine, LSD, amphetamines, cannabis and its derivatives, and a last category for other drugs. (Polizeiliche Kriminalstatistik, Police Crime Statistics 1991; 184).

## 2. Crime statistics.

Official police statistics are "administrative" definitions which expand the legal definitions found in the Federal penal code. In the national Police Crime Statistics crimes are organized according to numbers or keys.

\* Murder. In 1991 the Federal Bundeskriminalamt, the national organization which compiles crime statistics, reported a total of 962 murders and 1,746 acts of manslaughter. These numbers exclude attempts and include both old and new federal

states. This represents 3.4 homicides per 100,000 population. 7

The definition of murder used by the police for classification purposes is the legal statutory definition (StGB, s 221) which involves the killing of a human being through dangerous means, in a malicious, treacherous or heinous way in order to conceal or further a crime, or for sexual satisfaction, the enjoyment of killing, or out of greed or avarice. The criminal statistics further sub-categorize murders into robbery-murders and sexual-murders. Manslaughter (StGB, s 212) is the killing of a human being under circumstances which do not meet the standards of murder.

(Polizeiliche Kriminalstatistik or PKS 1991, 105: Table 01, and 107: second table; PKS 1991, 1992: 105).

\* Theft. In 1991 there were 1,863,753 cases of theft under aggravating circumstances reported throughout Germany for a rate of 2,337 per 100,000 population. Of these, 16.3% were attempts. (PKS 1991, 1992; 140: Table 01: 142: first table).

The category of theft under aggravating circumstances is based upon statutes 243 and 244 of the penal code (StGB) and includes taking advantage of the helplessness, injury, accident of another, or a situation of danger to commit a theft; the stealing of a firearm; the carrying of a firearm for the purpose of threat; and the commission of theft by a gang. 8 Other offenses which may be included are the breaking and entering of a locked building or apartment, the use of force against an object or building to commit the theft, the stealing of religious objects or those which have scientific or historical value. If the monetary value of the object in the aforementioned categories is minimal, the offense may be reclassified as a theft without aggravating circumstances.

\* Rape. According to the PKS, of the 5,821 cases reported nationwide, 2,289 (39.3%) were attempts. 9 This reflects a rate of 7.3 rapes per 100,000 inhabitants (PKS 1991, 1992; 109: Table 01; PKS 1991, 1992: 112: first table).

Rape falls under a broader category in the police statistics of offenses against sexual self-determination. Rape is based upon the penal code definition (StGB, s 177) and involves the use of force or threat of immediate bodily harm or death, to cause a woman to have sexual intercourse outside of marriage with the accused or a third party.

\* Drug offenses. The BKA registered 117,204 cases of drug violations for a rate of 147 per 100,000 population. The BKA bases their definition of drug-related offenses on violations of statutes 29 and 30 of the Narcotic Drug Law. These offenses involve the illegal dealing in,

importation, cultivation, buying or selling, prescription, manufacture, advertisement for or possession of an illegal drug. (PKS 1991, 1992; 185: Table 01; PKS 1991, 1992; 187: 2nd table).

\* Crime regions. While cities with a population of over 500,000 accounted for 18.3% of the crime compared to communities with a population under 20,000 (40.4%), the crime rates were higher in larger cities (13,560 per 100,000 population compared to 3,667 per 100,000 population in small communities) (PKS 1991, 1992; 27: first table).

The cities with populations over 100,000 with the highest rates of crime are Frankfurt (20,239 crimes per 100,000), Bremen (18,174), Lübeck (16,896), Hamburg (16,644), Hannover (14,620) and Berlin (14,617) (PKS 1991, 1992; 49). 10

## VICTIMS

### 1. Groups most victimized by crime.

Information on German crime victimization is collected by the police and various victimization studies. 11 Victimization studies are conducted on a limited, irregular, and often regional basis (Boers, 1991; 34).

Official police statistics provide information on victims according to sex and age (age groups are divided into children (Kinder, under 14), youths (Jugendliche, 14-18), young adults (Heranwachsende, 18-21) and adults (Erwachsene, 21-60, and 60 and over). The age group 21-60 categorically accounts for the highest percentage of victims. (PKS 1991, 1992; 53).

Males outnumber females as victims for the crimes of murder, manslaughter, robbery, battery, and battery resulting in death. Female victims outnumbered males in the categories of sexual offenses. While the age group 21 to 60 accounted for the most victimizations for murder, manslaughter and robbery, the rates for youths and young adult victims increased dramatically in the crime categories of rape and unlawful sexual acts. Elderly victims (60 and older) accounted for a higher percentage (even compared to youths and young adults) for the categories of murder, manslaughter and robbery and aggravated battery resulting in death. While offender statistics are available for ethnic minorities, no such victimization statistics are available.

### 2. Victims' assistance agencies 12

a. Weisser-Ring (White Ring) is a national victims' assistance agency providing a victims toll-free hotline and 300 satellite offices nationwide. The organization provides advice, assistance and financial support to aid in the legal situation and social restoration of crime victims. It is supported through voluntary workers

and financed through membership fees, contributions and money from fines (Weisser Ring, Presseinfo, Helmut Röllster, Pressesprecher, Weisser Ring, Weberstraße 16, 6500 Mainz-Weisenau, Deutschland; information packet sent by the Public Relations Officer of the Weisser Ring).

b. Opferhilfe e. V., the Victims' Assistance Organization, a national organization, is concerned with assisting the crime victim. However, emphasis is placed on reaching an agreement between the offender and victim (restitution) and assisting in resocialization.

c. Victims of traffic accidents in which the offender has fled are assisted by the national Verkehrsoferhilfe e. V., the Traffic Victims' Assistance Organization, which is funded through sources from mandatory car insurance (Kerner, 1992; 36).

d. Individual jurisdictions have established houses for battered women, crisis centers for rape victims, womens' self-help groups, and Kinderschutzzentren (Centers for the Protection of Children) where children who are the victims of personal crimes can turn for assistance.

By order of German law, all people have health insurance. In cases of victimization, health insurance pays for medical costs. In addition, the insurance companies may also be made to pay for emotional damages (Schmerzensgeld). Additionally, restitution provides another opportunity to compensate the victim. 13

### 3. Role of victim in prosecution and sentencing.

The victim's role is limited to the ability to act as an accessory to the prosecution in situations in which the prosecutor would not normally bring a case to court. In limited cases (libel, slander, trespass, simple assault and battery) the injured party may seek an indictment without having to rely on the prosecutor's office. In fact, if the victim fails to initiate action, no action will be taken by the prosecutor's office. The injured party takes over the role of the Public Prosecutor's Office (StPO, ss 395 et seq). The victim plays no role in the sentencing of the offender.

### 4. Victim's rights legislation.

Legislation which considers the role of the victim in the criminal justice system includes:

a. The Federal War Victim's Maintenance Act (Bundesversorgungsgesetz), designed to financially compensate victims of war for medical problems, loss of work, or loss of living quarters. Victims of violent acts are entitled to the same

compensation under this law as are victims of war. It has largely been expanded by the Victim Compensation Act (Bundesministerium für Arbeit und Sozialordnung, 1992; 2).

b. The Victim Compensation Act (Opferentschädigungsgesetz), provides financial awards to victims of violent crimes who have suffered lasting physical and financial hardships. Monthly pensions are paid which provide for medical treatment and vocational rehabilitation (Villmow, 1991; 69).

c. The Victim Protection Law (Opferschutzgesetz) (BGBI. I S. 2496), passed by the government in 1986, requires judges to consider the attempt made by the offender in providing restitution to the victim when contemplating the severity of the sentence (Jescheck, 1991; XIV).

## POLICE

### 1. Administration.

Germany has an extremely limited federal police force. Basically all police functions are the responsibility of the state police departments. Their jurisdictions are strictly divided and autonomous, and almost all police activity takes place at the local levels, or in cases of rural settlements, by the state police. Administration of the police falls under the control of the State Ministry of the Interior. While the federal constitution provides for mutual assistance between the federal and regional police, the Federal Minister of the Interior and the chief executive of the Federal police, may not issue instructions to the state Ministers of the Interior.

The Federal Police consist of 1) the Railway Police; 2) the Federal Border Police and a special federal anti-terrorist group (GSG 9); 3) the Police of the administrative departments of the Federal Parliament; 4) Customs officers and the Customs Investigative Branch (under the jurisdiction of the Federal Minister of Finance); and 5) the Federal Crime Investigation Office.

The main role of the Federal Crime Investigation Police is to act as a central clearinghouse for information and communications of all Federal police forces and to combat crime through such means as collection and analysis of police intelligence, compilation of statistics, research, identification and forensic science laboratory services. The FCI also conducts limited investigations in specific areas (for example, counterfeiting, drugs, arms and explosives -- if there are international aspects to the case, terrorism and political crimes). They may be ordered or requested to conduct investigations to aid local authorities

(International Criminal Police Review, 1987; 10).

