INTRODUCTION

In Germany, neither white-collar crime in general nor the agencies which have to deal with this sort of criminality attract the interest of researchers any more: the days of great concern in governmental, police and academic circles with white-collar crime have gone since the 1970s — this is now the decade of organised crime (though going out) followed by a keen interest in terrorism (coming in).

However, white-collar crime is of course still there, it is a fact all over Europe on the national as well as on the transnational or supranational level and is not left unobserved by the relevant authorities. Only in December 2001 the German Federal Crime Office (Bundeskriminalamt) in cooperation with the Länder published its first ‘Federal Survey on the State of White-collar Crime’ (Bundeslagebild Wirtschaftskriminalität). In another report of 2001 dealing with the crime situation in Germany generally — the periodical security report published jointly by the Federal Ministry of the Interior and of Justice — the phenomenon of white-collar crime and its control on the police and state prosecution level is also dealt with in a lengthy chapter. This paper examines only the attitude towards sanctions in the work of the tribunals.

SERIOUS FRAUD: THE PHENOMENON OF WHITE-COLLAR CRIME

For an evaluation of the structure and efficiency of the special tribunals for white-collar crime it may be useful to present a rough picture of the scope and kind of this sort of crime in Germany as emerging from the police statistics for 2000:

- Registered economic offences: 90,000. This is only 1.5 per cent of all registered offences.
- Damage caused by registered economic offences: more than DM10.5bn (€5.5bn), forming nearly 60 per cent of all material damage resulting from known criminal activity.

It must be borne in mind that these are only the known figures relating to criminal economic offences regulated for in the criminal code and in approximately 200 other federal acts dealing with economic matters (e.g. tax offences/Abgabenordnung). In addition to these crimes in a technical sense there are numerous non-criminal violations of economic laws (comparable with regulatory offences in the English structure) which can be sanctioned in a simplified procedure by non-criminal fines of sometimes a considerable amount of money (called Ordnungswidrigkeiten). For example, all breaches of the Act against limitation of competition (Gesetz gegen Wettbewerbsbeschränkung) of 1957 are only regulatory offences of a non-criminal character. The bulk of these Ordnungswidrigkeiten however, though also considered as white-collar offences, do not go through the police-prosecution-criminal court channel but are dealt with by administrative agencies.

Thus, the overall scope, structure and development of economic delinquency as a whole cannot be established; all there is as a foundation is the known and registered number of criminal offences in the economic field. The statistic as such is not a reliable source. Not only (obviously) does it exclude unreported and unrecollected offences, but it does not contain those cases dealt with by the specialised state prosecution offices or by the finance authorities without involvement of the police.

Most of the statistical figures refer to small offences; cases considered to be more serious with a damage of more than DM1,000 (€500/£330) count only for about 10–15 per cent of the total. This sector of serious white-collar crime is dominated by receiving by deception (two-thirds) (Betrag), followed by tax avoidance, bankruptcy offences, fraudulent conversion/misuse of trust (Unnütze), offences in connection with the working place, offences against company law (GmbH Gesetz) and against the insurance laws (Reichsversicherungen). There has not been a steady rise in economic crime: in 2000, cases fell by 16.2 per cent compared with 1999, though this may have been due to changes in enforcement behaviour.
CRIMINAL JUSTICE INSTITUTIONS DEALING WITH WHITE-COLLAR CRIME

What happens to these registered serious white-collar offences? Criminal control of white-collar crime has always been and probably will be hampered by its structure and characteristic features:

- circumvention of criminal provisions by profiting from gaps in legislation;
- commission of offences by units/companies, while traditionally the criminal law is directed against and shaped for individuals;
- evidential difficulties;
- less impact of sanctions on the defendant who calculates them as economical costs etc.

