

Reforms and Innovations in the German Public Prosecution System: A Contemporary Overview

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Abstract:-

Germany boasts one of the world's most exemplary public prosecution systems. As a modern democratic country that respects human rights and the principles of natural justice, Germany operates under a Civil Law framework with an inquisitorial system for criminal justice. The judiciary is fully independent and has the power of judicial review to examine decisions by the executive and legislature. The German constitution ensures the separation of powers among the judiciary, legislature, and executive, and protects human rights and natural justice principles.

Historically, German courts held investigative powers, but these responsibilities now lie with the Independent Public Prosecution Office. This office objectively investigates cases, gathering both inculpatory and exculpatory evidence, and considers all relevant circumstances affecting the trial's outcome. It is empowered to handle minor offenses (Vergehen) and can dispose of cases before they reach court, thereby reducing the courts' workload.

The Public Prosecution Office is obliged to investigate all applications for criminal proceedings. It conducts preliminary investigations, which may involve explicit methods like interviews and interrogations, as well as implicit methods such as surveillance and wiretapping. After collecting all evidence, the office decides whether to drop the case or indict the accused.

As the guardian of the rights of accused persons, witnesses, and victims, the Public Prosecution Office ensures no evidence is gathered by infringing on the accused's rights. If evidence is collected improperly, the prosecutor can discard it. The office also ensures the accused's right to a fair trial before an impartial judge.

During investigation and trial, an accused person in Germany may have three different statuses: suspect, accused, and defendant. A person is initially a "suspect" if believed to be culpable. They become an "accused" when the prosecution decides to indict them. If the court decides to proceed with the case, the accused then becomes a "defendant."

1. Introduction

Germany's public prosecution system is integral to its inquisitorial legal framework, which emphasizes thorough investigation and impartiality. The system is characterized by the role of public prosecutors (Staatsanwälte), who operate within the judiciary and are responsible for investigating crimes, supervising police investigations, and deciding whether to bring charges against suspects.

Public prosecutors in Germany are quasi-judicial officials, working closely with investigating judges to gather and evaluate evidence. Their primary objective is to determine the truth, rather than simply securing convictions. This impartial stance is a hallmark of the German system, ensuring that both inculpatory and exculpatory evidence are considered.

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Once an investigation is complete, the public prosecutor decides whether to file an indictment, and if so, they represent the state in court. Throughout this process, they maintain a commitment to legal objectivity and justice. This system reflects Germany's legal tradition of thoroughness and fairness, aiming to balance the rights of the accused with the needs of public safety and order.

2. History of public prosecution in germany:

In German criminal procedure, the public prosecution office is a relatively old established institution. The public prosecution offices have been working in Germany since 1845 even during the times of Imperial Germany. Prior to establishment of the Public Prosecution System, the Courts were all in all in. The Courts used to have their own police. That was called the court police. The investigations were conducted by the court police. Therefore, the Judges were so powerful that they can initiate criminal proceedings on their own. They had administrative control over the court police. They had subjective control over the investigative proceedings. The concentration of powers in hands of single authority induced them to prefer corrupt practices. The Judicial system needed immediate reformations. Therefore, the Emperor in order to reform the judiciary, introduce a new department that is called the Independent Public Prosecution Office. The executives powers, which were being exercised by the Judiciary in shape of court police, had been delegated to the new establish department, the public prosecution office. Henceforth, there become three power centers in the "GCJS". First and second were the courts and police respectively as usual. The third was the public prosecution office. The German adopted the French model of Public Prosecution. During the early years of 19th Century, France had applied the doctrine of separation of powers in the administration of criminal justice system. The basic principle of the doctrine of separation of powers is that concentration of powers into one hand leads to corruption and tyranny. As the French Courts were enjoying the investigative, prosecutorial and judicial powers simultaneously so it resulted into corrupt practices. Hence, the French separated the departments of investigation, prosecution and judicial proceedings. French separated the concentration of powers and divided it into three different independent organs which are police, prosecution and court. The success story of the French encouraged the German who were doing the same mistake in past². The German adopted the French model with improvisation. Prior to judicial reforms, German Courts used to have their own police that was called court police. Now, the court police in Germany is converted into independent public prosecution office. It was also demanded by the German public, being unhappy with the performance of Judges, as they were investigator, juror and executioner at the same time. The judges were corrupt, inactive and inefficient because of concentration of powers. Hence the German Emperor was initially concerned only with disciplining the courts started to develop a separate prosecution agency³. Thereafter it became the need of time.