The Security Program adopted by the Ministers of the Interior of the states provides for a relatively uniform police organization throughout the states. The chief executive is the Minister of the Interior of the State. Each state has a Crime Investigating Office which serves the same function at the state level that the Federal Crime Investigating Office serves at the federal level.

Each state has the following police components: 1)uniformed police, including special emergency units such as those for crowd or riot control, as well as marine police units responsible for policing rivers, harbors and coastal areas; 2)Detective Branch or Criminal Police. Barring specific criminal activities mentioned above, criminal investigations are carried out at the local level by the detective branch.; and 3)a Police Academy. The Police Academy, River Police Office, Central Crime Investigation Office, Telecommunications Center, Payments Office, and Mobile Police fall within the state police administrative structure, but outside of the immediate chain of command.

The Police Directorate is at the lower level and consists of uniformed officers and the detective branch. This is directed by the Common Chief Officer who maintains a central command and control function. At the higher level is the District Police Department, which is responsible for several police directorates as well as for specialty functions such as special operational units, motorway police stations, and the forensic laboratory.

## 2. Resources.

\* Expenditures. In 1992, expenditures for the federal and state police, including new construction and other purchases, totaled approximately 19 billion German marks. (Zimmermann, 1993; 1).

\* Number of Police. As of October 15, 1992, there were 219,887 state police and 26,424 federal police, for a total of 246,311 police. Of that total, 152,884 were patrol officers, 28,616 were detectives, 30,079 were mobile police, 2,802 were located in police schools, and 5,506 police operated in other capacities. 15 16 (Zimmermann, 1993)

Gender information is limited. The percentage of female officers at the lower levels of the organization may reach as high as or even exceed 50%. This percentage declines in the higher levels of the police hierarchy. Since all police officers must have German citizenship and are therefore considered German, no further information is available on ethnic origin. (Zimmermann, 1993; 3).

### 3. Technology.

\* Availability of police automobiles. As of October 15, 1992, the state police reported a total of 45,646 police vehicles, with an additional 5,937 vehicles in federal police use, for a total of 51,583 vehicles. This averages 21 vehicles per 100 officers at the state level, and 22 vehicles per 100 federal officers. 17 (Zimmermann, 1993)

\* Electronic equipment. In addition to computer aided dispatch, radar and radio communications, the German police have available to them a national computerized information system, INPOL, which links all state and federal police in Germany. This system facilitates police in their identification of those sought by the police or missing persons and property. Further information is provided on incarceration data, criminal files, information on specific crimes of interest to the police on a national level, documentary evidence on specific cases, police crime statistics, an automated fingerprint system, literature documentation, PIOS-Data (data collection on persons, organizations or objects which support and facilitate organized crime), and the INPOL-Land-Data (data on modus- operandi of persons or cases) (Zimmermann, 1993; 4-6).

\* Weapons. In general, police officers carry on their persons a baton, a chemical spray (CN or CS), handcuffs, and a 9mm Luger pistol. Machine guns may be found in the car and on special patrol (for instance at airports) or at the station. Bullet- proof vests are carried in the patrol car. In special circumstances police will be outfitted with riot gear such as protective clothing, a helmet, a shield and possibly a battering ram. (Zimmermann, 1993).

### 4. Training and qualifications.

\* Training. While training in each state is done both at academies and on-the-job, the content and length of the training varies from state to state. In general, the training takes 2 1/2 years with a 6-month internship and another 6-month course of study in criminology. In Berlin, for example, training for a police officer involves a 3-year period, with classes in psychology, law, political science, English, criminology, sports, martial arts, work ethics, and a short seminar on conflict management and stress reduction. Three examinations are administered throughout the training period. (der Polizeipräsident in Berlin, 1992; Zimmermann, 1993; 6).

\* Selection and qualifications. The states differ in their selection criteria. A school completion of the middle level is generally required to

become a police officer. A recruit enters the police department and trains to become either a patrol officer or a detective. To become a detective, some states require the applicant to have graduated from a 'gymnasium' or college preparatory high school before attending the academy. Some states also require an examination to transfer from the police officer position to detective (Zimmermann, 1993; 7). The education and training for police officers and detectives run parallel. The main difference is that detectives receive more training in criminology and criminalistics while the patrol officers receive more training in traffic administration and traffic law (Zimmermann, 1993; 7). To become a police patrol officer in Berlin, the applicant must be German and be between the ages of 16 and 24, although older recruits may be taken if certain requirements are met. In addition to height and health requirements, the applicant must also pass a written, a verbal, and a sports test, must be able to swim, and cannot have a criminal conviction. To be promoted to the upper ranks of inspector or some other rank requires 2 years of additional schooling. The first year is completed at the respective state training academy and all applicants spend the last year at a special national academy, the Police Leadership Academy (Polizei F hrungsakademie) (der Polizeipr sident in Berlin, 1992; Gedaschke, 1993; Zimmermann, 1993; 6).

##### 5. Discretion.

\* Use of deadly force. The use of force is dictated by police laws which share some similarities between states, the general principle being that minimal force shall be used in all circumstances. Police laws ("Polizeigesetze") dictate specific circumstances under which escalating force can be employed by police (to include warning shots, shots fired into crowds, the use of machine guns and hand grenades) (Polizeiaufgabengesetz des Landes Bayern, 1990, C01; 33-35; Polizeigesetz des Landes Nordrhein-Westfalen, 1990, H02; 37- 38).

Bavaria is the only state in which the police law specifically provides for police use of deadly force. For example, in hostage situations, police can aim to kill the hostage-taker. This is known as the "final saving shot" or finalen Rettungsschu . In other states and in other cases in which deadly force is used, an internal police investigation will occur to determine if the officer was acting in self defense or defense of others. (Erich, 1993 and Gadeschke, 1993)

\* Stop/apprehend a suspect. Police may stop or apprehend a suspect upon suspicion of violation of a criminal or administrative statute. (Gedaschke, 1993).

\* The Decision to arrest. The police are required by procedural criminal law (StPO, s 163) to investigate any criminal offense or administrative procedural violation. The results of the investigation are to be turned over to the prosecutor's office without delay. If it is necessary to expedite the judicial examination of a case, the prosecutor's office may be bypassed and the case can be sent directly to the court. The "Principle of Legality" governs police responsibilities and by law police have no discretionary powers. This is especially true for violations of criminal law; a certain degree of latitude is available when regulatory offenses are involved, which are governed by the "Principle of Opportunity". All law violators must be turned over to the Prosecutor's office. Violation of statute 163 could make a police officer liable to criminal prosecution for dereliction of duty (Erich, 1993). In practice, however, police do exercise discretion. As police are required by law to officially intervene, there are no departmental guidelines directing discretion. Discretion is an individual choice exercised by the officer. Police intervention will vary depending on the following circumstances: whether the individual is under suspicion for an offense; whether the offense is of a petty nature; whether the offense is widely socially acceptable; whether the workload of the police is disproportionate to the disposition likely handed down to the offender; the degree of social closeness; and whether the intervention will likely result in a successful prosecution. 18 Information concerning the number of arrests made without a warrant is not available. (Bruckmeier, et al., 1984; Krause, 1993).

\* Searches and seizures. Article 13 of the Constitution permits police to conduct searches and seizures of persons and private property only with judicial endorsement. In cases of imminent danger, permission may be given by the public prosecutor's office and/or its auxiliary officials without judicial approval. Within 3 days after a search based upon a decision by the prosecutor or police, judicial confirmation must be obtained to validate the search. Further entrance into a residence and restriction of its inhabitants are permitted only in situations concerning the protection of a youth, control of epidemics, prohibiting life-threatening situations to an individual, or preventing an immediate danger to the public safety and order. (Friedrich, 1987; 72).

\* Confessions. Police interrogations of a suspect are governed by procedural law (StPO s 136, 136a). At the initial interrogation, the accused must be told of the charges against him and of his right

to consult with an attorney. Statements made during the interrogation will be admitted into court providing they have been obtained without the following disqualifiers: the use of force, trickery or deceit, threats, drugs, hypnosis or exhaustion. (Friedrich, 1987; 57).

\* Complaints against police behavior. Complaints against police officers are handled internally by a police review commission. Civilians are not privy to reviews. If the complaints involve a criminal offense, the information is turned over to the public prosecutor's office to determine if the officer can be charged with a criminal offense. Any killing by a police officer, even in the line of duty, will automatically be turned over to the homicide division for further investigation. (Erich, 1993).

#### PROSECUTORIAL AND JUDICIAL PROCESS

##### 1. Rights of the accused.

\* Rights of the accused at trial. Prior to and during the trial, the accused has the following rights, which are, in part, laid forth by the Code of Criminal Procedure: 1)The suspect has the right to be heard and can request that evidence be taken before a writ of indictment is issued (StPO, s 163a(1)); 2)If the suspect is interrogated by police, the suspect must be told of the charges against him/her (StPO, s 163a(4)); and 3)Once the Public Prosecutor's Office has completed its inquiry, the writ of indictment will be communicated to the accused before the court decides to open the main proceedings. Counsel for the accused has an absolute right to inspect all evidence against the accused (StPO, s 201). In addition, the defendant may plea guilty to a lesser offense. 19 A guilty plea, however, does not automatically end the trial and more often than not the court will review the evidence presented by the prosecutor to determine if it supports the guilty plea. A guilty plea can be changed at any time, whereby the court would weigh the evidence presented to it to determine if a change in plea can be supported. At the district court level, where the defendant can receive up to a maximum sentence of 3 years of incarceration, the defendant can be tried either by a single judge or by a judicial panel consisting of one professional judge and 2 lay judges. There is no jury system in German courts. (GVG 24(1), GVG 25, and GVG 28 et seq.)(Heinz, 1992; 40, 41.)

