

State	Does the jurisdiction in question have prosecutorial discretion? If so, what are the applicable factors prosecutors take into account?	Can the prosecutor's/investigating judge's decision be challenged through judicial review?
A. MANDATORY PROSECUTION JURISDICTIONS		
Russian Federation	Pursuant to the Criminal Procedure Code of the Russian Federation, prosecutors are obliged to take action to establish the events of the crime and to expose the guilty person(s) (Art. 21(2)&(3)).	Participants in the criminal proceedings (including, victims, suspects and the accused) and parties whose interests are affected may appeal against the actions or omissions and decisions (including decisions to initiate or to not pursue proceedings) of the public prosecutor, with the relevant district court. The judge must look to the legality and substantiation of the actions or decisions and may rule either: 1) The prosecutor's action/decision was illegal or unsubstantiated and he/she is liable to eliminate the violation they committed 2) The appeal is rejected (Criminal Procedure Code of the Russian Federation, Art. 42(2)(18), 46(4)(10), 47(4)(14), 123 and 125).
Bulgaria	Pursuant to the Criminal Procedure Code of Bulgaria, when the conditions provided for by the Code are fulfilled, the competent state body shall be obligated to institute penal proceedings (Art. 23(1)).	N/A
Spain	Under the Spanish Criminal Procedure Code , the Office of the Public Prosecutor is obliged to pursue all criminal actions they deem appropriate. (Art. 105). The public prosecutor must seek judicial authorisation for the dismissal of a prosecution, on the grounds that the facts lack a nexus to the elements of an offence or there is a lack of connection to the accused. (Art. 637 and 642).	Victims have the right to appeal dismissals of the prosecution, although only as an appeal in cassation, on the grounds of an infringement of law. (Art. 636, 848).
Iraq	Pursuant to the Criminal Procedure Code of Iraq, the initial investigation of a crime is conducted by investigative judges (Art. 51). If the investigative judge finds that there is sufficient evidence for a trial, a decision is issued to transfer the accused to the appropriate court (Art. 130).	N/A

Lebanon	<p>As outlined in the Criminal Procedure Code, the Public Prosecution Office has a duty to “exercise the public prosecution”. It may not relinquish the public prosecution or arrange a settlement.</p> <p>The public prosecutor transmits information on charges to the investigating judge, who carries out the necessary investigation. (Art. 51 and 59) The investigating judge may decide to stay proceedings against a defendant either on a factual or legal basis- ie where there is no qualification of the alleged act under criminal law, the charges have been lawfully extinguished or where the facts of the case do not lend themselves to establishing the elements of an offence and/or the commission of a crime by an identifiable perpetrator (Art. 122).</p>	<p>The decision of an investigating judge to stay proceedings may be appealed to the Indictment Chamber by any of the parties to the case. (Art. 54, 73, 128 and 135). The Indictment Chamber will consider the merits of the application and shall either uphold, set aside or amend the appealed decision. (Art. 137).</p>
India	<p>If the magistrate who receives information on a crime is satisfied with the available evidence, he/she commits the case to higher courts (Criminal Procedure Code of India, S. 157, 159, 190, 193 and 204). If not, he/she discharges the case (S. 227).</p>	<p>In highly exceptional and rare cases the courts may quash investigations/criminal proceedings (State of Maharashtra & Ors v. Gawali & Ors, 2010) if:</p> <ul style="list-style-type: none"> - Such proceedings amount to an abuse of the process of the court; - The quashing of the impugned proceedings would secure the ends of justice; - The allegations do not constitute the offence alleged on <i>prima facie</i> basis; and - The available evidence clearly or manifestly fails to prove the charge - The allegations are patently absurd and inherently improbable that no prudent person can ever reach such a conclusion (State of Karnataka v. Muniswamy & Ors, 1977 SCR (3) 133; Kaupr v The State of Punjab 1960 SCR (3) 311.; State of Maharashtra & Ors v. Gawali & Ors, 2010).
Morocco	<p>Pursuant to Arts. of the Criminal Procedure Code, the initiation of criminal proceedings is mandatory if the investigating judge considers that the facts constitute an offense classified as a crime under the law. Where the investigating judge considers that the facts do not lend themselves to establishing the existence of a crime or the laying of charges against the accused, he may issue an “order of non-suit” (<i>une ordonnance de non-lieu</i>) (Arts. 84, 86, 198-200).</p>	<p>A civil party may appeal the decision of an investigating judge who issues an order of non-suit. (Art. 207)</p>

B. MANDATORY PROSECUTION JURISDICTIONS WITH RESIDUAL PROSECUTORIAL DISCRETION		
Argentina	<p>The Criminal Procedure Code of Argentina provides that Fiscal Public Ministry must initiate the proceedings <i>ex officio</i> and may only suspend, interrupt or cease proceedings as expressly provided by law (Art. 25).</p> <p>However, prosecutors have the discretion not to prosecute based on the opportunity principle, if:</p> <ol style="list-style-type: none"> 1) The public interest is not seriously affected; 2) The suspect's role in the offence is insignificant and could be subject to a fine, disqualification or conditional sentence; 3) Penalising the suspect would be unnecessary/disproportionate. 	<p>A decision not to prosecute can be challenged by:</p> <ol style="list-style-type: none"> 1) The victim before the hierarchically superior prosecutor. If the decision is confirmed, the victim may launch a private prosecution (Art. 252, 80(j)). 2) The complainant before a judge and, 3) The accused or his defender, requesting that the basis for the decision be modified or to make more specific the description of the facts for which the dismissal is issued (Criminal Procedure Code of Argentina, Art 270, 252, 80(j)).
Bolivia	<p>The Criminal Procedure Code of Bolivia provides that prosecutors are obligated to initiate public criminal action in all cases that may be appropriate. (Art. 21)</p> <p>However, the prosecutor may decide not to prosecute based on the opportunity principle if (Art. 21):</p> <ol style="list-style-type: none"> 1) The penalty that would be imposed is insignificant; 2) Where the accused repaired the damage caused to the victim and the victim consents to a non-prosecution, and: <ul style="list-style-type: none"> - Act is of little social relevance due to the minimal harm; or - The accused has suffered, as a result of the act, a physical or moral damage more serious than the penalty that would be imposed; or - A judicial pardon is foreseeable. 	<p>Prosecutors need judicial authorisation to terminate the criminal prosecution on discretionary grounds (Art. 21).</p>
Brazil	<p>The Criminal Procedure Code of Brazil provides that the Public Prosecution Service cannot decline to proceed with criminal prosecutions (Arts. 5, 24 and 42). Criminal action may, however, not be pursued/terminated where the prosecutor is looking to initiate an alternative mechanism, such as a police inquiry (Art. 28).</p>	<p>The competent judge must either affirm the prosecutor's reasons for not initiating proceedings or reject them, remitting the decision to the Attorney-General for further consideration (as to whether to pursue a prosecution and if so, how) (Criminal Procedure Code of Brazil, Art. 28).</p>