After adopting legal reforms, independent Public Prosecution was established whose role was not limited to watch the interest of victim or complainant but also to safeguard the rights of the defendant or accused. This unique feature of the Independent Public Prosecution in Germany was distinguishable from the rest of the world⁴.

3. Present public prosecution model of germany:

² Goldstein, Abraham S., and Martin Marcus, "The Myth Of Judicial Supervision In Three Inquisitorial Systems: France, Italy, And Germany" [1977] Vol. 87 Issue No. 2, *The Yale Law Journal*, PP. 240-283

³ Noguti, Mariana Y., Eduardo Vellasques, and Luiz S. Oliveira, "Legal Document Classification: An Application To Law Area Prediction Of Petitions To Public Prosecution Service" In 2020 International Joint Conference on Neural Networks (IJCNN) PP. 1-8. IEEE, 2020. Available at <<https://arxiv.org/pdf/2010.12533.pdf>> accessed on 19 November 2023

⁴ Ma, Yue., "Exploring The Origins Of Public Prosecution" [2008] Vol. 18 Issue No.2, *International Criminal Justice Review*, PP.190-211

Presently, Germany has 16 independent states having an independent legal set up except foreign affairs and defense. Therefore, each state has its own public prosecution system at State level. Moreover, the Federation has its own separate Federal Public Prosecution which deals with federal matters and federal offenses. In this way 17 public prosecution offices are working in Germany⁵.

As per German Criminal Procedure Code, there must be a prosecutor in each criminal court. Accordingly, in Local Courts, Regional Courts and Higher Regional Courts, concerned State is responsible for appointment of prosecutors therein. While in Federal Court, the Federation is competent to appoint prosecutors. Minister of Justice of the Federation is competent to appoint suitable lawyers as prosecutors upon the recommendation of Federal cabinet.

Federal Public Prosecutor General is head of the Federal Public Prosecution Office. The Federal Public Prosecutor General has its head office at Karlsruhe. It deals with federal matters in Federal Courts. The Federal Public Prosecutor General is principle law officer of Germany. Federal Prosecutor General has associates to assist in performing of his functions. These associates are called Federal Prosecutors.

Similarly, each State has its own prosecution system. The state prosecutors serve in Local and Regional courts as per their designations. The State, called as “Lander” in Germany, has its own public prosecution office. The head of state’s prosecution agencies are called senior public prosecutor or chief public prosecutor. The State’s Minister of Justice appoints experienced lawyers on the recommendations of State’s Council (State’s cabinet) as prosecutors. There is no senior or subordinate relation between Federal and State prosecuting agencies. However, all of them work in the separate domains⁶.

The Chapter X of the Constitution of Court Act of Germany deals with the prosecution the relevant provision is reproduced here as under:

“A public prosecution office should exist at each court.

(1) The official duties of the public prosecution office shall be discharged:

1. at the Federal Court of Justice by a Federal Prosecutor General and by one or more federal prosecutors;
2. at the higher regional courts and the regional courts by one or more public prosecutors;
3. at the local courts by one or more public prosecutors or officials of the public prosecution office with a right of audience before the local courts...”⁷

The plain reading of above sections of the GVG makes it abundantly clear that there must a prosecutor in each court at all levels. The Federal Court shall have Prosecutor General along with his associate federal prosecutors. The Higher Regional Court, Regional Court and Local courts shall have chief prosecutors and their associate prosecutors. However, at Local Court, the official of public prosecution office having right of audience may also represent the State in criminal proceedings.