These are serious limitations to social control by the criminal law. German criminal practice has been concentrating its preventive and reactive efforts against white-collar crime on two levels: (i) organisational specialisation of prosecution agencies and courts; and (ii) reform of the criminal law and procedure. The emphasis here is on the first leg of this approach, looking at the two sides of the topic: the trend to concentrate functions in economic matters in special courts or special chambers of courts on the one hand and the technical specialisation of prosecutors and judges who deal with economic matters in the respective agencies.

Specialisation at prosecution level

Already in the late 1960s some state prosecution offices began to install so-called Scharfpunktabteilungen, prosecution units which only dealt with white-collar cases and were equipped with specialised prosecutors. These had special knowledge of economic laws (company, civil, commerce, bankruptcy law etc), book-keeping and balancing analyses and continued their education in these fields. They were supported by business or political economists and experts in accountancy having practice experience in former professional activities. They acted as independent experts giving advice and opinion in complicated cases thus supporting the investigation. The centralised (supra-local/regional) units (which however have not been established in every prosecution office), are structured differently in the various Länder. It was a prerequisite that the head prosecutor should be ‘an especially well-equipped and active official’. At present there are about 30 such central white-collar prosecution offices, but the number fluctuates because new ones are established and others are closed down from time to time.

They cooperate with police units which are also specialised in the fight against white-collar crime; the police officers are trained in special courses for this kind of crime and are supported by economy auditing services (Wirtschaftsprüfdienste). The only evaluation study on the efficiency of these special white-collar crime prosecution offices dates from the early 1980s but is still quoted today. It is not fully in favour of such units: a striking result of their research was the length of the investigations of these special units in comparison with those of regular state prosecution offices. Even when taking in consideration the complexity of such cases, the time factor was surprising. One reason seemed to be the distance of the investigating office from the place where the offence was committed. In the only Land which had no centralised prosecution office at the time (Hessia), investigation turned out to be much faster. So it could be said that the concentration of technical equipment and know-how is a positive factor, though such concentration seems not to speed up investigations. This could be achieved better by extending and strengthening the economic crime units at the local prosecution offices. In addition to the aims of the organisational structure, procedural reform in 1975 tried to speed up the process in complex white-collar cases. Amendments of the Criminal Procedure Code relating to jurisdiction for search and seizure, special interrogation rights for the state prosecutor, concentration of judicial jurisdiction in the investigation process and other changes were meant to improve the situation.

Specialisation at judicial level

Legal position of the court

Following the establishment of concentrated prosecution offices, in 1971 court legislation (as amended in 1979) provided for chambers of special jurisdiction in white-collar cases on the level of the higher entrance courts, the Regional Court (Landgericht). These are not independent or separated tribunals but only form one of the specialised chambers of the general court, acting in the framework of the Landgericht like the chambers for offences against the state and penal chambers on this level. Under § 74c s. 3 Courts Act (Gerichtsverfassungsgesetz (GVG))
(GVG) the legislators of the Länder can establish such a specialised chamber for several regional courts of the area with the 'aim to further or speed up the criminal process in such cases'.

**Substantive jurisdiction**

Substantive jurisdiction of these concentrated chambers covers 'offences which are committed in the framework of actual or pretended economic activities and which — beyond damaging individual persons — adversely affect the economic life or can damage the general public and/or whose investigation makes special commercial knowledge necessary'.

The catalogue of offences which can be dealt with by these chambers is long, yet limited: the list, extended over the years, enumerates those offences which, by their very nature, are considered to form the bulk of white-collar crime in Germany. The jurisdiction refers to:

- conventional offences of breach of trust, usury, bribery offences and fraud (obtaining by deception);
- modern forms of fraud like computer fraud, subsidy fraud, credit fraud, capital investment fraud, bankruptcy offences, bribery in private business;
- numerous further offences under the patent, copyright and related laws;
- under illegal competition laws, shareholders act, company laws etc;
- offences under laws relating to matters of banking, deposits, stock exchange and credit, insurance laws and the securities trading act;
- offences under the Economic Crimes Act of 1954, the foreign economy law, financial, customs and tax laws (though not in connection with drug or car tax offences);
- offences under the wine and food laws.

