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Different systems, similar outcomes? Tracking attrition in reported rape cases in eleven countries

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Introduction

Attrition – the process by which reported rape cases fail to reach trial – has become a critical research and policy issue. In virtually all countries where major studies have been published, substantial increases in reporting have not been matched by rises in prosecutions, resulting in a falling conviction rate. Whilst this pattern has been documented in two previous Daphne projects (Regan & Kelly, 2003), it was not universal across Europe. The central research question for the current study was to analyse the similarities and differences in attrition processes across 11 countries with varying judicial systems and socio-legal cultures; in this sense it is unique.

Methodology

The research design combined two strands: the first updated time series national level data on reporting, prosecution and conviction for 33 European countries for the years 2001-2007. The second had at its core a quantitative content analysis of 100 case files in Austria, Belgium, England & Wales, France, Germany, Greece, Hungary, Ireland, Portugal, Scotland and Sweden. This was supplemented by: interviews with key informants; mapping the legal process/procedure; and creating a timeline to document social and legal responses to sexual violence. Project Partners were responsible for the collection and collation of data from their countries.

The 100 cases were to be consecutively reported after 1 April 2004 and fitting the following inclusion criteria: cases recorded as rape; female and male *adult* victims (aged over 16/the age of consent); single perpetrator.

All data were collected using case file content analysis, and covered: socio-demographic information on the victim and the suspect; the offence and reporting proceedings; the investigation, prosecution processes and court outcomes; and attrition. The process of data collection revealed gaps, both in official record-keeping and in the categories in the project database.

The Austrian data were gathered in Vienna, a city with a population of over 1.5 million. Access to case files was negotiated through the *Landeskriminalamt* with respect to the police and the Ministry of Justice was responsible for agreement with the Prosecutor's Office and Court. Unfortunately, analysis revealed a duplicate case, meaning the Austrian dataset comprises 99 rather than the intended 100 cases.

The data for all countries are presented in more detail in the final report – in English – which will be available at www.cwasu.org from end of June 2009. Country specific briefing documents focus on attrition and emerging comparative findings.

Law and procedure

In Austria rape is no longer a crime against morality, but is defined as a crime against sexual freedom and bodily integrity. As in many European countries it is a 'force-based' definition, widened to cover a range of sexual acts and not limited to penetration. The statute is gender-neutral with respect to both victim and perpetrator. The use of force or threat must be 'serious', 'dangerous' or 'life-endangering'. A reform of the Penal Code in 2004 abolished the distinction between rape in and outside marriage. Marital rape was defined as a 'state offence', which means that, from a principle of legality, prosecution is mandatory. Moreover, the distinction between severe and less severe rape was abolished.

Vienna Crime Police has six special units dealing with sexual offences. Since 2003 Vienna police has ensured that female police officers undertake interviews with women and children. From 2002, projects to improve forensic evidence gathering were also launched. In 2004, a pilot using a 'Forensic examination kit' linked seven hospitals, the Vienna 24-hour helpline and the Forensic Institute.

The Austrian penal procedure until the end of 2007¹ required police to refer any statement about a state offence to the prosecutor. Other agencies are also obliged to bring a state offence to the prosecutors notice. In the case of rape, it is most likely that referrals will come from the police or a hospital. Depending on the severity of the crime/charge three different routes may lead to trial at court.

- Statement – Pre-investigation – Charge (*Anzeige – Vorhebung – Anzeige*)
- Statement – Pre-investigation – Pre-enquiry – Charge (*Anzeige – Vorerhebung – Voruntersuchung – Anklage*)
- Statement – Pre-enquiry – Charge (*Anzeige – Voruntersuchung – Anklage*)

Which procedure is chosen depends on the prosecutor's decision, which is made on the basis of: the evidence gathered during the investigation; whether aggravating factors are identified; and the implications of both for which court should hear the case. The prosecutor heads the investigation (§ 88 Abs. 1 StPO) except where there is a Pre-enquiry phase; it is the responsibility of the police and court (through an investigative judge) to collect evidence.

The 2008 reform strengthened the position of the prosecutor, and weakened that of the investigative judge. However, in rape cases, it is still the investigative judge who undertakes the video interview with the victim. Since 2008, Prosecutor's Offices must create special units to deal with cases of sexual and domestic violence.