\* Assistance to the accused. The accused must be provided with legal representation under the following circumstances (StPO, s 140): 1)where the defendant is facing a trial in the regional court or higher regional court; 2)where the defendant is charged with a serious crime; 3)where the

defendant may be prohibited from practicing a profession; or 4) where the defendant has been incarcerated for at least 3 months and is not expected to be released until 2 weeks prior to the trial.

The defendant may choose up to three attorneys (StPO, s 137). Since legal representation under these circumstances is compulsory, it is provided by the state if the defendant cannot afford an attorney. Attorneys are obliged to provide legal services for the accused and are paid a fixed salary by the state for their services.

## 2. Procedures.

\* Preparatory procedures for bringing a suspect to trial. The investigatory procedures for bringing an accused to trial are usually initiated by either the police or the Public Prosecutor's Office or both. When sufficient evidence exists to indicate a criminal offense has occurred, the prosecutor will initiate an inquiry. If the inquiry suggests an indictment should be issued, the prosecutor's office will issue the indictment (StPO, s 170(1)). The power to indict is vested in the Public Prosecutor's Office. If the prosecutor refuses to indict, an injured party can turn to the courts to appeal the decision (Heinz, 1992; 39).

The indictment will then be reviewed by the relevant court. If sufficient grounds to proceed exist, the court moves the case on to the main proceedings. If insufficient evidence exists, the court issues an order refusing to open the main proceedings (StPO, s 204(1)).

\* Official who conducts prosecution. The Public Prosecutor's office is legally obligated to investigate any criminal offense, providing sufficient evidence exists to support the allegation that a crime has occurred (that is a police investigation, citizen's complaint, or press report). This is the "Principle of Legality" (StPO, s 152(2)). (Friedrich, 1987; 57).

Although in most cases offenses are prosecuted by the Public Prosecutor's Office in the court of appropriate jurisdiction, there are limited exceptions to this rule. For instance, tax authorities may apply directly to the court to impose fines, bypassing the prosecutor's office, in criminal tax offenses (Heinz, 1992; 39).

In some cases, such as libel, slander, trespass, and simple assault and battery, the injured party may seek an indictment without having to rely on the prosecutor's office. The injured party takes the role of the Public Prosecutor's Office. If in such cases the prosecutor's office files an indictment, the injured party may join the public proceedings as an accessory to the prosecution. This role grants

the injured party specific rights in reviewing defense material, calling witnesses, rejecting a judge and the right to be heard in court. (StPO, s 395 to 402).

\* Alternatives to going to trial. There are various options to trial which exist for certain cases of minor offenses, such as when the prosecutor asks for a punishment order (StPO, s 407) to be granted by the court. This out-of-court settlement occurs when the judge allows the defendant to make payments or forfeit a driver's license rather than face trial. The accused then has the option of refusing the order and requesting a hearing at which time the main hearing will resume.

The prosecutor can also exercise discretion and drop the charges against the accused under the following conditions: a) the suspect's role is limited and prosecution serves no public function or interest; b) the defendant is being tried for another more serious crime; or c) in the case of a minor offense, the prosecutor moves for a conditional waiver and the judge and the accused must agree to the conditions and orders which are sufficient to accommodate the public interest in a prosecution (StPO, s 153a). 20

\* What proportion of prosecuted cases go to trial? The limited capacity of police and the justice system demand a filtering process whereby not all cases will result in arrest, processing, formal trial or penal sanctioning. While specific figures concerning the number of prosecuted cases which actually go to trial are unavailable, the variables which influence a prosecutor's decision are the nature of the offense, relationship between victim and offender, the presence of a confession, the degree of injury to the victim and the criminal record of the accused. (Kaiser, 1989; 184).

\* Pre-trial incarceration conditions. A suspect may be detained by either the police or the prosecutor's office but only until the end of the day following arrest (GG, article 104 (2)) and must then be brought before a judge (StPO, s 128, 115). Only a judge has the authority to determine whether a detention is warranted. Further detention may be judicially mandated indefinitely, in 4 week increments, until a suspect is either charged or released (Cannings, 1990; 229). A suspect who is being held during the course of an investigative inquiry may at any time request a judicial review of the initial decision on the continuance of the detention. A special hearing before the Higher Regional Court (Oberlandesgericht) is held if the detention has lasted more than 6 months and the decision to detain must be reviewed every three months (StPO, s 122). The Principle of Commensurability

governs decisions to incarcerate individuals prior to trial. Individuals who commit offenses for which a sentence of probation or a fine are anticipated will generally not be held in pretrial detention. Violators facing a maximum sentence of 6 months incarceration or a fine consisting of 180 day-fines may be detained under the following prerequisites (Friedrich, 1987; 61-62): 1)there is great likelihood that the accused under suspicion has committed the criminal offense; 2. the detainee is a flight risk, for instance, he has failed to show for a previous hearing; 3)the individual has no permanent place of residence; 4)there is a great likelihood that the suspect will commit another crime if detention is not ordered; 5)there is a great risk that evidence will be destroyed ("Verdunklungsgefahr"); and/or 6)the crime involved a life-threatening offense.

\* Bail procedure. There is no absolute right to bail. Although an application for bail may be made at any time, the court can exercise unlimited discretion in fixing the amount of bail (StPO, s 116a). National statistics are not available on the proportion of pretrial offenders incarcerated (Tolzmann, 1993).

#### JUDICIAL SYSTEM

##### 1. Administration.

Courts in Germany deal with both civil and criminal matters. There are four levels of courts that deal with criminal matters: 1)local courts (Amtsgerichte). These court are competent in all criminal matters where a punishment of not more than 3 years imprisonment can be imposed; 2)regional courts (Landgerichte). Both Amtsgerichte and Landgerichte are courts of first instance. The regional courts, furthermore, may serve as a court of general appeal (Berufung), along with the higher regional courts; 3)higher regional courts (Oberlandesgerichte) or courts of appeal for both the Amtsgericht and the Landgericht; they may also hear cases at first instance ; 4)the Federal High Court (Bundesgerichtshof). The Federal High Court hears appeals on questions of law; it is divided into various panels each occupied by 5 professional judges; 5)the Federal Constitutional Court is the highest court in the land and considers only cases involving violations of constitutional law. It serves both as a court of first instance and a court of appeal.(Heinz, 1992; 39) A case may be heard for the first time in any of the first three courts, depending upon the type of offense. It may be taken to one or two more on appeal or revision on a legal point. 21

A separate court for juveniles has jurisdiction for those persons between 14 and 18 years of age. Young adults between the ages of 18

and 21 may be dealt with in Juvenile Court and may also be institutionalized in juvenile facilities up to the age of 25. Juvenile courts use the same penal codes but employ different sanctions and procedures than those used for adults.

Jugendgerichtsgesetz or JGG is the Juvenile Court Act which determines the court's handling of juveniles and young adults.

## 2. Judges.

At the district court level, a single professional judge will preside. It is also possible for a professional judge and 2 lay judges to preside. The votes of lay judges carry the same weight as that of professional judges. They determine guilt or innocence as well as the sentence. While a unanimous decision is not required, a two-thirds majority of judges, both lay and professional, is necessary for a decision against the accused. Lay judges are chosen by the lay judge election committee and serve for a period of 4 years. Lots are drawn to determine the days on which lay judges will preside (Heinz, 1992; 41; Gerichtsverfassungsgesetz or GVG, s 40).

In the Regional Courts, a chamber consisting of 3 professional judges and 2 lay judges hands down decisions concerning serious crimes at first instance (GVG 76) or may rule on appeals against judgments of the judicial panel at the District Court (Sch"ffengericht). The Small Criminal Chamber (Kleine Strafkammer), consisting of one professional judge and two lay judges, makes the determination in cases involving hearing an appeal of a decision made by the professional judge. In their appellate function the Criminal

Panels of the Higher Regional Courts sit as panels of three professional judges. If sitting as a court of first instance, the panel sits as a panel of 5 professional judges (GVG, s 122). The Criminal Panels of the Federal Supreme Court are composed of 5 professional judges (GVG, s 139).

\* Number of judges. In 1991 there were 13,371 judges in state courts and 281 in federal service. 22 Of these, 2,599 (19.4%) female judges sat in state courts and 20 (7.1%) on federal court benches. All judges are civil servants and must therefore be German citizens. No information is available on ethnic background. (Statistisches Jahrbuch 1992 f"ur die Bundesrepublik Deutschland, Statistisches Bundesamt, Wiesbaden, 1992; Table 15.2; p. 391.)