Only for jurisdiction in those cases of the conventional offences listed first (above) the law requires 'that the evaluation and adjudication of the case requires that the court has special knowledge of the economic/commercial life' (s. 1(6) GVG). Beyond the general experience such special knowledge relates to methods that are only to be found in special economic circles such as complicated mechanisms of economic life that are difficult to understand or uncover, whose misuse characterises white-collar offences. If, however, even in complicated or extensive serious cases of fraud, breach of trust or bribery such special knowledge is not necessary in order to deal with the case, it must be adjudicated by the general penal chamber and not by the white-collar crime chamber.

**Composition of the courts**

Like the other chambers of the Regional Court the white-collar crime chamber as a trial court is basically composed of three professional judges and two lay assessors with full judicial functions (right to put questions, participation in discussion and decision on guilt and sentence). Only if less serious or less complex cases are heard can the court consist of two judges and two lay assessors.

The issue of lay assessors does not appear to be controversial in contemporary Germany. It is possible, however, to find voices which criticise the participation of lay assessors in such complex cases. As elsewhere, there are doubts as to the capacity of lay people to understand economic processes, accountancy connections and other facts to be evaluated during white-collar crime proceedings. Further disadvantages are seen in the generally lengthy proceedings of several months or even years, which cause professional burdens and personal strain for lay people. But proposals to have chambers without lay assessors or to choose specialised lay assessors for white-collar cases have not been taken up by the legislator. Another solution to the problem was sought in pre-instructing lay people. They are, under German law, not allowed to read the files (which would be impossible in most white-collar crime cases anyway), but there were demands, at least to instruct them about the indictment. This would have been a legal possibility, as expressly stated by the Federal Supreme Court. However, the guiding principles concerning criminal process and non-criminal fine process (Richtlinien für das Straf- und Bussgeldverfahren) expressly prohibit lay assessors from being informed before the commencement of trial by way of written indictment. There is the possibility of handing out a copy of the bare accusation (without reasons) during proceedings in extensive or complicated cases. So judges have a duty to explain complicated issues under discussion to lay people during proceedings and in joint deliberation/discussion of the judgment.

**Special training for judges**

From among the concentration of competences in specialised bodies, professional specialisation should be examined more closely.
German legal education is not particularly specialised: after finishing university studies and with additional practical training in several professional bodies like courts, prosecution offices, practising lawyers' chambers, administration authorities etc., by passing a second state examination, the young jurist can start any professional career without further training or specialisation. This means he/she can also become a judge. Beginners generally start in the lower courts or as state prosecutors, but can also stay for a while in the higher courts as a member of a civil or penal chamber/bench.

A leading position in a special economic chamber, however, will be entrusted to a judge only after several years of practice in the state prosecutor’s office where they first deal with general crimes and mass delinquency in order to learn the prosecution business. After one or two years they may move on to the tax or corruption units to familiarise themselves with white-collar topics. There are opportunities to attend special conferences offered by the Academy for Judges (Trier) on problems of economic offences; the young state prosecutor can also undergo further training in matters of balance sheet evaluation/analysis or related fields. This also covers international aspects.

Presiding judges of white-collar crime chambers are always chosen from the range of experienced state prosecutors; other members of the bench learn by ‘doing’.

Such further training is seldom compulsory: most judges take the initiative themselves to attend training conferences or courses. Expenses for this are generally paid by the authorities. A problem especially at prosecutorial level is the command of foreign languages: for such courses time or costs are rarely awarded even for personnel working in the white-collar or organised crime area with international references.

Lay justices however are not trained at all, nor are they chosen under aspects of special knowledge of economic matters.