4. Powers, duties and functions of prosecutors:

The prosecution has a cardinal role in administration of criminal justice system in Germany. From the registration of a case, till the culmination of investigation and during the trial proceedings; the prosecutor plays a vital role at all stages. The prosecutors in Germany are called Apolitical Legal Technocrats they are also named as Second Judges. The public prosecution is the supervisor of the whole investigation proceedings. Although the

⁵ <https://www.generalbundesanwalt.de/EN/Home/home_node.html> accessed on 15 April 2023

⁶ Shawn Maria Boyne, *The German Prosecution Service- Gaurdian of the law?* (Springer 2014)

⁷ Ss. 141 & 142 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG)

prosecutors come under the general supervision of Ministry of Justice and they are a branch of Executive but they are absolutely independent internally and externally. Neither the courts nor the executive authorities can directly interfere into the powers, duties and functions of the prosecution. They have positive role in judicial proceedings as well. The German prosecutors make some decisions of semi-judicial nature. For example, drop of criminal proceedings, penal order, conditional discharge, medical examinations, forensic examinations, and many others. That is why, they are called “Second Judges” but they are civil servants of the Government⁸.

It is not easy to become a prosecutor in Germany. It takes a long journey of legal education and training. Only successful candidates having higher grades are selected for these appointments. Appointments are made by ministry of justice which is a political forum but their recommendations are made by judicial recruitment committees through a transparent, fair and rigorous selection process. The appointment of a prosecutor is for life time made by a ruling party. Although they can be removed or be compulsory retired by the Government but there are seldom such examples that the prosecutors have been terminated by Government even by opposition parties. It shows a clear confidence and trust in prosecutors’ selection process and their professional performance⁹.

The German Public Prosecution has multiple options to deal with crime. Whenever a complaint is received either directly to public prosecution office or through other sources, it is incumbent upon public prosecution office to investigate the facts and determine whether there are sufficient indications to proceed further. The Public prosecution office can discontinue or suspend the proceedings. If the prosecution office is of the opinion that there is not sufficient evidence to open main proceedings or the alleged offence is of minor nature and can be disposed of otherwise. It can also suspend the proceedings till the discovery of further evidence. If the public prosecution does not dismiss or discontinue the proceedings as there is sufficient material is available against the accused but the offense is of petty nature having punishment less than one year imprisonment, the public prosecution office may request for penal order before the Local Court without opening main hearing. The public prosecution office may also conditional dismiss the proceeding in minor cases if the offender is ready to retribute the loss of complainant. In this way, the German Public Prosecution may adopt these alternative routes to dispose of the cases prior to involvement of court including mediation between accused and victim. If the public prosecution office finds that the criminal act is not of serious nature it may recommend for private prosecution. But in serious cases, where sufficient material is available the prosecution formally present the bill of indictment and press public charges against the accused and request the court for main hearing of the case. Thereafter, the accused may be acquitted or convicted by the court after concluding the whole trial proceedings¹⁰.

5. Registration of criminal case in germany:

The office of public prosecution is the main gate of the criminal justice system in Germany. The ignition switch is in hand of public prosecutor office which has plenary powers to initiate criminal proceedings. No one enter into criminal proceedings without knocking the door of public prosecutor. The prosecutor can receive direct complaints from the victim or through other sources including Police or even court can transmit application to the

⁸ Albrecht, Hans-Jorg., “Criminal Prosecution: Developments, Trends And Open Questions In The Federal Republic Of Germany” [2000] Vol. 8, *Eur. J. Crime Crim. L. & Crim Just*, P-245

⁹ Ross, Jacqueline E. “The Place Of Covert Surveillance In Democratic Societies: a Comparative Study Of The United States And Germany” [2007] Vol. 55 Issue No. 3, *The American Journal of Comparative Law*, PP. 493-579

¹⁰ Gwladys Gilliéron, ‘*Comparative Overview of Position, Powers, and Accountability of Public Prosecutors. Public Prosecutors in the United States and Europe: A Comparative Analysis with Special Focus on Switzerland, France, and Germany*’, (Springer 2014) PP.313-331.

prosecutor for registration of case. The relevant provisions of the German Criminal Code (Strafprozessordnung, StPO) are as under:

“Section 158. [Criminal Informations; Applications for Prosecution]

(1) Information of a criminal offense or an application for criminal prosecution may be filed orally or in writing with the public prosecution office, with authorities and officials in the police force, and with the Local Courts. An oral information shall be recorded in writing....”