Chile	<p>The Criminal Procedure Code provides when the Public Prosecutor's Office becomes aware of the existence of the commission of a crime, it will initiate criminal prosecution without being able to suspend, interrupt or cease it, except in the cases provided by law (Art. 166).</p> <p>The public prosecutor has the discretion not to initiate or discontinue criminal proceedings based on the opportunity principle if:</p> <ol style="list-style-type: none"> 1) The public interest is not seriously affected; 2) The penalty for the offence is not significant (Art. 170). 	<p>Either on the application of any of the interested parties or <i>proprio motu</i>, the competent judge may annul the prosecutor's decision and order for the prosecution to be initiated if he/she believes that the discretionary criteria are not met.</p> <p>If the interested party's claim was rejected by the competent judge, an appeal to the authorities of the office of the public prosecutor can be launched who will then make the final decision on whether the prosecutor's decision not to prosecute complies with the general policy and rules of the service (Art. 170).</p>
Colombia	<p>According to the Criminal Procedure Code of Colombia, the Office of the Attorney-General is obliged to prosecute criminal acts, unless the opportunity criteria is applicable (Art. 322).</p> <p>In deciding whether this is the case, the Attorney-General's Office, taking into consideration the interests of the victims (Art. 323, 328) considers the opportunity criteria, i.e., <i>inter alia</i>, whether:</p> <ol style="list-style-type: none"> 1) The perpetrator is cooperative with the prosecution in terms of providing information/testimony; 2) The perpetrators is injured by the criminal act to the extent that a penalty would be disproportionate, 3) The restorative justice or national security interests demands so; 4) The criminal conduct is of limited legal and social significance, 5) Even though the conduct is socially-significant, the interest of victims is better met through an alternative mechanism. 6) The prescribed penalty for the act is not significant, provided that the victim is compensated (Arts. 324). 	<p>When seeking to discontinue a case based on his/her discretion, the prosecutor must seek judicial approval (Art. 327 of the Criminal Procedure Code).</p> <p>Additionally, victims have the right to appeal a prosecutorial decision not to prosecute before the competent court (Arts. 11(g), 327 and 329).</p>
Costa Rica	<p>The Criminal Procedure Code of Costa Rica provide that the Public Prosecutor's Office must exercise public criminal action, in all cases where appropriate (Art. 22).</p> <p>Prosecutors, however, may decline to initiate proceedings based on the opportunity principle if:</p> <ol style="list-style-type: none"> 1) Public interest is not affected because of the insignificance of the act or the prescribed penalty or the limited culpability of the suspect; 	<p>In order to exercise the discretion not to prosecute, the Public Prosecutor's Office has to request judicial authorisation. (Arts.22- 23). The victim may file a complaint regarding the decision and become a complainant (recourse to civil action), or he/she can file a civil compensation action. (Art. 71(3)(g), 300).</p>

	<p>2) The suspect cooperates in providing essential information to the authorities for the prevention of the continuation of the crime in case of organized, serious or complex crimes;</p> <p>3) The suspect has suffered, as a result of the act, serious physical or moral damage that render the application of a penalty disproportionate (Art. 22).</p>	
Dominican Republic	<p>The Criminal Procedure Code of the Dominican Republic provides that the Public Ministry is obliged to prosecute all criminal acts (Art. 30)</p> <p>Prosecutors, however, may decline to initiate proceedings based on the opportunity principle if:</p> <p>1) The public interest is not seriously compromised and the maximum sentence for the act is less than 2 years;</p> <p>2) The suspect has suffered damage such that a sanction would be disproportionate (Art. 34).</p>	<p>Victims have a right to file an appeal with the competent judge a decision not to prosecute based on discretionary criteria on the grounds that the prosecutorial decision does not meet legal requirements or that it constitutes discrimination (Criminal Procedure Code of the Dominican Republic, Art. 35).</p>
El Salvador	<p>The Criminal Procedure Code of El Salvador provides that, as soon as the General Prosecutor's Office of the Republic becomes aware of a punishable act, it is obliged to initiate the investigation (Art. 238).</p> <p>A prosecutor, however, may request the competent judge to terminate the criminal prosecution based on the opportunity principle if (Art. 20):</p> <p>1) The public interest is not affected because of the insignificance of the act, or the minimal responsibility of the accused;</p> <p>2) The suspect has done everything in his power to prevent the act;</p> <p>3) The suspect has contributed significantly to the clarification of the participation of other suspects in the same or more serious act;</p> <p>4) The suspect has suffered, as a direct consequence of the act, a physical, serious or irreparable harm;</p> <p>5) The potential penalty is insignificant.</p>	<p>If the competent judge disagrees with the exercise of the prosecutor's discretion, he/she will refer the matter to a superior prosecutor. The superior official prosecutor's decision is final (Art. 258).</p> <p>The competent judge may, <i>proprio motu</i>, apply the discretionary criteria to decide against the prosecution of the suspect. (Art. 20).</p>
Guatemala	<p>According to the Criminal Procedure Code of Guatemala, the Public Ministry must pursue all crimes <i>ex officio</i> (Art. 24). The exercise of criminal action may not be suspended or interrupted, except in cases expressly provided by law (Art. 285).</p>	<p>Consent of the victim and the authorisation of the competent judge is required if the Prosecutor deems appropriate to apply the opportunity criteria and not to prosecute (Art. 25).</p>