**WHITE-COLLAR CRIME COURTS: CASELOAD**

The workload of courts depends on the decision of state prosecution officers to indict a case. Despite the principle of *compulsory prosecution* not all investigated cases reach the courts. After the investigation is finished (in practice also before this stage) the state prosecution basically has three options: (i) to indict; (ii) to deal with the case by written penal order (*Strafgebühr*); or (iii) to discontinue a case for reasons discretionary (§§ 153, 153a ff. Criminal Procedure Code/*Strafprozessordnung* (StPO)) or for other reasons (§ 170 p.2 StPO). Table 1 shows the number of investigations concluded in special white-collar crimes as enumerated in § 74c Courts Act (GVG) in comparison with investigated cases of regular crimes; the percentage of indictments or written penal orders in contrast to the percentage of discontinued cases of both categories and those discontinued for other reasons.

Between 1986 and 1996 the percentage of cases that made formal progress to the courts or were handled by penal order declined from 44 per cent to only slightly over 29 per cent. Compared with regular crime reaching the courts it becomes obvious that here, the decline was much slower and ended at 35.6 per cent. This means that regular crimes are substantially more likely to end up indicted or subject to penal order.

The rest of white-collar crimes and other crimes are discontinued either by a decision of the prosecution office under § 153 StPO because of pettiness (small or no damage, insufficient culpability of the offender) or by a decision approved by the court under § 153a StPO to discontinue after a fine is paid or other conditions are fulfilled. The table shows that after a fairly equal level in 1987 of 23.6 per cent of white-collar crimes and 23 per cent of regular crimes discontinued, the numbers diverge in the years after unification with 40.6 per cent discontinuation of economic crimes against only 27 per cent of regular crimes. This was not a constant development — discontinuance of white-collar cases levelled down to 28.2 and 26.7 per cent while the percentage of normal crime discontinuance rose to over 31 per cent. The decline of the rate of indictments in white-collar crimes is not balanced by a higher rate of discontinuance decisions with conditions; this special form of discontinuance in special white-collar crime cases has declined as well.

This is in contrast to the discontinuance for pettiness or other reasons like lack of evidence under § 170 s. 2 StPO. The latter has gone up from 37.3 per cent to over 44 per cent in 1996, while in the same decade the percentage regarding normal crime has ranged between 35 per cent in 1989 and 31.1 per cent in 1994, not showing so much difference.
over the years. Most of the 'other reasons' (80 per cent) are lack of evidence as to offence, offender, or circumstances or the act does not fall under a criminal provision.

Reasons for such special development of prosecution practice in economic crime cannot be taken from the statistics. These figures confirm earlier research results which showed that the central prosecution units declined to bring the greater part of cases to court under § 170 s. 2 StPO while indictments to the white-collar chambers occurred in only 14.8 per cent.

This gives rough statistical evidence of the fact that over 70 per cent of white-collar crime in Germany is not getting to the courts but is decided upon by the prosecution offices, generally after a deal has been reached.

**SENTENCING PRACTICE**

Earlier empirical research showed that in white-collar crime proceedings, only 24 per cent of the defendants were convicted while the rate for defendants indicted of other crimes was approximately 30 per cent. Of those 76 per cent who were not convicted 10.4 per cent were acquitted while all other proceedings were discontinued in court without final judgment.

Sanctioning practice in white-collar cases is difficult to establish, because there is no breakdown by sub-types. However, fines are the most common sanction, accounting for 80 to 90 per cent of the sentences for the regular white-collar offences contained in the Penal Code: bankruptcy, environmental offences, and mishandling of employers’ salaries. When a prison sentence is imposed at all it is mostly suspended: in less than 10 per cent of sentences

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of investigations concluded in special white-collar crimes</th>
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<tr>
<td></td>
<td>Terminated investigation proceedings</td>
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<td></td>
<td>Special white-collar crime investigations(^2) (WCC) N</td>
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<tr>
<td>1986</td>
<td>9,150</td>
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<tr>
<td>1987</td>
<td>11,649</td>
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<td>1988</td>
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<td>1996(^4)</td>
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1 Discontinuance under §§ 153, 153a, 153b, 153c, 154, 154b, 154c, 154d, 154e StPO; 45., 47 Juvenile Court Act/ Juengergerichtsgesetz (JGG); § 37 Drugs Act/Betäubungsmittelgesetz (BtMG) by the State Prosecution Office.