The plain reading of above section made is abundantly clear that applications for prosecution or information of a criminal offense may be reported to public prosecutor office, police authorities or Local Court. If the information is given orally it shall be recorded in writing by the concerned authority¹¹. All applications received either by police or other authorities shall be ultimately transmitted to public prosecution office for further proceedings¹².

From the above section, it can be concluded that a complainant, victim or any other person having knowledge of an offence may report it to police, prosecutor or court. Whenever, an offence has been reported to police, prosecutor or court it shall be given a case number. That case number shall be referred for future reference.

There are certain offenses which are of private in nature for example insult, property damage or tress pass. In these kind offenses public prosecution office must need a written consent from the actual victim. These offenses are called “Antragsdelikte”. If such offence has been reported by a third person other than the real victim then it is incumbent upon the victim to provide a written consent within 3 months from the date of occurrence to the prosecution office. Otherwise the prosecution may refuse to proceed further unless and until public interest is involved.

Whenever a complaint is received in police, prosecutor or court it becomes a public asset. The prosecutor office shall have right to prosecute even the complaint is withdrawn by the complainant or victim if there is sufficient public interest is involved. Hence, it means that in Germany the prosecutor office shall have authority to prosecute any case even without the permission of the victim whenever there is question of public interest is involved. On the top it, the prosecutor may sou moto initiate criminal proceedings even without formal complainant. The prosecutor may initiate criminal proceedings if he acquires knowledge through either source. Unfortunately, in Pakistan the major offenses like murder, hurt etc are not prosecuted when the complaint is withdrawn¹³. The prosecutors in Pakistan are helpless if the complainant compound the offence of murder. Even in case of public interest the prosecutor can do nothing. Secondly, in Pakistan, a number of criminal cases are not even registered by the police in spite of written applications¹⁴. If a police officer does not register a case, it amount to drop of case without involving the court and prosecution and it is not warranted by the law.

6. Power to open investigation and prefer public charges:

After the receiving of the application or information second step is to decide about the opening of investigation and preferring public charges. In Germany, all applications and information must be thoroughly probed and investigated by the public prosecution office. The relevant section is reproduced here as under:

¹¹ S. 158 Criminal Code (Strafprozessordnung, StPO)

¹² <<https://docplayer.net/11647960-Criminal-justice-in-germany-by-jorg-martin-jehle.html>> accessed on 16 April 2023

¹³ S. 345 of Criminal Proscedure Code, 1898, (the murder and hurt are compoundable offences)

¹⁴ Raza, A. and Khan, A., “Mechanism of Crime Reporting in Pakistan: A Critical Study” [2023] Vol. 4 Issue No.2, *Human Nature Journal of Social Sciences*, PP. 66-81

Section 160. [Investigation Proceedings]

(1) As soon as the public prosecution office obtains knowledge of a suspected criminal offense either through a criminal information or by other means it shall investigate the facts to decide whether public charges are to be preferred.

(2) The public prosecution office shall ascertain not only incriminating but also exonerating circumstances, and shall ensure that such evidence is taken the loss of which is to be feared....¹⁵

It clearly shows that the Prosecution Office is authorized and responsible for receiving criminal complaints and to make decision for entering into investigation either through them or through other agency including police. But conversely, in Pakistan the Police are the authority to receive the applications and further more the police is also empowered to decide to enter into investigation. It means that Police can cancel the case without investigation¹⁶. This is main difference between German and Pakistan that in Germany the public prosecution office is empowered to receive application and proceed further but in Pakistan the Police is authorized to register criminal case as per their choice.