	<p>However, the Public Ministry may decline to initiate a prosecution based on the opportunity principle in any of the following cases (Art. 25):</p> <ol style="list-style-type: none"> 1) Crime does not seriously affect the public interest, 2) The maximum penalty does not exceed two years in prison; 3) Minimal contribution by the accused in the perpetration of the crime; 4) The accused has been directly and seriously affected by the consequences of the crime, rendering a penalty inappropriate. 	
Honduras	<p>Pursuant to the Criminal Procedure Code of Honduras, the Public Ministry has the obligation to initiate a prosecution in all appropriate cases (Art. 28).</p> <p>However, where the necessary reparations to the victim are made, there are circumstances in which they may elect not to prosecute based on the opportunity principle (Art. 28 and 29) where:</p> <ol style="list-style-type: none"> 1) The applicable sentence does not exceed 5 years, 2) The public interest is only minimally affected, 3) The background of the suspect indicates a lack of danger posed by him/her; 4) The suspect has been so damaged that the imposition of sanctions would be disproportionate. 	<p>The victim may challenge the prosecutor's application of the opportunity criteria, lodging an appeal with the competent judge, on the grounds that the decision does not meet the legal requirements (The Criminal Procedure Code of Honduras, Arts. 30, 32 and 34). Where the judge does not agree with a prosecutor's request, the decision will be remitted to a superior prosecutor for further consideration (Arts. 294-299).</p>
Mexico	<p>The Criminal Procedure Code of Mexico provides that the Public Prosecutor's Office is obligated to proceed with an investigation/prosecution where a complaint has been made and the probable commission of a crime has been determined (Art. 221)</p> <p>However, prosecutors may abstain from initiating a prosecution based on the opportunity principle if reparations have been made to the victim and (Art. 256):</p> <ol style="list-style-type: none"> 1) The crime is a non-violent in nature; 2) The crime does not attract a severe sentence; 3) The accused has been so injured that a penalty would be "notoriously unnecessary or disproportionate"; 4) Due the causes or circumstances of the crime, a prosecution would be disproportionate/unreasonable. 	<p>Victims may appeal the decisions of prosecutors to not investigate, to apply the opportunity criteria and/or to not pursue criminal action, before a competent judge. The judge must convene a hearing and issue a final decision on the matter (Criminal Procedure Code of Mexico, Art. 258).</p>

Paraguay	<p>According to the Criminal Procedure Code of Paraguay, the Public Prosecutor's Office shall be obliged to initiate public criminal proceedings for punishable acts which come to its attention provided that there is sufficient factual evidence (Art. 18).</p> <p>However, Public Prosecution Service may waive criminal prosecution of offences based on the application of the opportunity criteria where:</p> <ol style="list-style-type: none"> 1) The act is not serious enough to require prosecution and the suspect has shown remorse; 2) The penal code or law permits the court to waive the penalty; 3) The possible penalty for the act is insignificant (Art. 19). 	A decision not to prosecute must be judicially authorised (The Criminal Procedure Code of Paraguay , Art. 19).
Peru	<p>The Public Ministry is <i>ex officio</i> responsible for the conduct of criminal prosecutions and must initiate preliminary proceedings (or direct the police to do so) on learning of the existence of a crime (the Criminal Procedure Code of Peru, Arts. 1, 60 and 65(2)).</p> <p>Under the 'opportunity principle', the prosecutor may decide not to proceed with prosecutions where (Art. 2):</p> <ol style="list-style-type: none"> 1) The accused is so seriously affected by the consequences of the crime (and facing imprisonment for a term not exceeding 4 years) that the application of a penalty is unnecessary; 2) The public interest is not seriously compromised (this criterion is not applicable to conduct for which the sentence is imprisonment for over 2 years) and the suspect took reparative action to remedy the injury. 	Prosecutorial applications to dismiss criminal actions are dealt with by the competent judge after receiving from the other parties to the proceedings submissions regarding and objections to the dismissal. The judge may either affirm the dismissal or remit the decision to a superior prosecutor for reconsideration. The superior prosecutor may either uphold the dismissal or order a new prosecutor to continue proceedings. It is possible to appeal orders for dismissal (The Criminal Procedure Code of Peru , Art. 344-347).
Venezuela	<p>According to the Criminal Procedure Code of Venezuela, the Public Ministry is obliged to prosecute, except for reasons provided by law (Art. 11)</p> <p>However, prosecutors may request the termination of the criminal proceedings, totally or partially, in the following cases (Art. 37) :</p> <ol style="list-style-type: none"> 1) The act does not seriously affect the public interest; 2) The accused's participation in the perpetration of the act is minor, except when the maximum penalty exceeds three years of imprisonment; 3) When the accused has suffered serious physical or moral damage as a result of the act and that makes the application of a penalty disproportionate; 	The prosecutor is obliged to request authorisation from the competent judge in relation to their decision to discontinue the criminal prosecution. The Judge, before deciding on the request, will seek victim's opinion. (The Criminal Procedure Code of Venezuela, Art. 37-38). The judge's decision on the termination of the criminal prosecution based on the application of the opportunity criteria is final. (Art. 48).