\* Appointment, training and qualifications. After studying law, completing an 18-month internship in various branches of the legal field such as public administration, courts, prosecutor's office, or a law firm, and passing the second state exam for juridical studies, a lawyer may apply for selection as a judge to the Electoral Committee

for Judges made up of parliamentary representatives. 23 For appointment to the Federal Constitutional Court, judges must have at least 3 years experience in a high court and must submit their names for consideration. They may not hold political office in state or federal government. There are two panels of judges for this court, each consisting of eight judges. About half of the appointments to the panels are made by the Bundestag's 12-member electoral committee. Eight votes of this electoral committee are needed to make the appointment to the Court. The other half of the judges are elected by members of the Bundesrat. A two-thirds vote is necessary to win an appointment. Judges serve a 12-year term on the Federal Constitutional Court, unless they reach the mandatory retirement age of 68. Judges may not be reelected. (BVerfGG s 2, 4-7).

### 3. Special Courts.

The only other court which deals with criminal matters is the juvenile court, which maintains jurisdiction over individuals between the ages of 14 and 21. Immigration offenses are handled in regional courts that deal with criminal matters. Article 101 of the Federal Constitution prohibits the existence of special tribunals. Courts dealing with specific problems can only be created by law.

### 4. Procedure.

Cases may be filtered out of the system with an informal punishment order whereby the judge allows the defendant to make payments rather than face trial. All other cases, even those in which the defendant has made a confession and entered a guilty plea, will be moved to the main hearing for trial. Plea-bargaining, entering a guilty plea in exchange for a lighter sentence, exists on a very limited basis in Germany.

## PENALTIES AND SENTENCING

### 1. Sentencing Process.

\* Who determines the sentence? Sentences are handed down either by the single professional judge or the judicial panel. There must be at least a two-thirds majority vote to determine the sentence.

\* Is there a special sentencing hearing?  
Information not available.

\* Which persons have input into the sentencing process? During the main hearing, information is collected by the presiding judge about the defendant's personal life, problems, and financial

means. If deemed necessary by the court, a psychological or psychiatric evaluation may be conducted to aid the court in the determination of guilt or innocence as well as the sentence and placement of the accused. As an aid to the court, the Gerichtshilfe, also found in the Juvenile Court as the Jugendgerichtshilfe, will conduct an examination of the individual's personality, home environment, and school or work performance to make recommendations to the court on the appropriate adjudication and disposition. Criminal responsibility can be mitigated as a result of the mental state of the offender. This may include acts committed under the influence of alcohol or drugs. These factors are spelled out in the Criminal Code (StGB, s 21).

The court imposing the sentence must ensure that the sentence has been executed. This may be done in the offender's home town by the Amtsgericht or the court may appoint a probation officer to supervise the individual sentenced.

## 2. Types of penalties.

\* Range of penalties. The criminal law mainly provides fines and incarceration. Fines are day fines based upon the offender's income and calculated on a day rate of between 2 and 10,000 German marks (StGB, s 40). Incarceration can range from 6 months to 15 years (StGB, s 38, 39). 24 A life prison sentence is imposed for murder and may be imposed for other crimes such as manslaughter or treason. Certain crimes (murder, manslaughter, rape and robbery) carry a mandatory sentence of incarceration. Property crimes (battery, theft) carry a sentence of incarceration or fine. Fines and probation are often levied in non-serious property and non-violent personal offenses. While fines and incarceration are viewed by the court as punishments, the court can also hand down other orders (forfeiture to the state of proceeds of crime; loss of the privilege to drive (StGB, s 44)), which are considered supplementary punishments.

The introduction of legal reform has provided other types of penalties such as the suspended sentence; Weisungen (instructions); Auflagen (orders); declaration of guilt without imposition of sentence; community service and probation. 25, 26, 27, 28, 29, 30

In addition to the concept of penalties, the penal code also contains measures for the prevention of crime and the rehabilitation of offenders (StPO, s 61 to 72). Among these are commitment to a psychiatric hospital, commitment to a drug or alcohol clinic, supervision of conduct, suspension of the driver's license, or prohibition to practice a profession. Preventive detention of habitual offenders exists in the adult criminal justice system. This measure, also

designed for the prevention of crime and the rehabilitation of an offender, allows a judge to further detain in an institution an individual who has already served his/her penal sentence.

\* Death penalty. The death penalty was outlawed in Germany on May 23, 1949 by Article 102 of the Grundgesetz (Constitution) of the Federal Republic of Germany.

## PRISON

### 1. Description.

\* Number of prisons and type. Prisons are classified as either open or closed institutions. Open institutions are characterized by minimal restrictions and lack of high security walls, fences, or armed guards at the perimeter. Open institutions house non-violent offenders with relatively short sentences. Closed institutions are characterized by high security at the perimeter as well as within the institutions. However, within closed institutions it is not uncommon to find low-security tracts, particularly in womens' prisons, where young mothers are often allowed to keep their children with them in the prison until the child reaches a designated age (Kaiser, et al., 1992; 180). As of September 1992, there were 25 open institutions (11.2% of the total) and 199 closed institutions. (Tolzmann, 1993).

\* Number of prison beds. On September 30, 1992, there were 224 correctional facilities with approximately 70,354 beds, of which 59,579 were occupied (84.7% occupancy) (Tolzmann, 1993).

\* Average daily population/Number of prisoners. The average number of prisoners as of September 30, 1992 was 59,579.32. . On 31 March, 1991, the total number of prisoners was 37,281, of which 35,787 (96%) were male and 1,494 (4%) were female. There was a total number of 37,281 persons in adult correctional facilities, of which 1,390 (95.8%) were male and 1,390 (4.2%) were female. Juvenile correctional facilities had a total of 3,889 persons, of which 3,785 (97.3%) and 104 (2.7%) was female. Information is not available on ethnic origin. (Tolzmann, 1993). 32

\* Number of annual admissions. In 1989, there were 519,084 admissions into correctional institutions. Of this total, 23,668 (4.56%) were women. These figures also include transfers between institutions. 33

\* Actual or estimated proportions of inmates incarcerated. The estimated yearly percentages for prison inmates by crime type on March 31, 1989 are as follows: 34

Drug Crimes	9.1%
Violent Crimes	35.2%
Property Crimes	44.3%
Other Crimes	11.4%

## 2. Administration.

Prisons are administered at the state level. There are neither federal prisons nor private prisons in Germany.

\* Prison guards. In 1992 there were 21,500 uniformed personnel in the 13 states that reported. 36 There were 31,882 positions at all levels in correctional institutions in the 13 reporting states (Gem,hlich, 1993).

\* Training and qualifications. The training of guards is fairly consistent in each of the federal states. All guards attend a school designed to train prison personnel called the Justizvollzugsschule. A school is located in each of the larger states. Smaller states combine resources and train their personnel at the same school. The training period, which lasts approximately two years, combines practical training in the institutions coupled with classes in psychology, sociology, and criminological theory. (Gem,hlich, 1993).

\* Expenditure on the prison system. Because the administration of the prison which includes the training of guards, building, operation and maintenance, is done at the state level, statistics concerning these matters are not available from the Federal Ministry of Justice. (Tolzman, 1993).

\* Number of prisoners awaiting trial. As of September 30, 1992, there were 18,82336 prisoners (31.6% of the total prison population) awaiting trial (Tolzmann, 1993).

## 3. Prison Conditions.

\* Remissions. In cases where a determinate sentence has been imposed, conditional release for good behavior may be granted an inmate after having served two-thirds of his/her sentence (StPO, s 57). In special cases, an individual may be released after half the sentence is served. Where an individual has received a life sentence, the court may consider conditional release after the individual has served at least 15 years (StPO, s 57a). The decision is made by a criminal law judge of the Landgericht. 37 Supervisory assistance in the form of a parole officer is available to inmates released early from prison.

\* Work/Education. Inmates are required to work

when work is available. Educational opportunities in the prison are voluntary. Inmates are often given vocational training and allowed to complete their apprenticeship in prison workshops and are then given certificates, which allows them to practice their profession on the outside upon release from the institution. Heavy emphasis is placed upon education in juvenile institutions.

\* Amenities/privileges. Several amenities are provided the German prisoner. They are listed below. 1)Work release: The individual under certain circumstances is allowed to work outside of the prison and return to the prison after work. Some institutions have established a separate wing or separate quarters outside of the prison for those on work release; 2)Temporary (day basis) release: Prisoners are allowed to leave the prison either with or without supervision by a staff member. Emergency leave may also be granted in life-threatening situations involving a family member; 3)Vacation. This involves release of an inmate for a period of anywhere between 6 to 21 days depending upon the circumstances and the particular inmate. 4)Correspondence: Inmates have the right to correspond with individuals outside of the institution and the institutions have the responsibility to facilitate this contact; 5)Visitation: Inmates have a right to visitors. Visitors are not restricted to family members or specific individuals. Inmates do not have a right to sexual contact with spouses or partners in prison (Higher Regional court decision 1967). However, the court did not prohibit individual prisons from providing such an opportunity. 6)Education: School classes may be offered with the intention of providing a graduation certificate for elementary school. (Kaiser, et al., 1992: 187-188, 192).