It can be sum up that In Germany the public prosecution office is duty bound to exhaust the investigation steps in all received applications. The Public Prosecution Office cannot decide not to investigate any case. It is incumbent upon Public Prosecution Office to take all evidences in favour or against the accused. After considering all evidences, the public prosecutor office decides either to terminate of proceedings or to indict the accused. After receiving the application or information the Prosecution Office cannot use its discretion for selective investigations. All applications or information must have to be gone through investigation. Thereafter, the fate of the applications shall be decided by the Prosecution on objective manners.

6.1 Crime scene preservation and inspection:

The public prosecutor is the first person who is informed about the happening of a crime. As soon as possible, the Prosecutor reaches at crime scene and supervise the process of inspection by the police. Thereafter, the prosecutor issues appropriate directions to the police for preservation of crime scene, for making arrest or for collection of evidence. The prosecutor is the person who decides the lines of inquiry, interrogation and investigation. Although no search or arrest is possible in Germany without a warrant of court but in exigent circumstances the Prosecutor may issue search or arrest warrant provisionally¹⁷.

6.2 Recording of statements of witnesses:

The investigation of a case starts after registration of a formal complaint. The recording of the statements of the witnesses, victim and accused is the most important part of the investigation. In Germany the witnesses' statement are recorded not only by police but also by the public prosecution office separately. The relevant provision is as under:

Section 161a. [Witnesses and Experts before the Public Prosecution Office]

(1) Witnesses and experts shall be obliged to appear before the public prosecution office upon being summoned and to make statements on the subject matter or to render their opinion. Unless otherwise provided, the provisions of Chapters VI and VII of Part One concerning Witnesses and

¹⁵ Ss. 160-161 Criminal Code (Strafprozessordnung, GVG)

¹⁶ Punjab Police Rules 1934 Volume III, Rule NO. 27.4

¹⁷ <<https://www.deutschland.de/en/topic/politics/how-public-prosecutors-work-in-germany>> accessed on 4 October 2023

Experts shall apply *mutatis mutandis*. Examination under oath shall be reserved for the judge....¹⁸

The above provision states a comprehensive procedure for recording of statements of witnesses and experts in office of Public Prosecution Office. In this way the statements of witnesses are not only recorded by the legal experts but also preserved in safe hands where maneuverings and manipulations are impossible. On the top of it, coercive measure have also been described in German Law to deal with a recusant witness. This procedure provides a sanctity to the recording of statement of witnesses and experts not only by the Police but also by the Prosecution office. It diminish the chances of maneuvering. Furthermore, it creates a direct link between the prosecutor and other stake holders of the case. Conversely, in Pakistan, the public prosecutor has no chance to meet the witnesses or expert prior to initiation of trial.

7. Prosecutor's powers of alternative disposal :

The prosecutors in Germany are empowered to dispose off minor cases by using different alternative measures. The Sections 153, 153a, 153b and 407 of German Criminal Code provide a complete mechanism for alternative disposal of the minor cases in some specified situations on the recommendation by the prosecutor and subsequently approval by the court.

After exhaustive investigation of the applications and information received by the public prosecution office, the next important decision is to decide whether to prosecute or not. The Public Prosecution Office in Germany objectively investigates all cases and collects all kinds of evidences related to the offence. The German Penal Code has divided the offenses into two main categories; cases of serious nature (*Verbrechen*) and cases of less serious nature (*Vergehen*). The cases of serious nature are cases where specified punishment is one year or more. The cases of less serious nature are of where specified punishment is less than one year imprisonment¹⁹.

Firstly, only the cases of less serious nature (*Vergehen*) can be disposed off through alternative measures. No case of serious nature (*Verbrechen*) will be subject of alternative disposal. Secondly, the case can be disposed off subject to formal approval by the court. Hence, the ultimate decision is of the court. The court has power to agree or disagree with the decision of the prosecutor. In all other cases, the principle of mandatory prosecution is prevalent in Germany. The principle of opportunity or discretion has limited use by the German prosecutors only in cases of minor nature. Law has used following terms; "dispense with prosecution", "provisional dispense with" and "penal order"²⁰.