	4) When the penalty that may be imposed irrelevant compared to the penalty already imposed.	
Italy	<p>Pursuant to the Constitution of Italy, the public prosecutor has the obligation to institute criminal proceedings (Art. 112).</p> <p>Additionally, pursuant to the Criminal Procedure Code of Italy criminal proceedings can be suspended or interrupted only in the cases expressly provided for by law (Art. 50(3)). Prosecutors may request to the Preliminary Investigation Judge to discontinue the case due to the “the triviality of the offence” (Art. 411(1)).</p>	<p>The suspect and the victim can oppose the Public Prosecutor’s request to discontinue the case due to the triviality of the offence (Art 411). If the petition is well-founded, the single-judge Tribunal shall annul the relevant decision and direct that the case file be returned to the Preliminary Investigation Judge. (Art. 410-bis(4)).</p> <p>In any event, any request to dismiss a case must receive judicial authorisation by the competent judge to be effective (The Criminal Procedure Code of Italy, Art. 409-411).</p>
Germany	<p>As provided in the Criminal Procedure Code of Germany, as soon as the public prosecution office obtains information that a criminal offence may have been committed, it shall open an investigation (S. 160(1)) and it is obliged to prosecute if there are enough factual indications that the crime was in fact committed (S. 152 (2)),</p> <p>The prosecutor may decide not to prosecute under certain conditions provided by law including:</p> <ol style="list-style-type: none"> 1) Misdemeanor is the subject of proceedings 2) Perpetrator’s guilt is considered to be of a minor nature 3) There is no public interest for the prosecution (Section 153 (1)). 	<p>The court’s approval of the decision not to prosecute is necessary; however, not in case of misdemeanour which is not subject to an increased minimum penalty and where the consequences of the offence are minimal. (The Criminal Procedure Code of Germany, S. 153)</p> <p>Victims can challenge prosecutor’s decision before superior official in the Office of the Prosecutor, and later before the court, if this appeal is rejected. However, in majority of cases when the prosecutor is exercising the discretion not to prosecute including non prosecution of petty offences, there is no right to appeal their decision. (S. 172). In those few cases where the appeal is allowed, the court’s decision is final (S. 174, 175).</p>
Poland	<p>The Criminal Procedure Code of Poland states that no one may be discharged from liability for a committed offence and if there is good reason to suspect that an offence has been committed, there is an obligation on the public prosecuting authority to initiate investigations/inquiries and to bring and support charges. (Art. 10, 303, and 305(1)&(2)).</p> <p>Where <i>inter alia</i>, there are insufficient grounds to suspect that the criminal act has been committed, the act constitutes an “insignificant social danger”, valid criminal proceedings have already been constituted or concluded, the perpetrator is not subject to the jurisdiction of the criminal courts, etc. In these circumstances, a prosecutor shall not pursue a prosecution. (Art. 17(1)).</p>	<p>An injured person or a complainant have the right to appeal a decision not to investigate or prosecute to a superior state prosecutor. If the appeal is rejected, a further appeal may be made to the court that has jurisdiction over the case in the first instance. (The Criminal Procedure Code of Poland, Arts. 306 and 329).</p> <p>Should the court decide to revoke the decision to discontinue or not initiate preparatory proceedings (investigations/inquiries) it will indicate the subsequent actions to be taken. These indications are binding on the prosecutor, although, even after doing as the judge ordered, the prosecutor may still find that there are no grounds to bring an indictment. An interlocutory appeal of this (second) decision can only be made to a superior state prosecutor for a final decision (Arts. 330, 53, 54, 55).</p>

Netherlands	<p>The Criminal Procedure Code of the Netherlands provides that if the Public Prosecution Service considers on the basis of the results of the criminal investigation instituted that prosecution is required, it shall proceed to do so as soon as possible (S. 167(1)).</p> <p>Prosecutors may take a decision not to prosecute on grounds of public interest (S. 167(2) The grounds for decisions not to prosecute include:</p> <ol style="list-style-type: none"> 1) National interest; 2) The act is a minor breach and caused insignificant damage, meaning a prosecution would be disproportionate; 3) The suspect played a small part in an organised crime; 4) The suspect is a victim him/herself; 5) The significance of prosecution has been diminished due to the long time which has elapsed since the commission of the offence; 6) Circumstances, age and infirmity of the suspect; 7) The conflict between the suspect and the victim has been resolved by reconciliation or compensation; 8) The victim provoked the crime; 9) The victim's attitude towards prosecution; 10) Lack of community interest in prosecution; 11) Existence of alternative avenues for justice (such as civil or administrative law) (see here). 	<p>A decision not to prosecute under public interest can be challenged by any interested party (The Criminal Procedure Code of the Netherlands, S. 12) The Court of Appeal may order the institution or continuation of prosecution of the offence (Section 12i).</p>
Lithuania	<p>As provided by the Criminal Procedure Code of Lithuania, upon receipt of a complaint, or notification on offense, or <i>ex officio</i>, the prosecutor shall immediately start a pre-trial investigation after having established the features of the offense. (Art. 169)</p> <p>The prosecutor may terminate of the pre-trial investigation is if the offense is of minor importance (Art. 212(4)).</p>	<p>This Prosecutor's decision needs to be approved by the pre-trial judge's decision (The Criminal Procedure Code of Lithuania, Art. 214(2)), which can be further appealed to the court of higher instance (Art. 214(4)).</p> <p>At the request of the parties or <i>proprio motu</i>, the prosecutor may resume the pre-trial investigation if there is a basis for it. (Art. 217(1))</p> <p>This decision also needs to be confirmed by the pre-trial judge. Order of the pre-trial judge refusing to approve the decision may be appealed to the court of higher instance. (Art. 217(3)).</p>
Czech Republic	<p>Pursuant to the Criminal Procedure Code of Czech Republic, the public prosecutor is obliged to prosecute all criminal offences, which they gain</p>	<p>The accused and the victim may file a complaint against the Prosecutor's decision to discontinue the proceedings. (S. 172(3)) The Supreme Public Prosecutor is entitled to repeal the decision of the hierarchically subordinate</p>

	<p>knowledge of, unless the law or a promulgated international treaty binding the Czech Republic stipulates otherwise (S. 2(3)).</p> <p>The prosecutor may decide to discontinue criminal proceedings if it is clear that its purpose has been reached based on the following criteria (S. 172(2)(c)):</p> <ol style="list-style-type: none"> 1) the manner in which the act was committed and its consequences, 2) the conduct of the accused person after committing the act, particularly his effort to compensate the damage caused or to eliminate other harmful consequences of this act. 	<p>prosecutor on discontinuation of criminal prosecution. (S. 174a (1)) In that situation, the public prosecutor, who made decisions in the first instance, shall continue with the proceedings (Section 174a (3)).</p>
Estonia	<p>Pursuant to Criminal Procedure Code of Estonia, investigative bodies and Prosecutors' Offices are required to conduct criminal proceedings upon the appearance of facts referring to a criminal offence, unless there are discretionary grounds to terminate criminal proceedings, as provided by the Code (Art. 6).</p> <p>One of such grounds is when there is a lack of public interest and the offence is minor, the guilt is negligible, and the suspected/accused remedied the damage caused by the criminal offence (Art. 202(1)).</p>	<p>In the situation when the prosecutor's office exercises its discretion to terminate the proceedings because of the lack of public interest, the request by the prosecutor's office shall be adjudicated by a ruling of a single judge. (Art. 202(4)).</p> <p>If the judge refuses the request submitted by the prosecutor's office, the criminal matter will be returned to the prosecutor's office and the proceedings will be continued. (Art. 202(5)).</p>
Romania	<p>According to the Criminal Procedure Code of Romania, prosecutors are under an obligation to start and exercise the criminal investigation <i>ex officio</i> when evidence exists that shows the commission of an offense. (Art. 7(1) of)</p> <p>However, the prosecutor can waive the exercise of the criminal action if the prosecution is not in the public interest. (Art. 7(2)) The criteria that is considered before dropping the charges are (Art. 318(1)(2)):</p> <ol style="list-style-type: none"> 1) The penalty for the offense is a fine or imprisonment of no more than 7 years 2) Modus operandi, the goal of the offense and the concrete circumstances of its commission 3) The consequences that occurred or could have occurred 4) The suspect's conduct. 	<p>It is possible to complain against the prosecutor's decision to drop charges, which will be then resolved by the chief prosecutor, or by the hierarchically superior prosecutor if the decision was made by the chief prosecutor (The Criminal Procedure Code of Romania, Art. 339).</p> <p>In case the complaint was denied, this decision can be appealed before the Preliminary Chamber Judge. (Art. 340(1)) If the Judge sustains the complaint, he/she will annul the challenged decision and send the case back to the prosecutor, with explanations, for them to start or supplement the criminal investigation or, to start criminal action and supplement the criminal investigation. (Art. 341(6)(b)).</p>