The prison is responsible for providing for the physical and mental well-being of the inmate. Religious services and other religious events or meetings are a right. The prison must provide for medical and dental care of inmates. Additionally, many prisons offer drug and alcohol rehabilitation programs to inmates. (Kaiser, et al., 1992: 223.) The inmate also has the right to financial assistance from the prison upon his release. The money can be used to pay for transportation, clothes, and generally to get established in a residence. The released prisoner is not obliged to repay the prison. (Kaiser, et al., 1992; 233).

#### EXTRADITION AND TREATIES

\* Extradition. The Act for International Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen (IRG)) contains the rules governing extradition in Germany. The European Convention on Extradition (ETS No. 24), a multilateral agreement between

member countries, provides for extradition between Germany and each of the following countries: Austria, Belgium, Cyprus, Denmark, Finland (by accession), France, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein (by accession), Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and with Israel (a non-member state by accession) (E.T.S. No. 24 - European Convention on Extradition; in Müller-Rappard and Bassiorni, 1991; 247).

\* Exchange of prisoners. The exchange of prisoners is governed by the Convention on the Transfer of Sentenced Persons (ETS No. 112), entered into force in 1985. This multilateral agreement provides for the transfer of sentenced persons between Germany and the following countries: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the non-member states of the Bahamas, Canada, and the United States (Müller-Rappard and Bassiorni, 1991).

\* Specified conditions. In both of the aforementioned treaties, many countries have specified conditions under which they will or will not abide by the treaty. Germany adheres to the following disclaimers: A German national will not be extradited to a foreign country (prohibited by Article 16 subsection 2 of the Federal Constitution); those facing political oppression or the death penalty in their own country will not be extradited; a prisoner will not be extradited if the requesting country does not provide for early release on parole for a prisoner sentenced to life imprisonment. The decision to extradite lies with the Higher Regional Court (IRG, ss 12-14).

#### FOOTNOTES

1. The following abbreviations will be used throughout this paper:

StPO or Strafprozeßordnung -- Code of Criminal Procedure

StGB or Strafgesetzbuch -- German Penal Code

GG or Grundgesetz -- German Constitution or Basic Law

GVG or Gerichtsverfassungsgesetz -- Constitution of Courts Act or law governing court jurisdiction and organization

JGG or Jugendgerichtsgesetz -- Juvenile Court Act

2. The Federal Prosecutor is involved in the prosecution of limited types of offenses, such as treason.
3. The "Constitutio Criminalis Carolina" of 1532 was its predecessor.
4. The Betäubungsmittelgesetz or BtMG (drug statutes) (BtMG, s 1) and the Betäubungsmittel-Verschreibungsverordnung (drug prescription regulation) (BtMVV, ss 2,3,4).
5. Youth, Family and Health translated into: Bundesminister für Jugend, Familie and Gesundheit.
6. The most recent police statistics for Germany are reported for and divided along the lines of the old and new federal states. The old federal states consist of 8 states or Lände and the city-states of Hamburg, Bremen and Berlin. The new federal states total 5. Up until 1990 the Berlin statistics were divided into statistics for the eastern and western sector. However, beginning with the 1991 statistics, Berlin statistics are reported for the entire city and are included in the statistics for the old federal states, making comparisons with previous years impossible.
7. Firearms were rarely used in robbery-murders; firearms were used in every 7th murder and every 12th manslaughter.
8. The Police Crime Statistics (PKS) categorize theft into "Theft without aggravating circumstances" and "Theft under aggravating circumstances".
9. In 1.8% of the cases the victim was threatened with a firearm and in 0.1% of the cases a firearm was discharged.
10. In comparing the population and crime distribution between the old federal states (former "West" Germany, including Berlin) and the new federal states, one can note that the old states had a crime rate of 7,311 per 100,000 population (with total inhabitants equalling 65,001,379 with 261 inhabitants per square kilometer) while the new states have a crime rate of 3,733 per 100,000 (with total inhabitants equalling 14,751,848 with 137 inhabitants per square kilometer) (PKS 1991, 1992; 32).
11. The results of a nationwide victimization study conducted by the Criminological Research Institute in Niedersachsen are expected to be published by 1995. Pitsela (1988) has conducted one of few victimization studies comparing victimization rates between Germans and Greek inhabitants.

12. See Eisenberg, pages 1003 and 1004 for a more detailed description of victims' assistance agencies.

13. Restitution ("Täter-Opfer Ausgleich") is a sentence handed down by the court requiring the payment by the offender to the victim to compensate the victim for losses suffered.

14. GSG 9, the federal anti-terrorist unit was formed after the massacre of the Israeli athletes at the 1972 Munich Olympics (Cannings, 92).

15. These include the Border Police and the Air Security Police, the Federal Railway Police, those police protecting the German Parliament, as well as employees at the Federal Criminal Investigation Office.

16. This figure does not reflect the actual total number of detective officers. The German states of Brandenburg and Sachsen-Anhalt did not report figures for this category.

17. This figure excludes 5 boat trailers and 25 water spraying wagons.

18. Findings are indicated in Bruckmeier, et al. (1984) which cites an earlier (1972) study of police discretion by Feest and Blankenburg.

19. The Federal Constitutional Court or Bundesverfassungsgericht has held that within certain limits plea bargaining is permissible (Bundesverfassungsgericht, NJW 1987, 2662, cited in Heinz, 1992; 41).

20. Conditional waivers often include the following: a) restoration of damage resulting from the offense; b) financial payment to the Treasury or community institution; c) community service to benefit community; and/or d) payment of maintenance money (Kalmthout and Tak, 457).

21. German lawyers may appeal through a "Revision" which involves an appeal on a point of law or error in proceedings or through a "Berufung" which involves an appeal on a point of fact.

22. These courts are classified in the Statistical Yearbook as ordinary courts dealing with criminal and civil matters, but excluding special courts dealing with social matters, financial matters, professional and disciplinary matters, administrative matters, work arbitration matters.

23. Article 98 of the Federal Constitution (GG, s 98) provides for the appointment and removal of judges. Subsection 3 provides for the individual

states (Länder) to pass laws concerning the appointment of judges, while subsection 4 provides that the states may allow for the appointment of judges to be made in a cooperative effort between the "Richterwahlausschuss" and the state's Minister of Justice. Appointment to the Federal Constitutional Court ("Bundesverfassungsgericht") is spelled out in the Law of the Federal Constitutional Court (BVerfGG or "Gesetz über das Bundesverfassungsgericht").

24. Sentences of incarceration under six months are always suspended and the offender is placed on probation.

25. The suspended sentence, introduced in adult penal law in Germany in 1953, allows for the suspension of a custodial sentence for up to two years. The judge must place the individual under probationary care for a period between two to five years. Fines may not be suspended (Kalmthout and Tak, 447).

26. Instructions are made to help support the convicted person so that he/she does not reoffend. These instructions usually concern place of residence, work, education, financial matters (StPO, s 68b). There is no conclusive list in the penal code (Kalmthout and Tak, 448).

27. Penal Code Section 56b, subsection 2, deals with orders. In order to force the accused to correct the wrong-doing, he/she may be required to pay a fine to the state or a public agency, or may be required to perform a useful service to the community (Kalmthout and Tak, 448).

28. Independent of the guilt or the severity of the sentence, this sanctioning alternative allows judges to refrain from prosecution or sentencing under specified conditions (offender so seriously affected by the consequences of his/her act that the imposition of a penalty would be detrimental to the accused) (Kalmthout and Tak, 454).

29. Community service has a long history as a sanctioning option to replace both the fine and the sentence of incarceration. It can be imposed under the following circumstances: as a special condition of a suspended sentence, parole, a caution with conditional deferral of sentencing, a conditional waiver and a conditional pardon or as an alternative to fine default detention (for a more thorough explanation see, Kalmthout and Tak: 459-517).

30. Probation is only handed down as a sentence in the case of a suspended sentence of incarceration. It involves supervision of the individual while in the community. The probation officer is assigned to the probationer by the

court.

31. As of September 30, 1992, the average number of prisoners in pretrial detention were 18,823 (31.6%); the average number of incarcerated juveniles were 3,668 (6.2%); the average number of prison incarcerated persons were 34,375 (57.7%), and the average number of "other" types of incarcerations (for instance, preventive detention of habitual offenders, deportation detention) was 2,713 (4.5%), making for a total of 59,579 persons incarcerated on a daily basis. (Tolzmann, 1993).

32. Source: Table 3 Strafgefangene am 31. März 1991; Strafvollzug-Demographische und kriminologische Merkmale der Strafgefangenen am 31.3.1991 (Correctional Facilities- Demographic and Criminological Characteristics of Inmates on March 31, 1991) Rechtspflege; Rechtspflege Reihe 4.1 Fachserie 10; (Administration of Justice Series 4.1 Subject Series 10) Wiesbaden: Statistisches Bundesamt, (Federal Bureau of Statistics) 1993; 10.