2 Special white-collar crime investigation proceedings concerning misdemeanours as defined in § 74c Abs. 1, Nos 1–3, 5 and 6 GVG or misdemeanours under §§ 266a, 283b StGB.

3 Other regular proceedings are all finished investigation proceedings without the proceedings in special white-collar-crime cases.

4 ‘Old’ Länder plus Berlin since 1993.
for offences that account for economic crime was the imprisonment unconditional. Out of the additional penalties contained in the Penal Code only prohibition to work in one’s profession (§§ 70 ff. Criminal Code/Strafgesetzbuch (StGB)) is of certain significance, though the preventive potential of this measure is considered to be high. Forfeiture and confiscation of assets and objects however (§§ 73 ff. StGB) are used more often (food and wine laws, copyright law). Also noteworthy is the fine against collective entities for breaches of competition law. Under § 30 Regulatory Offences Act/Ordnungswidrigkeitsgesetz (OWiG) the amount of the fine can be three times as high as the advantage reached by the offence or violation of regulatory rules. (Examples are fines of DM284m for some producers of power cables who entered into a cartel, or similarly for a company of traffic signal producers, fines of DM3.7m).

A characteristic of the economic chambers is the generally lower tariff than that found in judgments of the regular courts, in particular when one compares the penalties after a full trial and those that are the consequence of a guilty plea. The inconsistency is most striking.

GUilty Pleas AND THE pRACTice Of DAlEs
In practice, deals concerning decisions in criminal cases are an established reality in the process of adjudication of justice, though how often they occur is not known (and not known probably in aggregate form even by practitioners): this is true both of general crime proceedings and also concerning the white-collar crime field. In white-collar cases (as in cases of organised crime) it is prevailing practice now. Sixty per cent of the medium serious economic offences are disposed of by guilty pleas and deals, while in proceedings of serious cases it is now the rule. Politicians call it a ‘necessary evil’ or ‘a problematic but daily practice’.

Formerly the initiative for such deals came from defence counsel: by bombarding the courts with all sorts of applications for more evidence, postponements, disclosure or removal of judges for reason of bias etc they made it very difficult for the courts to dispose of a complicated case in reasonable time. Nowadays the proposal is frequently made by the judges themselves: prescription periods run out, evidence is difficult to collect — so in order to achieve at least a sanction against the defendant(s) a deal is asked for.

Reasons for this trend are evident: criminal investigations against enterprises cause damage to reputation and turnover; sensational, incorrect or imprecise media reports on investigations de-motivate staff and damage the working atmosphere; proceedings are long and generally involve several persons; the subjects of the proceedings are complicated, generally embracing civil or administrative-public law issues and referring to operational questions; the extension of the ambit of financial criminal law by new forms of fraud and breach of trust offences as well as criminalisation of abstract endangerment, preparatory acts or attempts, and finally the constant overburdening of prosecution agencies and courts make deals an attractive alternative for all participants in the proceedings. The consequences of the extension of the ambit of criminal offences in the field of white-collar crime make investigations more complicated and time consuming and less efficient regarding the amount and value of evidence. On the other hand the accused has a very strong interest in finishing proceedings as fast as possible and cannot afford long-lasting trials, high expenses for his defence or negative media reporting.

Tools for such a practice of avoidance of a main trial are offered by § 153a StPO, which allows the prosecution to discontinue proceedings in cases of misdemeanours under certain conditions. The court and the defendant have to consent to this kind of disposal. Main prerequisites are: the guilt should not be serious and the public interest in the state prosecution should be met by fulfilment of certain orders like reparation of the damage caused by the criminal act (no. 1), payment of a certain amount of money to a charitable institution (no. 2), doing other acts of value for the community/society (no. 3) . . . (nos 4 and 5 are not relevant in white-collar cases). In economic crime cases it is mostly the payment of a fine, sometimes of a considerable amount, by which a formal indictment can be avoided after a deal has been achieved.