Serbia	<p>Pursuant to the Criminal Procedure Code of Serbia, the public prosecutor is required to conduct criminal prosecution where there are grounds for suspicion that a criminal offence has been committed. However, the public prosecutor may decide to defer criminal prosecution or not to undertake it under certain conditions (Art. 6) including:</p> <p>1) If offences are punishable by a fine or a term of imprisonment of up to five years and</p> <p>2) if the suspect agrees to fulfil one or more of the certain obligations (e.g. to rectify the detrimental consequence or indemnify the damage caused; to pay a certain amount of money to a humanitarian organisation, fund or public institution; to perform certain community service or humanitarian work; etc.) (Art. 283).</p>	N/A
Turkey	<p>Pursuant to the Criminal Procedure Code of Turkey, as soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, he shall immediately open an investigation, in order to make a decision on whether to file public charges or not (Art. 160).</p> <p>The prosecutor may decide that there is no ground for prosecution if there is an “effective remorse” of the accused (Art. 171(1)).</p> <p>Where the suspect has not already been convicted and is not likely to commit further crimes, there is public benefit, and restorative justice is possible, cases that are investigated and prosecuted on the basis of a claim and carry a sentence of imprisonment up to one year or less may be postponed for 5 years and if no crime is committed in the 5-year period, the prosecution is ended (Arts. 171(2),(3)&(4)).</p>	<p>A victim may oppose a decision not to prosecute, providing an explanation of events and evidence that justifies the continuation of the prosecution that was either ended or postponed- with the President of the Court of Assizes (Art. 171(2) and Art. 173(1)&(2). The President either orders further investigations, dismisses the application or orders the prosecutor to prepare an indictment (Art. 173(3)&(4)).</p> <p>The right of appeal outlined in Art. 173 does not apply to those instances where the public prosecutor exercises discretion in not pursuing a prosecution/public claim (Art. 173(5)).</p>
Kazakhstan	<p>The Criminal Procedure Code of Kazakhstan dictates that where there are sufficient indications of a crime, the prosecutor is obliged to take all measures to establish the facts of the crime, identify perpetrators and bring about their punishment as well as the rehabilitation of the innocent. (Art.36(1)).</p>	<p>Victims have a right to be informed of decisions regarding the refusal and termination of proceedings and the right to appeal this with a higher prosecutor and/or a higher court. (Art. 38(4)&(5), 75(6), 103, 108, 109).</p>

Afghanistan	<p>The Criminal Procedure Code of Afghanistan provides that prosecutors must investigate all felony and misdemeanor crimes which is performed by the prosecutor (Art. 145(1)) and he/she is obligated to use any means which leads to the identification of the crime, perpetrator, and determination of the relationships and facts (Art. 145(3)).</p> <p>The prosecutor shall issue an order to dismiss a case if the perpetrator's culpability and the outcome of the act are insignificant and its prosecution is not in the public interest. (Art. 171(3)) This order shall be signed by the prosecutor and is submitted to a higher prosecutor. (Art. 172 (2)).</p>	<p>The victim and plaintiff and their legal representative can submit their objections to a higher prosecutor against an order to suspend a criminal case. If the higher prosecutor confirms the order to suspend a criminal case, the victim, plaintiff or their legal representatives can submit their objections to the competent court (The Criminal Procedure Code of Afghanistan, Art 170).</p> <p>The victim, plaintiff, their legal representatives and the prosecutor can file their objections to the court ruling to discontinue the case, to the relevant appellate court and in case of a justified objection, the appellate court shall issue a ruling on prosecution of the accused person (Art. 203 (2)(3)).</p>
China	<p>Pursuant to the Criminal Procedure Code of China, the public security organ or the people's procuratorate shall initiate an investigation when obtaining information that a crime was committed (Art. 83). When a people's procuratorate believes evidence is reliable and sufficient and that criminal responsibility shall be investigated according to law, it shall initiate a public prosecution in the people's court. (Art. 141)</p> <p>The prosecutor may decide not to initiate a prosecution if based on the circumstances it is a crime of a minor nature and which shall, according to the provisions of the Criminal Law, not be given a criminal punishment or be exempted from criminal punishment (Art. 142).</p>	<p>If the victim disagrees with the decision, he/she can submit a petition to the office of the prosecutor (people's procuratorate) at the next higher level and apply for the initiation of a public prosecution. If the decision not to initiate prosecution is confirmed, the victim may bring the matter before a people's court. The victim also may directly bring the matter before a people's court without undergoing the procedure of presenting a petition. When a people's court agrees to accept the case, the people's procuratorate shall transfer materials related to the case to the people's court (The Criminal Procedure Code of China, Art. 145).</p>
C. OPPORTUNITY PRINCIPLE JURISDICTIONS		
England & Wales	<p>The prosecutors of England & Wales have wide discretion in deciding whether to initiate criminal proceedings or not. According to the Code for Crown Prosecutors, prosecutors of England and Wales have two separate tests in exercising their discretion.</p> <p>1) The Full Code Test (applicable when an investigation is completed):</p> <ul style="list-style-type: none"> - Is there sufficient, admissible, reliable and credible evidence to provide a realistic prospect of conviction against a suspect? - Is a prosecution is required in the public interest (for the list of factors to be considered, see paras. 4.1-4.14). 	<p>In rare and exceptional circumstances, courts may review the exercise of any police decisions to investigate or charge and decisions of prosecutors whether or not to prosecute (Belhaj & others v DPP, 2018 UKSC 33, para. 16).</p> <p>Where there is a decision not to prosecute, judicial review is available if:</p> <ol style="list-style-type: none"> 1) The decision was taken because of some unlawful policy (e.g. such as not to prosecute where the value of goods stolen was below £100); 2) Prosecutor failed to act in accordance with the Crown Prosecution Code; 3) The decision was perverse, i.e. it was a decision which no reasonable prosecutor could have arrived (R v DPP Ex parte Chaudhary [1995] 1 Cr. App. R. 136, pp. 4, 5)'. This may be the case, for instance, if:

	<p>2) The Threshold Test (In limited circumstances where the Full Code Test is not met, see paras. 5.15-5.10):</p> <ul style="list-style-type: none"> - There are reasonable grounds to suspect that the person to be charged has committed the offence; - Further evidence can be obtained to provide a realistic prospect of conviction; - The seriousness or the circumstances of the case justifies the making of an immediate charging decision - It is in the public interest to charge the suspect. 	<ul style="list-style-type: none"> - The law has not been properly understood or applied - Evidence supporting prosecution has not been considered properly (<i>R (Torpey) v DPP</i>, [2019] EWHC 1804, paras. 61-63) <p>Judicial review in the case of a decision to prosecute is only allowed if the prosecutorial discretion is exercised dishonestly or in bad faith (<i>R v Director of Public Prosecutions, ex parte Kebilene and Others</i> [1999] UKHL 43).</p>
Ireland	<p>The prosecutors of Ireland have wide discretion in deciding whether to initiate criminal proceedings or not. According to the Guidelines for Prosecutors, prosecutors of Ireland employ a two step test in deciding whether to prosecute a case or not:</p> <ol style="list-style-type: none"> 1) Is there sufficient, admissible, reliable and credible evidence to provide a realistic prospect of conviction against a suspect; 2) Is a prosecution is required in the public interests (for the specific public interest factors that are to be taken into account, see pp. 16-18). 	<p>Prosecutorial discretion is amenable to judicial review if:</p> <ol style="list-style-type: none"> 1) A <i>prima facie</i> case can be made that the discretion was exercised <i>mala fides</i> 2) The discretion was abdicated or was influenced by an improper motive or improper policy; 3) The requirement of fair procedures was not satisfied by the prosecutor; 4) Based on the facts of the case, there is no reasonable possibility that the prosecutor's decision not to prosecute was proper and valid (<i>Carlin v. DPP</i>, 105/2008, paras. 12-14).
Northern Ireland	<p>The prosecutors of Northern Ireland have wide discretion in deciding whether to initiate criminal proceedings or not. According to the Code for Prosecutors, prosecutors of Northern Ireland employ a two step test in deciding whether to prosecute a case or not:</p> <ol style="list-style-type: none"> 1) The evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction; 2) Prosecution is required in the public interest (for the specific public interest factors to be taken into account, see pp. 16-19). 	<p>In rare and exceptional circumstances, courts may review the exercise of any police decisions to investigate or charge and decisions of prosecutors whether or not to prosecute (<i>Belhaj & others v DPP</i>, 2018 UKSC 33, para. 16), i.e. if the prosecutorial discretion was:</p> <ol style="list-style-type: none"> 1) Exercised dishonestly or, in <i>mala fides</i>; 2) Irrational, i.e. no reasonable prosecutor could have come to such decision (<i>Kincaid, Re Application for Judicial Review</i>, [2007] NIQB 26, paras. 22-26).
United States of America	<p>The US prosecutors have wide discretion in deciding whether to initiate criminal proceedings or not. According to Principles of Federal Prosecution, where there is sufficient evidence, the US prosecutors may commence a federal prosecution unless (Section 9-27.220):</p> <ol style="list-style-type: none"> 1) The prosecution would serve no substantial federal interests (for the list of factors to be considered, see S. 9-27.230); 2) The person is subject to prosecution in another jurisdiction; or 	<p>US Prosecutors have a broad discretion in deciding whether or not to prosecute. This right is subject to constitutional constraints and may be reviewed only if:</p> <ol style="list-style-type: none"> 1) Was based on an unjustifiable standard such as race, religion, or other arbitrary classification 2) Targeting the exercise of protected statutory and constitutional rights of individuals (<i>Wayte v. United States</i>, 470 U.S. 598, at 607-609)

	3) There exists an adequate non-criminal alternative to prosecution.	
Canada	<p>The prosecutors of Canada have wide discretion in deciding whether to initiate criminal proceedings or not. According to Prosecution Deskbook, in deciding whether to prosecute, Canadian prosecutors must consider (p.3):</p> <ol style="list-style-type: none"> 1) Is there a reasonable prospect of conviction based on evidence that is likely to be available at trial? 2) Would a prosecution best serve the public interest? (for a list of public interest factors to be considered, see pp. 5-9). 	<p>Prosecutors are entitled to considerable deference in deciding to prosecute or not. Their decision in this regard is reviewable only if:</p> <ol style="list-style-type: none"> 1) It was exercised with improper motives or bad faith 2) Constitutes an abuse of process that, seriously compromises the integrity of the judicial process or trial unfairness (R. v. Anderson, 2014 SCC 41, [2014] 2 S.C.R. 167, paras. 46-51).
Georgia	<p>Under the Criminal Procedure Code of Georgia, prosecutors have the sole discretion to initiate and conduct a criminal prosecution (Art. 166).</p> <p>Ministry of Justice of Georgia, Order No. 181 (8 October 2010) and the Criminal Law Policy of Georgia (outlined here) indicates that the following factors must be taken into account by Georgian prosecutors in the exercise of their prosecutorial discretion:</p> <ol style="list-style-type: none"> 1) Sufficient evidentiary grounds for a realistic prospect of conviction; 2) Criminal prosecution is dictated by public interest, based on, <i>inter alia</i>: <ul style="list-style-type: none"> - The severity and nature of the crime; - The preventive effect of criminal prosecution; - The characteristics and the criminal record of the perpetrator; - The perpetrator's willingness to cooperate with the investigation; - Economic harm caused to the public and whether the perpetrator made amends; - The interests of the victim and his/her family; - The expected sentence in case of conviction - The expected consequences of criminal prosecution. 	<p>A victim may appeal a decision of a prosecutor refusing to initiate a criminal prosecution with a superior prosecutor only once. The decision of the superior prosecutor is final and may not be appealed, except when a particularly serious offence has been committed. If so, the victim may appeal the decision to a district court, which may not be further appealed. If the decision of the prosecutor is reversed by a superior prosecutor or the district court, criminal prosecution shall be initiated (The Criminal Procedure Code of Georgia, Art. 168(2)-(3)).</p>
Uganda	<p>The prosecutors of Uganda have wide discretion in deciding whether to initiate criminal proceedings or not. The Director of Public Prosecutions may direct the police to investigate crimes, institute criminal proceedings against suspects and discontinue criminal proceedings at any stage before judgment is delivered. In exercising his/her powers, the Director shall have regard to public interest, the interest of the administration of justice and the need to prevent abuse of legal process (Constitution of Uganda, Art. 120(3), (6)).</p>	<p>An interested party may initiate judicial review of the decision to prosecute or not prosecute on the grounds of:</p> <ol style="list-style-type: none"> 1. Illegality, i.e. the prosecutor acted without the legal power to do so; 2. Unreasonableness, i.e. no reasonable prosecutor could have come to the same decision, 3. Procedural impropriety or fairness, i.e. the decision was made without observing the rules of natural justice (Bakaleeke v Attorney General, [2019] UGHCCD).