33. Source: Table 4.2 Art der Zugänge und Art der Abgänge; Types of Admissions and Releases), Ausgewählte Zahlen für die Rechtspflege 1989; (Selected Statistics for the Administration of Justice; Wiesbaden: Statistisches Bundesamt, (Federal Bureau of Statistics) 1992: 43).

34. Source: (Rechtspflege, Fachserie 10, Reihe 4, Strafvollzug 1989; The Administration of Justice, Subject Series 10; Series 4, Prisons 1989; Wiesbaden: Federal Bureau of Statistics, 1992; 43. Statistisches Bundesamt 1992; sent per FAX from Mrs. Tolzmann, the Federal Ministry of Justice, June 24, 1993).

35. Other crimes include traffic offenses, offenses against the state, environmental offenses, and offenses against other laws of the state (excluding the Federal Penal Code, the Federal Traffic Violations Code and the Federal Drug Code).

36. Statistics were not reported by three of the new federal states.

37. See Kalmthout and Tak, 1992; 451, 452 for other conditions for conditional release considered by the courts.

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#### GENERAL OVERVIEW

##### 1. Political System.

"England and Wales has an unwritten or, more appropriately, an uncodified constitution. The British constitution is a blend of statute law, precedent, and tradition dating back to the time of King Henry I (1100)." The Magna Carta (1215), the Bill of Rights (1688), and the Act of Settlement (1700) represent the three major statutes that define British legal and political history. (Terrill, 1984:2).

Delegated legislation, typically in the form of 'statutory instruments' may be promulgated by Government ministers or departments. Parliament, composed of the Monarch, the House of Lords, and the House of Commons, may annul such legislation and courts may challenge such legislation as being ultra vires (beyond the competence) of those who introduced it.

Acts of Parliament can override common law provisions, and in principle, deny established rights. In practice, courts faced with such a situation would be likely to subvert the intentions of Parliament by the use of perverse interpretations in individual cases. Later Acts take precedence over earlier ones.

Membership in the European Union entail adherence to European Community law, which takes precedence over both legislation and common law.

##### 2. Legal System.

The legal system in England and Wales is adversarial in all courts, including the juvenile courts. The prosecution must disclose relevant information to the defense, but the corresponding duty on the defense does not exist.

### 3. History of the Criminal Justice System.

The criminal justice system in England and Wales is the historical pioneer of the common law type of legal system. In England, courts expanded and the law evolved according to decisions made in individual cases. Judicial decisions influenced legal perceptions and rules. This process can be traced back to the fifth century, where freemen of local communities acted as judges and incorporated community perceptions into court decisions. After 1066, the geographical generality of common law principles increased when judges traveled around for court sittings. These judicial circuits survive to the present day. In a common law tradition, the dissemination of judicial pronouncements was crucial, and the first forerunner of published Law Reports was distributed in 1283.

The common legal systems of England and Wales derive from the Acts of Union of 1536 and 1542 which united the countries. The late nineteenth and twentieth centuries have seen an increase in the number and scope of statutes and of delegated legislation in British law.

## CRIME

### 1. Classification of Crime.

\* Legal classification. While there are many ways of classifying crimes, they are largely distinguished on the basis of their seriousness. In addition, offenses may be classified according to the procedure by which a case is brought to trial (in a magistrates' court only, by indictment, or triable-either-way in a magistrates' or the higher Crown Court), according to the availability of the sanction of imprisonment, or in terms of the Home Office's Standard List of more serious offenses.

\* Age of criminal responsibility. The age of criminal responsibility in England and Wales is 10. Children between 10 and 17 years of age are brought before a youth court when charged with a criminal offense. The sanctions available to youth courts are more restricted than those for adult courts, the major differences being that fines can be imposed which parents must pay and supervision or attendance center orders may be imposed.

\* Drug offenses. The classification of drugs by seriousness of offense presents particular difficulties. The Misuse of Drugs Act of 1971, created for the purpose of narcotic control, listed certain drugs as Class A, B, or C,

depending on the magnitude of harm deemed to be attached to their trafficking and use. Drugs can be reclassified and new drugs classified within this framework. It is essential that flexibility be maintained so that drug classification is kept in line with current social and scientific opinion. The Misuse of Drugs Act was intended to regulate the use and flow of drugs. Accordingly, as a general rule it is unlawful to import or export, produce, supply, possess, prepare or cultivate any controlled substance.

## 2. Crime Statistics.

Home Office data shows that in 1994 there were 5.3 million recorded notifiable offenses, including indictable offenses, and certain summary offenses recorded by the 43 Home Office police forces. (Twenty-six percent of the total number of recorded notifiable offenses were cleared. That is, people were charged or there was enough evidence to charge even if the case was not proceeded with, the defendant was only cautioned, or the person admitted the offense.)

\* Murder. In 1994, there were 729 initial recordings of homicide by the Home Office. Homicide is defined as murder, manslaughter, and infanticide. Manslaughter is defined as homicide without the intent to kill. (In 1994, there were 220,000 recorded offenses of violence against the person, which accounted for 4% of all recorded notifiable offenses in that year. 19,600 offenses were classified as more serious, which is defined as endangering life. Of those 729 initial recordings of homicide, only 677 were currently recorded as homicide. Of cases dealt with at court, over half were dealt with as manslaughter cases.)

\* Rape. In 1994, there were 5,039 rapes recorded which represents over three times the level recorded in 1984. (Overall, sexual offenses comprised fewer than 1% of the total recorded notifiable offenses in 1994.) The increase is thought to be attributed to both an increase in reporting and changes in police practice of recording the offense.

\* Property Crime. In 1994, 93% of the total 5.3 million offenses were against property, including burglary, theft, criminal damages and fraud.

\* Serious drug offense. In 1994, there were 17,569 reported offenses of trafficking in controlled drugs.

\* Crime regions. Nearly half of the total of 5.3 million notifiable offenses were recorded by the police in metropolitan police areas, which also had higher per capita crime rates than the non-

metropolitan areas. Rural areas had the lowest crime rates, while the highest rate was in Humberside, with 15,357 offenses per 100,000 population, followed by Nottinghamshire and Cleveland, with rates of 14,837 and 14,609 per 100,000 population, respectively.

## VICTIMS

### 1. Groups Most Victimized by Crime.

The British Crime Survey is a periodic crime victimization survey which has been carried out in England and Wales during the years 1982, 1984, 1988, 1992 and 1994. Some 10,000 respondents (14,500 in 1994) were interviewed in each of the years about crimes they suffered personally, and about crimes which their resident household had suffered.

The British Crime Survey revealed that the rise in crime between 1981 and 1993 was less steep than measures of recorded crime in the annual Criminal Statistics. The Surveys show that young males have the highest risk of violent victimization. In 1992, 8 out of 10 street assaults involved male victims. Mugging victims, however, were divided equally between males and females.

The largest number of domestic assaults involved partners, ex-partners or family. In 1992, nearly 50% of the assaults involving female victims were of this type, yet just over 1% of all women reported one or more incidents of domestic violence. Thus, women have less risk than men of violence, except in the categories of domestic assault and mugging.

The survey also examined repeat victimization. Persons are more likely to be repeat victims of violent crimes than property crimes. In the 1992 survey it was found that 33% of violent crime victims were involved in incidents more than once, especially female victims of domestic assault.

One-third of violent crime incidents against Afro-Caribbean and Asians were believed to be racially motivated. Most incidents of racial violence or threats were perpetrated by young men aged 16-21 who were strangers to the victim. Three-quarters of Asian victims were attacked by more than one offender. People of an Afro-Caribbean or an Asian background were more likely to be crime victims than white people. Afro-Caribbeans were more often victimized in their homes, while Asians experienced a higher frequency of vandalism and robbery. Despite their high levels of fear, the elderly are infrequent victims of violent assault. (Aye Maung and Mirrlees-Black, 1994).

The International Victimization Survey shows England and Wales to have a higher prevalence of victimization than the European average of 23%. The country had the highest rate of car theft

among the twenty participating countries at 3.3%, and the third highest rate of theft from cars at 8.7%. It had the sixth highest rate of burglary with entry and the tenth highest rate of the combined category of robbery and pickpocketing. As for sexual incidents, assaults and threats, England and Wales was eleventh highest at 3.5%.

## 2. Victims' Assistance Agencies.

Apart from specific helping agencies, such as Rape Crisis Centres, there is an umbrella organization for victims, known as the National Association of Victim Support Schemes. Its central organization has provided a powerful national voice to the victim movement and case-by-case help to victims referred by police forces. In 1990, there were 375 victim support schemes involving 7,000 volunteers and covering 97% of the national population.

The Criminal Injuries Compensation Board administers a compensation scheme for the victims of violent crime, whether or not the perpetrator is identified. Annual payments were over £140 million in financial year 1993-1994 for England and Wales, with 62,511 new applications, a 12% increase on the previous year. Restitution is available as a court sentence in its own right, and payment of restitution takes precedence over the payment of other financial penalties.