It is obvious that under such circumstances the presumption of innocence is sacrificed on the altar of efficiency. Even innocent suspects may accept such a deal when the evidential situation is not sufficiently favourable for them and a high penalty is to be expected if they reject the deal and are convicted. The interest in procedural truth has become a matter of consensus amongst the parties involved.
What matters is that there should be a result with which the participants can live: it is much easier to live with a reduced penalty (one-third reduction) than to endure a trial of several months with an uncertain result.24

The main areas for such deals are investigations against members of organised gangs with transnational implications. Further, those professions which need a licence for practising — accountants, lawyers, tax consultants etc. — are also inclined to plead guilty and get their deal. Since the fact of being indicted (irrespective of conviction) has to be reported to their professional chamber where it will cause a professional investigation, deals to finish criminal investigations without indictment are generally most welcome. Another field is simultaneous investigation against an individual as an organ of a legal person and against the legal person as an alternative suspect. Indictments against the individual can be avoided if the enterprise agrees to pay a fine.25

One has to admit that such practice is not without dangers: the person involved comes under heavy pressure from the prosecution or the courts to consent to such a deal even when innocent. Only very few suspects resist the offer of a deal and wish to go through a full procedure. This carries the risk of a higher sentence because after a guilty plea the penalties are generally reduced to two-thirds of the regular tariff.

Another misuse of the discretionary possibility of § 153a StPO is the fact that the prosecution proposes deals even when they should discontinue for other reasons under § 170 StPO for lack of evidence. Proposing not too high a fine, the prosecution hopes that the suspect will accept the offer in order to free himself from the burden of investigation and trial or penal order. In such a case the deal has turned into a form of coercion (e.g., bribery offences — §§ 331 ff., § 12 UWG and § 299 StGB, internal corruption, fraud regarding tenders — § 298 StGB; insolvency provisions §§ 283–283d StGB, illegal insider trading under § 38 WpHG, new provisions on environmental criminal law with heavier penalties, § 370 Tax Law/Abgabenordnung (AO) creating a prohibition to deduct bribery payments from tax declarations etc).

Further conditions inducing a deal under § 153a StPO could be the fact that a restructuring of the enterprise has taken place or is under way, that employees undergo training or have been moved to other units of the firm. A lapse of time of more than five years or more between investigation and indictment, the very late granting of access to files or the omission to limit the number of issues for indictment (§§ 154, 154a StPO) can also lead to discontinuation. Such a decision can still be taken during the so-called intermediate phase of procedure immediately before the opening of the trial is decided upon.

Another way of avoiding lengthy trials is the use of a written penal order imposing a fine. This disposal without a trial is efficient when no evidential problems exist and the taking of evidence in court is superfluous.

To summarise: the practice of procedural deals is now considered in practice as a legitimate measure to administer justice. White-collar crime could not be managed without it. Defence counsel are in favour because it saves first offenders in high positions from negative publicity and lengthy trials. The courts are relieved and public resources are saved in cases where the discovery of the truth does not serve any other aim but itself.

On the other hand the structure inhibits final adjudication on important legal problems in doubt, and interpretation of new legislation, and thereby avoids the crystallisation of important boundary-setting judgments.

OTHER EUROPEAN MODELS

Shortage of space allows little scope for reviews of procedures in other European jurisdictions, but though there are first steps towards specialisation in dealing with white-collar crime in some countries, only in France can a full structure of specialised police, state prosecution and courts similar to those in Germany be found.