	<p>According to the Prosecution Standards and Guidelines, the exercise of prosecutorial discretion to prosecute or not will be strictly guided by:</p> <ol style="list-style-type: none"> 1) Whether there is sufficient evidence; 2) Whether the intended prosecution is in the public interest; 3) There is no abuse of the due process (p.7). 	
Kenya	<p>The prosecutors of Kenya have wide discretion in deciding whether to initiate criminal proceedings or not. The Director of Public Prosecutions may direct the police to investigate crimes, institute and discontinue criminal proceedings at any stage before a judgment. In exercising the powers conferred to him/her, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process (Arts. 157(4), (6), (11), Constitution of Kenya; Art 82, Criminal Procedure Code of Kenya).</p> <p>According to Kenya National Prosecution Policy following factors are taken into account in the exercise of prosecutorial discretion:</p> <ol style="list-style-type: none"> 1. Whether there is enough admissible evidence to support a realistic prospect of conviction against the perpetrator; 2. The prosecution is in the public interest, based on (<i>inter alia</i>): <ul style="list-style-type: none"> - The nature and seriousness of the offence, - The likely consequences of prosecution; - Degree of victim's vulnerability; - The level of culpability of the perpetrator; - Length of delay in criminal proceedings (See here p. 6-18). 	<p>Courts may review the prosecutorial decision to prosecute or not prosecute on the following groundsf:</p> <ol style="list-style-type: none"> 1. Unconstitutionality, i.e.the decision infringes upon constitutional right of individuals, 2. Insufficient factual/evidentiary foundations for the case; 3. Abuse of process (<i>Republic v Director of Public Prosecutions & others</i>, [2019] eKLR, paras. 31-45, 50).
Nigeria	<p>The prosecutors of Kenya have wide discretion in deciding whether to initiate criminal proceedings or not. The Attorney-General of Kenya has the power to institute and undertake criminal proceedings against any person and discontinue at any stage before judgment is delivered. In exercising his powers, the Attorney General of the Federation shall have regard to the public interest, the interests of justice and the need to prevent abuse of legal process (Art. 174 of the Constitution of Nigeria; Administration of Justice Act 2015, S. 107-108).</p>	<p>No judicial review of prosecutorial discretion (<i>The State v S.O Ilori & Ors</i>, S.C. 42/1982).</p>

South Africa	<p>The prosecutors of South Africa have wide discretion in deciding whether to initiate criminal proceedings or not. The Solicitor-General's Prosecution Guidelines of South Africa provides a two step test for deciding whether or not to institute criminal proceedings against an accused person:</p> <ol style="list-style-type: none"> 1) Whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution; 2) Whether a prosecution would be in the public interest (for the list of public interest factors to be taken into account, see pp. 5-8). 	<p>Prosecutorial discretion to prosecute or not to prosecute may be judicially reviewed if: the decision was:</p> <ol style="list-style-type: none"> 1) Irrational;or 2) Illegal, i.e: <ul style="list-style-type: none"> - The prosecutor did not act in accordance with the empowering statute (<i>National Director of Public Prosecutions v Freedom Under Law</i> (67/14) [2014] ZASCA 58, paras. 27-29). - There was a departure from the formalities, rules and principles of procedure, <i>Shabalala & 5 others v A.G of Transvaal & Another</i> CCT/23/94, para. 28).
Israel	<p>The prosecutors of Israel have wide discretion in deciding whether to initiate criminal proceedings or not. Even if there is sufficient evidence, prosecutors may decline to initiate proceedings if they believe there to be no public interest in doing. The decision must be made with the acquiescence of the public officials (Criminal Procedure Code of Israel, Art. 62(A)).</p> <p>In exercising their discretion, prosecutors consider:</p> <ul style="list-style-type: none"> - Whether the prosecution would cause severe harm to social interests and values, outweighing the harm caused by not prosecuting; - Matters of security, political or public importance and vital interests of the State; - Severity of the act and the circumstances of the suspect and the victim (see State Attorney's Guidelines, cited here, paras. 123-127). 	<p>A complainant may appeal a decision not to investigate or bring trial due to lack of public interest, because of insufficient evidence or when no guilt was determined to a higher prosecutor (Criminal Procedure Code of Israel, Art. 64).</p> <p>Additionally, any decision not to proceed with a prosecution on grounds of public interest is subject to judicial review by the Supreme Court sitting as the High Court of Justice (OECD, Review of Implementation of the Convention and 1997 Revised Recommendation, 2009, para. 125).</p>
Japan	<p>The prosecutors of Japan have wide discretion in deciding whether to initiate criminal proceedings or not. Prosecutors may decide not to prosecute owing to:</p> <ul style="list-style-type: none"> - The character, age and the environment of the offender; - The gravity of the offense; - The circumstances or situation after the offense (Criminal Procedure Code of Japan, Art. 248) <p>More detailed guidelines are contained in the Prosecutor's Manual (see A.D. Castberg, Prosecutorial Independence in Japan, 1997, p. 56).</p>	<p>Upon application from the victims, Prosecutorial Review Commission may review the decision of the prosecutor and order the prosecution of the case. (H. Fukurai, Japan's Prosecutorial Review Commissions, 2011 pp. 2-3)</p> <p>In very rare cases, courts may dismiss a case if the prosecutor initiates a case against an individual in extreme deviation from a proper exercise of his/her discretion and in violation of that individual's fundamental rights (Japan v. Kawamoto, 348 HT 179 (Tokyo High Ct., June 14, 1977); Japan v. Kawamoto, 428 HT 69 (S. Ct. 1st P.B., Dec. 17, 1980) cited here, pp. 70-76).</p>