## 3. Role of Victim in Prosecution and Sentencing.

The victim has no direct role in prosecution, but private prosecutions are possible.

## 4. Victims' Rights Legislation.

The Victim's Charter was published by the UK Government in 1990. It sets standards to which the agencies of criminal justice should aspire. (For example, "the police should respond to complaints of crime as promptly as the circumstances require and allow....The police should try to give the name, station and telephone number of the police officer dealing with the case, so that the victim can check if he or she has questions about the investigation or court case .... The police should ensure that they know what loss or injury the victim has suffered - to pass on to the Crown Prosecution Service and court if someone is charged, in order to ensure that no victim loses their (sic) right to compensation by oversight ... the police should outline to the victim the investigatory process. They should aim to ensure that he or she is told of significant developments in the case particularly if a suspect is found, if he is charged or cautioned, if he is to be tried, and the result of his trial." (Victim's Charter, 1990: 9)) In February 1990, the United Kingdom ratified the Council of Europe Convention on the Compensation of Victims of Violent Crime, under which mutual arrangements exist for compensation to citizens of the

ratifying countries.

## POLICE

### 1. Administration.

There are 43 police forces in England and Wales, each responsible for a certain area of the country. Other police forces, such as the British Transport Police, the Ministry of Defence Police, and The Port of London Authority Police are responsible for the policing of particular installations. They are maintained and provided resources by central and local government agencies, with immediate oversight by local county committee councils and magistrates (police authorities). The Metropolitan Police Force polices London and is directly answerable to the UK Government Minister. The UK Government Minister is responsible both for crime control and other interior affairs.

The chief officer of each police force, the Chief Constable, is not answerable to anyone on operational matters, but is accountable to the committee on matters of efficiency. He or she must prepare an annual report on the work of the force concerned. Local police authorities select a force's most senior officers, subject to the approval of the Home Secretary. The Chief Constable can also appoint other officers. With the exception of the Metropolitan Police, all police forces are required to undergo statutory inspection by Her Majesty's Inspectorate of Constabulary.

Some common services to police forces are provided centrally. The most important of these is the compilation of criminal records information. Liaison with the International Criminal Police Organization (Interpol) is provided by the Metropolitan Police. Other central bodies are the National Drugs Intelligence Unit and a National Criminal Intelligence Service (NCIS). The Police National Computer records, inter alia, registration and relevant history of all motor vehicles.

### 2. Resources.

\* Expenditures. Expenditures on the police service in England and Wales for 1993/94 was £6022 million, an increase of 41 per cent since 1986/87.

\* Number of police. In 1994, there were 127,358 sworn police officers and 50,978 civilians employed by the 43 police forces. As of December 1994, 14 per cent of these officers were female and 1.6 per cent officers serving in England and Wales were of an ethnic minority. Recruitment campaigns for such officers periodically appear in the press.

\* Availability of police automobiles. The number

of motor vehicles used by police officers in England and Wales was 24,304, amounting to 19.4 per 100 officers.

### 3. Technology.

\* Electronic equipment. Each force has a computerized crime recording system and control and dispatch system.

\* Weapons. Arms are not routinely carried. However, recent developments in 1994 have led to pronouncements by Chief Officers in urban areas that arms will be carried more often in response to the perception that professional criminals now carry firearms. The standard weapon carried by all officers is a wooden staff or truncheon. A weapon capable of inflicting more harm, a side-handled baton, promises to replace the truncheon in the near future.

### 4. Training and Qualifications.

Police training lasts for 2 years, and has recently been reorganized.

### 5. Police powers and use of discretion.

\* Stop/searches and powers of seizure. The Police and Criminal Evidence Act of 1984 allows a police officer to stop, detain and search persons and vehicles for stolen goods, weapons, or other tools of crime, and they may set up roadblocks in certain circumstances. The officer must state and record the grounds for taking this action and record what was found. In 1995, the police recorded 690,300 stops and searches of persons and/or vehicles, an increase of 20 per cent over the previous year. Twelve per cent of searches led to an arrest.

The police have powers to enter and search premises and to seize and retain property. The police may seize anything which on reasonable grounds is believed to be evidence of the offense under investigation, or of any other, or which had been obtained following an offence.

\* Decision to arrest. Arrest may occur without a warrant where a person is reasonably suspected of having committed an arrestable offense, or a magistrate may issue a warrant.

\* Use of force. The Police and Criminal Evidence Act 1994 allows a police constable to use reasonable force if necessary to detain or search a person or vehicle. What is reasonable force will depend on the circumstances and the extent to which the citizen resists.

### 6. Suspects' rights.

\* Legal advice. One of the most important rights

available to those detained on the suspicion of committing an offence is the right to free and independent legal advice. Persons detained at the police station must be notified of their right to free legal advice by the custody officer. Legal advice can be obtained regardless of means, privately or through the Duty Solicitor Scheme.

\* Admissions. No national data is available on the proportion of suspects who admit the offence for which they have been arrested.

\* Right of silence. Suspects may opt to remain silent during interviews with the police. Under the Criminal Justice and Public Order Act 1994 however, the court, under certain circumstances, may draw adverse inferences where suspects exercise this right.

#### 7. Accountability.

The Police Complaints Authority, established in 1984, supervises the investigations of alleged serious misconduct by police officers and decides whether a breach of discipline should be charged. If a police officer is alleged to have killed or seriously injured a citizen, the Authority must oversee an investigation. The Authority will hand a case to the Crown Prosecution Service if a judgement is reached that a criminal offense may have been committed. Discriminatory behavior is an offense under the Police Discipline Code.

### PROSECUTORIAL AND JUDICIAL PROCESS

#### 1. Procedures.

\* Preparatory procedures for bringing a suspect to trial. If the police wish to offer a case for prosecution, they charge the defendant and hand case papers to the Crown Prosecution Service, which then reviews the evidence and makes a decision whether or not to prosecute. Currently, around 26% of all cases are discontinued by the Crown Prosecution Service on the grounds of either insufficiency of evidence or a judgement that it is not in the public interest to pursue a case.

Once in court, a defendant may be found guilty, acquitted, have the sentence deferred for up to 6 months, have an absolute discharge or be conditionally discharged on good conduct.

\* Official who conducts prosecution. The Crown Prosecution Service took over responsibility for prosecution from the police in England and Wales in 1986, and are currently under increasingly heavy criticism. The two problems which their introduction was intended to address were regional differences in rates of prosecution and the high

rates of directed acquittals in the Crown Court. However, both of these problems now appear to be worse than before the Crown Prosecution Service was introduced.

The Service has been accused of discontinuing winnable cases due to incompetence and for wasting police time by demanding the preparation of full case dossiers in advance of a decision to prosecute. In addition, the necessity to create administrative units within the police service to weed out cases before they are considered by the Crown Prosecution Service is seen as overly time consuming.

Finally, the Service is less accountable for its actions than the police or courts, a matter which has attracted increasing concern and criticism. The Serious Fraud Office, established in 1988, investigates and prosecutes the most serious and complex fraud offenses in England and Wales and in Northern Ireland. The SFO has itself attracted criticism for its failure to secure prosecutions in some notorious cases.

\* Alternatives to trial. Options exist for a court appearance to be avoided. This may be by a formal caution administered by the police, used disproportionately for young offenders, or by discontinuance of a case by the Crown Prosecution Service. A formal caution requires that certain conditions be satisfied, including the admission of the offense and the willingness of the offender, or his or her legal guardian if the offender is a juvenile, to proceed as the police wish.

A movement is currently under way to persuade the Government to permit legal aid for mediation procedures as an attempt to avoid the court process.

\* Pre-trial incarceration conditions. There are limits to the length of the remand period. In magistrates court trials, the defendant must not be in custody more than 56 days from their first court appearance to trial. If there is a committal for trial to the Crown Court, this must take place within 70 days of the first court appearance.

If a plea has not been taken within 112 days of committal the defendant is entitled to bail unless the court extends the limit. To do this properly, the court must be satisfied that the prosecution has acted as swiftly as was reasonably possible.

\* Bail Procedure. The police may release an accused person on bail. Under new provisions in the Criminal Justice and Public Order Act 1994 the police can attach bail conditions to a person's bail before the first court appearance. If bail is not granted by the police, a swift appearance before a magistrates court occurs. There is a

presumption in favor of bail under the Bail Act of 1974. The presumption for bail may be over-ridden on clearly defined grounds, such as the judgement that an accused will interfere with the administration of justice or abscond. There is a limited right of appeal against a magisterial decision to deny bail.

## 2. Rights of the Accused.

\*Legal advice is available to all defendants charged with an offense. Duty solicitors are on hand at the court to provide legal representation, or defendants, particularly those with prior knowledge of the criminal justice system, may use the services of a private solicitor before their appearance at court.

\* Assistance to the accused. Legal aid must be granted when a defendant faces a murder charge or where the prosecutor appeals to the House of Lords. Otherwise, complete or partial payment of legal costs is made available if the defendant is deemed to require such assistance after a means inquiry.