France

France too created a special category of chambers in 1975.26 The complexity of financial and economic matters and the cleverness of the offenders made such special institutions necessary. In each area of appellate courts one or several tribunaux de grande instance were installed for such matters. Special procedure rules were enacted27 which corresponded with the special jurisdiction in economic and financial matters enumerated in Article 705 Code de procédure pénale (Cp). The competence covers both judicial inquiry/instruction and adjudication. So there are specialised juges d'instruction as well as specialised
trial judges. In order to improve the judicial handling of white-collar crime, the judges are assisted by specialised persons; these have no judicial functions but have access to the case files when fulfilling their tasks and are obliged to keep professional silence. In certain specialised chambers economical and financial pools were established, thus concentrating modern logistic means and forming multidisciplinary groups which are at the disposal of the specialised chambers. But the tribunaux de grand instance consist only of learned judges; no lay justices are part of the bench.

The offences which fall into the jurisdiction of these chambers are:

- several offences contained in the Code pénal, such as money laundering, bankruptcy, misuse of trust, fraud and fraudulent offences (escroquerie Art. 313–4 n°), corruption, peddling of influence, illegal taking of interest etc;
- violations of provisions relating to manufacture, trade and arts;
- offences of fraud and untruthful/mendacious publication as well as financial and customs offences and those relating to financial relations with foreigner which also cover transnational crime on the level of the EU and complex fraudulent actions outside the EU by international organisations;
- offences in the field of banking, financial institutions, stock exchange and credit;
- offences relating to social and commercial society as well as bankruptcy-like offences;
- offences relating to construction and town planning.

However, not all offences committed in these fields are dealt with by the special chambers: as in Germany, they are reserved for the very complex cases and offences connected with them, in particular receiving of sums gained through the offence (aka money laundering).

By law of 1994 — before the report of the Roskill Committee — the idea of specialisation was extended to the prosecution level, recognising that a specialised prosecution authority can deal with complex financial investigations much more efficiently. Also at police level, specialised personnel are used to support the police judiciaire in their duty to detect and ascertain the crime and its circumstances, to collect and prepare the evidence and to compose the protocol on the offence. The legal position and function of these fonctionnaires en matière économique is most complicated and diligently circumscribed by laws which cannot be laid out here. 29 French law also has methods to deal with criminal cases in a less complex way than by full investigation and lengthy trial: comparution immédiate and convocation par officier de police judiciaire are such procedures for speeding up the process. Though white-collar crimes are not expressly exempt from being disposed of by these processes, the complexity requirement which earmarks them for adjudication by the special economic chambers in practice excludes them from such speedy treatment. 30 The specialised prosecuting officer cannot therefore propose a composition pénale and the specialised jurisdiction cannot be delivered by a single judge.

Austria

In Austria there are specialised criminal chambers but they only deal with financial/tax cases (Finanzauswertungs- oder Steuerstrafverfahren). On the level of state prosecution there are no expressly specialised units but internal organisation provides that certain state prosecutors are in charge of white-collar cases. Special units in the police were closed down in January 2002 for political reasons, apparently to reduce costs. There is now a unit in the Federal criminal investigation office (Bundeskriminalamt/BKA) responsible for white-collar crime. In sum: in Austria, the fight against white-collar crime has mainly caused substantive amendments to the criminal law and new criminalisation but no organisational changes are apparent.

Italy

In contrast to France, Italy, despite the acknowledged existence of a vast field of white-collar crime and an intense discussion of the substantive economic criminal law, does not care much about organisation of special courts or state prosecution offices. White-collar crime is no procedural subject at all. There are neither special investigative methods for this kind of crime nor different procedural rules in order to manage serious cases of economic crime more efficiently. A special jurisdiction or special courts have not been created; special units on prosecution level have only been formed in the state prosecution office in Milan. This was done as an organisational measure out of necessity in the 1980s. However, on the law enforcement level the Guardia
della Finanza acts under the umbrella of the Ministry of Economic Tax and Financial Matters. Under the supervision of the state prosecution office, this authority undertakes all investigations into tax crime, money laundering, political corruption and bankruptcy offences. The personnel here appear to be highly specialised. Otherwise there is evidently no special training or experience.