The prosecutor may dispense with prosecution only when there is no public interest is involved in the case and culpability of accused is of minor nature. In such case the prosecutor with the approval of the competent court may dispense with the prosecution. In addition to it, if the offense is not subject to increased minimum penalty, the prosecution even without the formal court's approval may dispense with the prosecution. Usually, these are the offense having punishment of fine without any imprisonment.

Furthermore, court can use the same powers if the prosecutor fails to exercise his legal powers in such cases. It means that in minor cases, if prosecutor has decided to prosecute but the court is of the opinion that there is no public interest involve in the case, the court itself order the prosecution to dispense with the prosecution. So, the power of dispense with the prosecution either can be used by the prosecution or by the court in minor cases where public interest is not involved.

¹⁸ Section 161a Criminal Code (*Strafprozessordnung, StPO*)

¹⁹ Section 12 of German Penal Code

²⁰ Section 153, 153a, 153b & 407 Criminal Code (*Strafprozessordnung, StPO*)

In minor cases, even there is public interest involve but the offender is ready to reimburse the loss suffered by the victim or to deposit donation in NGO or public Treasury or to perform a public service on gratuitous basis or to comply with any other public order or ready to join any training or workshop then the prosecutor may with the consent of the accused provisionally dispense with the prosecution subject to permission of court. This is called provisional dispense with prosecution. The court may order the public prosecution office to exercise the same power in suitable cases.

In addition to above, in minor cases having less than one year imprisonment, with consent of accused and in some cases even without the consent of accused, the prosecution may dispense with the prosecution subject to issuance of penal order. This is a summary procedure for disposal of minor cases. In this way, the minor cases can be disposed off by the prosecution in summary manners. Instead of full dress trial, the prosecutor may request to issue for penal order. Hundred of thousands cases are disposed off the prosecution office in Germany.

These are the situations where a prosecutor decides not to prosecute at public expense as the public interest is otherwise. But unfortunately, Pakistani prosecutors have no such powers and functions. The German Public Prosecution has multiple options to deal with case workload. According to a report of Federal Ministry of Justice out of 2805887 cases 1906798 cases have been disposed off by Public Prosecution Office of Berlin in the year 1995²¹.

Apart from the above, in cases of serious nature, the public prosecution office shall follow the principle of mandatory prosecution. It means that the German prosecutors have no option or discretion in serious cases. However, the public prosecution office has power to suspend or terminate the investigation proceedings even in some cases. This power is objectively used only in cases of no evidence or cases of insufficient evidences. Whenever a complaint is received either directly to public prosecution office or through other sources, it is incumbent upon public prosecution office to discover all facts and circumstances related to the offence. If at the conclusion of investigation, the investigation agency remains fail to collect sufficient evidence against the accused then the prosecution has two options one to suspend the proceedings till discovery of new evidence or to terminate the proceedings.

The public prosecution office finds that offence has not been committed or it is against the Statute of Limitation. Except murder, all other criminal offenses must be prosecuted within prescribed limit in Statute of Limitation which may extend from 3 to 30 years in different offenses. If the prosecutor finds that there is not sufficient evidence that connect the accused with the crime and there are not sufficient indications to open main proceedings in court or offence has been reported after the expiry of Limitation period as prescribed or offence has not been committed either. Then the prosecutor may decide to terminate the investigation proceedings and drop the case. In this case the suspect shall be exonerated from the allegations.

The complainant shall be informed in writing by the prosecution office its decision not to prosecute. After the receiving of such information, the complainant may challenge the impugned decision to the superior prosecutor officer within 30 days. If the superior officer of public prosecution office does not accept the application made by the complainant then the complainant has right to file appeal in the Court against such decision. The Court may pass appropriate order on it. The Court is fully empowered to order the public prosecution office to file public charges, if necessary.

²¹ Gilliéron, Gwladys, *Public Prosecutors in the United States and Europe : A Comparative Analysis with Special Focus on Switzerland, France, and Germany*, (Springer International Publishing AG, 2014) P-9

But in cases where accused are unknown, evidences are insufficient or any question of civil nature should be determined prior to initiate criminal proceedings. The public prosecution office may suspend the investigation proceedings till the discovery of evidence or disposal of civil case related to criminal matter or arrest of actual culprits.