## 3. Outcomes

\* Proportion of guilty pleas at trial. In 1994, around 1.95 million defendants were proceeded against at magistrates' courts. Around one-half of these pleaded guilty at trial.

## JUDICIAL SYSTEM

### 1. Administration.

All cases first appear in magistrates' courts, which are also known as courts of first instance. The magistrates' courts decide if the nature of the offense is appropriate for that court and whether the parties consent to try the offense in that court. Alternatively, the court may decide to commit the accused for trial in the Crown Court.

It is possible for a case to be tried in a magistrates court and but sentenced in the Crown Court. That is, if the magistrates' court assesses the facts as meriting a sentence beyond its powers to impose, the accused may be convicted in the magistrates court but committed to the Crown Court for sentencing.

The Crown Court sits in approximately 90 centers in England and Wales. Judges, sometimes sitting with lay magistrates, adjudicate in these courts. Matters of fact are determined by a 12-person jury composed of people between 18 and 70 years of age. Verdicts may be delivered by a 10 to 2 majority, and guilt must be established beyond a reasonable doubt.

If convicted by a magistrates' court, a

person may appeal to the Crown Court against the sentence. Appeals from the Crown Court are brought to the Court of Appeal Criminal Division. If an important point of law is entailed, the appeal is then brought to the House of Lords. The Attorney General, who is a Government minister and has ultimate oversight of the prosecution process, may also refer a case to the Court of Appeal if a sentence is deemed too lenient.

## 2. Special Courts.

\* Youth Courts. Youth courts are specialized magistrates' courts that adjudicate cases involving defendants under 18 years of age. There are restrictions on the access of the public and press to such courts. The defendant and any other witnesses under 18 years old must not be identified. Arrangements also exist for child witnesses to give videotaped evidence to avoid direct court appearances.

## 3. Judges.

\* Number of judges. In magistrates courts, the bench of magistrates is usually comprised of 3 lay members. They are advised on points of law by a legally qualified clerk. In some courts, legally qualified stipendiary magistrates sit alone.

\* Appointment and qualifications. County advisory committees advise the Lord Chancellor on the appointment of justices. Attempts are made to represent various sections of the community, in terms of race, age, sex and occupational status. Following appointment, justices undergo two periods of training over twelve months, with both instruction on the duties of magistrates and practical exercises completed.

## PENALTIES AND SENTENCING

### 1. Sentencing Process.

\* Determining the sentence. Where defendants are found guilty at the magistrates' court, the sentence is set by the magistrate; at the Crown Court, the judge will determine the sentence.

\* Sentencing hearing. In the vast majority of cases the defendant is sentenced after the jury verdict, but in cases where the judge requests a pre-sentence report or further information, the defendant will be sentenced at a separate hearing.

\* Input into the sentencing process. Defence advocates usually attempt to reduce the sentence severity by informing the court of any mitigating circumstances. Pre-sentence reports provided by the probation service will often recommend an alternative sentence to custody which will be

considered by the magistrate or judge. Neither the crown prosecutor nor the victim participates in the sentencing process.

## 2. Types of Penalties.

\* Range of penalties. Absolute and conditional discharges and bindovers constitute the lowest level of sentences imposed. The numerically preponderant sentence is the fine, which is unlimited in the Crown Court and limited to £5000 on summary conviction. (An attempt under the Criminal Justice Act of 1991 to relate fines more closely to offender income was quickly abandoned after some well-publicized cases had resulted in large fines and vice versa for apparently trivial offenses.) Around 80% of offenders found guilty are fined.

An order for financial compensation to a victim may be imposed either as the totality of a penalty or in addition to a fine. Maximum amounts also exist for financial compensation. The probation order has historically been imposed as an alternative to sentencing, but is now itself a sentence. Community work of up to 240 hours, or a combination of probation supervision and community work may now be given, and more recently curfew orders have been imposed. A sentence of imprisonment may be suspended or may be imposed to begin immediately.

\* Proportion of pre-trial offenders incarcerated. In 1994, 69,200 persons received custodial sentences. Seventeen per cent of those found guilty of indictable offences were sentenced to immediate custody. The average sentence length of adults males received into custody in 1994 was 16 months.

\* Death penalty. For all practical purposes, the death penalty has been abolished in England and Wales.

## PRISON

### 1. Description.

\* Number of prisons and type. Prisons are segregated by sex and age, with young offender institutions housing persons under 21 years-old. As of November 1995, there were about 130 prisons, of which four were contracted out and run by the private sector. Prisoners are classified into one of four security categories, and must be housed in a prison with a security classification at least that of their individual security class. The Inspectorate of Prisons periodically writes reports on individual prison establishments and is often extremely critical of them. A series of prison riots in 1990, of which the most serious was at Strangeways in Manchester, has rendered

authorities extremely sensitive to any deterioration in prison conditions.

In England and Wales there are secure prisons, local prisons, closed and open training prisons, closed and open young offender institutions, and remand centres for men and women.

\* Average annual population. This was 48,983 at male establishments in 1995, and 1,979 at female establishments, the highest total ever.

\* Number of prison beds. At June 30, 1995 there were 50, 251 in-use Certified Normal Accommodation, creating a total excess of 796 (including those in police cells) of the annual average population in custody.

\* Population under sentence. As of June 30, 1995, there were 37,900 male inmates serving sentences in England and Wales, not including the remand population. As of June 30, 1995, the total female sentenced prison population was 1,480.

## 2. Administration.

Prisons are run by a Governor in accordance with prison rules set by Parliament. The Home Secretary is responsible for setting prison policy, whilst the Prison Service Executive Committee, headed by the Director-General, is the decisionmaking body which considers operational matters.

\* Number of prison guards. As of March 1995, there were 24,000 staff employed as prison officers. Of 826 prison officers recruited in 1994/5, 659 were men, 167 were women and 24 were from ethnic minorities.

\* Training and qualifications. New entrant prison officers undertake a training course for 9 weeks. The course includes interactive skills training, physical education, control and restraints training, and learning about suicide prevention, equal opportunities, and race relations.

\* Expenditure on prison system. In the financial year 1993-1994, the total expenditure on prisons in England and Wales was £1509 million.

## 3. Prison Conditions.

\* Remissions. Until recently, early release from prison was available only after two-thirds of the sentence was completed. Parole consideration occurred periodically after one-third of the sentence or 6 months, whichever was greater, was completed. Under the scheme currently introduced, parole release is being limited only to those inmates with sentences exceeding 4 years. Those inmates with shorter sentences have a presumptive

release when they serve 50% of their sentence. Longer-term prisoners released on a parole license are to be supervised by the probation service until 75% of their pronounced term of sentence has expired. Some sex offenders are supervised for the entire term of their sentence.

\* Work/education. A variety of prison jobs exist in England and Wales, including kitchen work, gardening, farming, and craft work such as weaving and woodwork. Some prisoners are employed in light assembly activities or laundry and cleaning jobs. Very low levels of pay are given.

Prisoners are able to take National Vocational Qualifications for 48 trades and occupations. Other certification up to degree level is available.

\* Amenities/privileges. Prisons vary in the extent to which they offer comprehensive exercise facilities. Most prisons have small prison shops and libraries. There has been a limited movement towards allowing prisoners to wear their own clothes.

There are now national guidelines on incentives and earned privileges for prisoners, which cover access to private cash, extra or improved visits, enhanced earning schemes, and community visits for eligible groups. The aim is to improve responsible behaviour and increase participation in constructive activities.

#### EXTRADITION AND TREATIES

\* Extradition. For the purpose of extradition, the legal framework in the United Kingdom distinguishes between different types of states. First are those designated as Commonwealth countries and Dependent Territories, where extradition is governed by the Fugitive Offenses Act of 1967. These states include: Australia, Bahamas, Barbados, Botswana, Canada, Cyprus, Dominica, Fiji, Gambia, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Nauru, New Zealand, Papua New Guinea, St. Lucia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Switzerland, Tanzania, Togo, Trinidad and Tobago, Tuvalu, Uganda, Western Samoa and Zambia.

Dependent territories include Belize, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Monserrat, Pitcairn Islands, St. Helena and the Turk and Cacos Islands.

Second, the U.K. has Extradition Acts which govern treaty agreements with the following foreign states: Albania, Argentina, Austria, Belgium, Bolivia, Chile, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Germany, Greece, Guatemala, Haiti, Hungary, Iceland, Iraq, Israel, Italy, Liberia, Luxembourg,

Mexico, Monaco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Romania, Salvador, San Marino, Switzerland and Thailand.

Finally, extradition between the Republic of Ireland and the U.K. is controlled by the 1965 Backing of Warrents Act, in accordance with the 1978 Suppression of Terrorism Act, which gives effect to the European Convention on the Suppression of Terrorism.

A current matter of active concern is the exchange of criminal records among countries of the European Union, particularly in connection with citizens of the Union seeking employment in other countries of the Union.

\* Exchange and transfer of prisoners. Information not obtained.

\* Specified conditions. Information not obtained.

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