Spain

Spain, however, is different again. Here there is a slightly more developed specialisation at prosecutorial level; the Fiscalía Especial para la Represión de los Delitos Económicos relacionados con la Corrupción was established in 1995. This authority investigates:

(a) offences against the public finances (subversion fraud, social insurance fraud, tax evasion etc), smuggling/customs offences, and control of money changing;

(b) misuse of insider knowledge, prevarrication, breach of trust/mismanagement in relation to public funds, fraud and illegal charging of fees, bribery and influence peddling, and some others.

But this special prosecution authority only intervenes directly in penal processes when the Fiscal General of the State discovers ‘special significance’ in the case. In the structure of the prosecution office, a special Unit of the Judicial Police has been established together with several professionals and experts as are necessary for permanent or occasional support (Art. 18 ter, Law 50/81). Special courts or special chambers with jurisdiction in the field of economic crime do not exist, but there is a de facto centralisation of important and complex white-collar crime cases in the Audiencia Nacional in Madrid for those offences which are committed by groups or organised gangs, or which have or may have effects on the security of trade and commerce, on the national economy or can cause financial disadvantage for a great number of people in the area of more than one Audiencia (provincial court). Under these conditions, the central Audiencia Nacional has territorial jurisdiction over the whole of Spain for certain offences, amongst them white-collar crimes like the falsification of money, offences concerning control of exchange, fraudulent behaviour and schemes to alter prices, frauds relating to food or medicine (Art. 65 1(b) and (c) Ley Organica de Poder Judicial). The judges of this central criminal court are not expected to have special knowledge of commercial, financial, or similar matters. There are courses and seminars offered on subjects of economic crime in the Schools for Judges/Escuelas Judiciales, but the judges do not undergo a special training before sitting in white-collar crime cases such as the programmes offer for judges and prosecutors working in the field of criminal administration for juveniles.

CONCLUSIONS

As can be seen there exist several normative models of specialisation and centralisation of judicial or prosecutorial bodies. Empirical material however about the workings of these bodies is scarce. So there is no basis for an overall evaluation of the various models from the point of view of efficiency.

The difficulties caused by the sheer volume of economic cases, by causal and evidential complexities, by the internationalisation of offending, by modern forms of economic crimes connected with the phenomenon of corruption and its problems of invisibility apparently cannot be solved by special courts, judges, prosecution officers or police alone. Procedural reforms are necessary in most countries to modify certain principles governing the criminal process: the principle of obligatory prosecution, theoretically still adhered to in Germany, has already been replaced in practice by discretion and the prosecutorial power to adjudicate white-collar cases by their own means of discontinuance after a guilty plea. The principles of oral hearings and immediacy are applied very strictly in Germany and Spain as in Great Britain, demanding that the evidence is put orally before the court. Whether these features of a liberal criminal process can be upheld under modern conditions is another question. But that is a wider issue that the technical approach to law reform seeks to avoid.

REFERENCES

(22) For example, bribery offences §§ 331 ff. StGB; § 12 Unfair Competition Act/Gesetz gegen unlauteren Wettbewerb (UWG), § 299 StGB; insider trading, fraud regarding tenders § 298 StGB; insider trading violation §§ 283-283a StGB; illegal insider trading under § 38 Wertpapierhandelsgesetz (WpHG); new provisions on environmental criminal law with heavier penalties; § 370 AO creating a prohibition to deduct bribery payments from tax declarations etc.
(27) 'De la poursuite, de l'instruction et du jugement des infractions en matière économique et financière', Art. 704, Code de procédure pénale (Cp). This was the formation of a first body of economic criminal law.
(29) See for details Delmas-Marty and Guindicelli-Delage, ref. 26 above, p. 94 ff.
(30) None of the violations listed for speedy procedures in Arts 41-2 and 398-1 Cpp is at the same time contained in the catalogue of offences in Art. 704 which provides for specialised adjudication, see Delmas-Marty and Guindicelli-Delage, ibid., p. 97.
(34) For details see Gutiérrez Zarza, ref. 32 above.

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