If the investigation proceedings are neither suspended nor terminated then the Public prosecution must have to decide the indictment of the accused.

Above said options available to the German Prosecutors are novel for the Pakistani counterparts. These terms are alien to Pakistani prosecutors. Public prosecutor in Pakistan even does not have authority to drop the case.

7.1 BILL OF INDICTMENT:

At the end of conclusion of the investigation, the public prosecution has absolute powers to file a bill of indictment before the competent court for initiation of trial proceedings²². The bill of indictment shall include the public charges leveled by the prosecution office. The Court is empowered to change, modify or alter the charges preferred by the prosecution. However, initial charges are framed by the prosecution in shape of bill of indictment. The Court has power to reverse it. The bill of indictment is also known as 'challan' in Pakistan.

7.2 Difference between accused and defendant:

In Pakistan there is in no legal differentiation among suspect, accused and defendant. But in Germany three different terms are used for the criminal subjects, first is suspect who is person against whom any investigation is being conducted, second is accused who is the person against whom public charges have been preferred by the prosecution office, and third is defendant against whom main proceedings have been initiated. Through these different terminology three different status are designated to the culprits. The accused have some legal protection because of three different status. In this manners the rights of accused are protected by German public prosecution office. The relevant provision is as under:

Section 157. [Definition of the Terms "Indicted Accused" and "Defendant"]

Within the meaning of this statute, the indicted accused shall be an accused person against whom public charges have been preferred, the defendant shall be an accused person or indicted accused in respect of whom there has been a decision to open the main proceedings²³.

However, in Pakistan any person who has been concerned in FIR is to be treated as an accused. It does not matter that he may be exonerated later on but his status is of an accused. His name will be treated as an accused in all the times. He will remain a record holder always.

8. Conclusion

Germany has one of the best public prosecution system in the world. Traditionally, Germany is a Civil Law country and has an inquisitorial system for administration of criminal justice but presently Germany is modern democratic country that respects human rights, principles of natural justice and independent judiciary. The Judiciary is fully independent and empowered to examine the decisions of executive and legislature in shape of Judicial Review. The constitution of Germany fully protects the human rights and

²² Sections 169-175 Criminal Code (*Strafprozessordnung, StPO*)

²³ Sections 157 Criminal Code (*Strafprozessordnung, StPO*)

principles of natural justice. On the top of it, the powers of judiciary, legislature and executive are absolutely separate in the Constitution of Germany.

Previously, the courts were using investigative powers but now an Independent Public Prosecution Office is responsible to perform these duties. The Public Prosecution Office objectively investigates each case and collects all kinds of evidences including inculpatory and exculpatory. The Public Prosecution Office is also bound to investigate other circumstances as well which may have impact upon the ultimate conclusion of trial. The Public Prosecution Office is empowered to deal the minor offenses(Vergehen). The Public Prosecution Office has a variety of powers to dispose off the cases prior to submission in court. In this way, the work load of the courts can be decreased.

The Public Prosecution Office is duty bound to receive and investigate all applications for initiation of criminal proceedings. Thereafter, the Public Prosecution Office may conduct inquiries, interrogations or investigation accordingly. In this regard, the Public Prosecution Office may ask any agency like, police, medical, forensic etc. The preliminary investigation may also include explicit and implicit proceedings. The explicit investigative proceedings may includes interviews, interrogations, questionnaires, statements and so on. While the implicit investigation proceedings includes surveillance, under cover agent, wire tapping, communication tapping, location tracking and so on. After gathering all evidences including exculpatory and exonerating, the Public Prosecution Office decides to drop the case or to indict the accused.

The Public Prosecution Office is guardian of rights of the accused persons, witnesses and victims. The Public Prosecution Office makes assurance that no evidence is collected by infringing the rights of accused and if it is collected in such manners, the prosecutor is empowered to discard the same. The Prosecutor is also responsible to protect the rights of accused for fair trial of public hearing through impartial judge.