Republic of Korea	<p>The prosecutors of the Republic of Korea have wide discretion in deciding whether to initiate criminal proceedings or not. A prosecutor may decide not to institute a public prosecution, based on (Criminal Procedure Code of the Republic of Korea, Art. 247):</p> <ul style="list-style-type: none"> - The age, character, conduct, intelligence and environment of the offender and his/her relation to the victim; - The motive for the commission of the crime; - The means used in committing the crime; - The results and the circumstances after the commission of the crime. 	<p>If a decision not to prosecute is arbitrary or goes beyond the “rational scope of prosecutor’s discretion” under article 247, it may be invalidated by the Constitutional Court (Case on the Non-Prosecution of the December 12 Incident, [7-1 KCCR 15, 94Hun-Ma246, 1995] cited here, p.582).</p>
Hong Kong	<p>The prosecutors of Hong Kong have wide discretion in deciding whether to initiate criminal proceedings or not.</p> <p>According to the Prosecution Code, the prosecutors of Hong Kong employ a two step test in deciding whether to prosecute or not (p. 14-15):</p> <ol style="list-style-type: none"> 1) The admissible evidence available is sufficient to justify instituting or continuing proceedings; 2) The general public interest must require that the prosecution is to be conducted (for the list of public interest factors that must be taken into account, see pp. 15-17). 	<p>In extremely rare cases and only where the evidence points unquestionably to the desirability of there being a prosecution, courts may review a decision not to prosecute (<i>Ma Pui Tung v Department of Justice</i>, CACV 64/2008, paras. 9-10) if:</p> <ol style="list-style-type: none"> 1) The decision constituted an abuse of process; 2) The decision was taken in dishonesty or in bad faith (such as in return for payment of a bribe, or obedience to political instruction) (<i>Kwan Pearl Sun Chu v Department of Justice</i>, HCAL 56/2005, paras.16-17); 3) Prosecutor acting outside of his constitutional powers, for instance he/she: <ul style="list-style-type: none"> - Did not act on an independent assessment of the merits - Rigidly fettered his discretion, for example, by refusing to prosecute a specific class of offences detailed in a statute (<i>RV v Director of Immigration Secretary for Justice</i>, HCAL 2/2008, paras. 70-76).
Singapore	<p>According to the Constitution of Singapore, Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence (Art. 35(8)). The exercise of this discretion is influenced by the following factors (see here):</p> <ol style="list-style-type: none"> 1) The sufficiency of the evidence; 2) What is in the public interest based on factors such as: <ul style="list-style-type: none"> - The accused’s youth, immaturity of mind or prior good conduct; - Need to deter similar criminal conduct; - Level of culpability of the accused; - Interests of victim or his family - The concerns or fears of the public; - Policies on enforcement and security. 	<p>Courts may interfere with the exercise of prosecutorial discretion if it was exercised:</p> <ol style="list-style-type: none"> 1) Arbitrarily or in a biased manner, taking into account irrelevant matters; 3) In bad faith for an extraneous purpose; 4) In contravention of constitutional protections and rights (<i>Ramalingam v. Attorney-General</i> [2012] SGCA 2, paras. 17, 51).

Australia	<p>The prosecutors of Australia have wide discretion in deciding whether to initiate criminal proceedings or not. According to the Prosecution Policy for the Commonwealth, in doing so, they employ a two step test:</p> <ol style="list-style-type: none"> 1) Whether the evidence is sufficient, admissible, substantial and reliable to justify the institution or continuation of a prosecution; 2) Whether, in light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued (for the list of public interest factors to be taken into account, see, pp. 4-6). 	<p>Courts will not interfere by way of judicial review in the ordinary process of a prosecution (<i>Maxwell v. The Queen</i> [1996] HCA 46, para. 26), except where the prosecutor's decision:</p> <ol style="list-style-type: none"> 1) Was beyond jurisdiction or contrary to what is provided by statute; 2) Was an abuse of process, e.g. delayed, repeated, burdensome or oppressive litigation (<i>Island Maritime Limited v Filipowski</i>, [2006] HCA 30, para. 82) 3) Was found on an improper policy (<i>Smiles, P.M. v Commissioner of Taxation & Ors</i>, [1992] FCA 270, p. 5-7).
New Zealand	<p>The prosecutors of New Zealand have wide discretion in deciding whether to initiate criminal proceedings or not. In line with the Solicitor-General's Prosecution Guidelines, they employ a two step test in deciding whether to prosecute or not:</p> <ol style="list-style-type: none"> 1) The evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction; and 2) Prosecution is required in the public interest (for the list of public interest factors to be taken into account, see pp. 8-10). 	<p>In highly exceptional cases, courts may exercise judicial review of prosecutorial discretion where:</p> <ol style="list-style-type: none"> 1) The prosecutor abdicated his/her discretion via an unlawful general policy; 2) The decision was unreasonable, i.e. the prosecutor had failed to consider relevant factors and took into account irrelevant factors; 3) The decision was based on an error of law; 4) The prosecutor failed to accord to applicable code for conduct of prosecutions; 5) The prosecutor acted under bad faith or dishonestly, such as by discontinuing a prosecution for payment of a bribe; 6) The decision constituted an abuse of process (New Zealand: Osborne v WorkSafe New Zealand [2017] NZCA 11, [2017] 2 NZLR 513 at paras 36-49).