Also in the course of the reform from 2008 the rights of victims in criminal cases were considerably enhanced in comparison with other countries, with particular impacts in sexual offence cases. These rights include:

- to appoint a person of trust to accompany them to official interviews;
- to access free psycho-social and legal support (advocacy) throughout criminal proceedings – automatic in sexual offence cases;
- to receive information about the legal proceedings and case progress;
- to actively participate in both the criminal proceedings and the investigation;
- to appeal the public prosecution's decision to discontinue the case, and even to mount a prosecution as a private citizen.

Victims of sexual offences are also granted the right to be questioned by a person of the same sex, the right to refuse to answer intimate questions about the rape that may cause discomfort and the right to a closed courtroom (Wegscheider, 2006). Victims can ask for a video statement to be taken at the beginning of the procedure to prevent repeat interviews and having to appear at court.

¹ From 1.1.2008 a new penal procedure came into force. The collected data refers only to cases dealt with before this reform, thus the changes are not explained in detail.

Attrition in reported rape cases

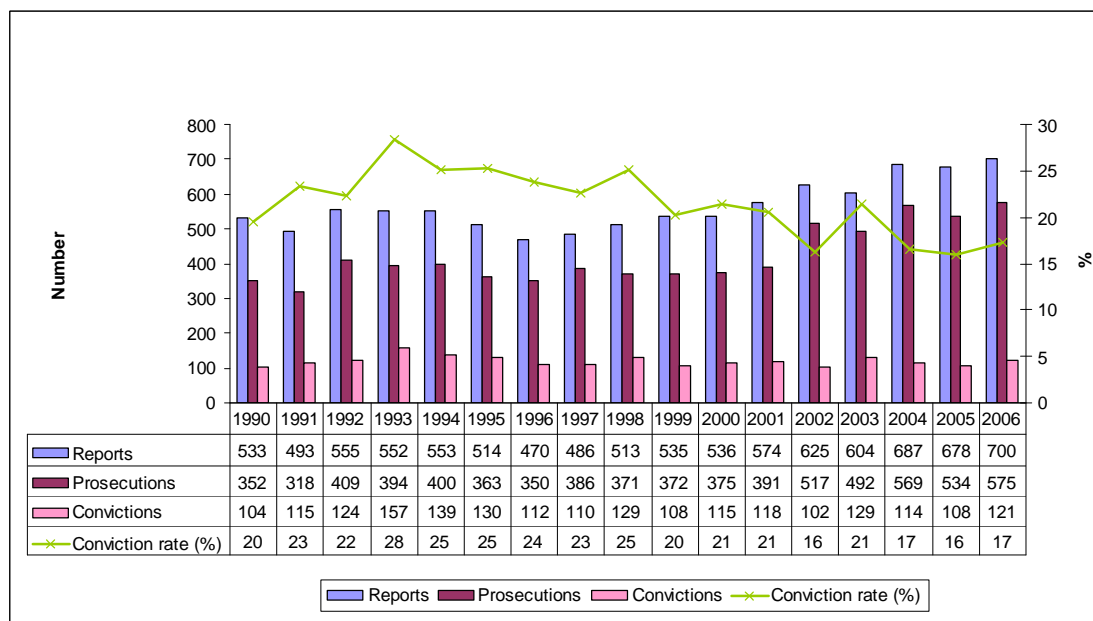
The attrition data are presented in two sections, the first outlining the national statistics and the second reporting findings from the case file analysis.

National statistics

As in many Western Europe states, there has been a steady increase in reporting over the last decade, albeit with some year on year fluctuation during the 1980s and 1990s. That said, this increase has not been as marked as in some countries, especially England & Wales and Sweden. Austria, which has an average-sized population relative to other EU states, has a below average rate of reporting per 100,000 of the population – just 8.5 – with the highest rate (46.5) in Sweden.

Figure 1 presents the national data for reporting, prosecution and conviction. Austria has one of the highest prosecution rates in the EU – around 80% of reported cases over the last five years – and a medium conviction rate – 17% in 2006. Whilst these have remained relatively steady over time, there has been a fall in the conviction rate over the last five years – an average of 17% compared to 22% for the previous five years. Attrition in Austria is, therefore, most evident between the stages of prosecution and trial.

Figure 1: Attrition in reported case Austria 1990-2006



Source: Ministry of Justice

Case tracking and attrition in Vienna

The findings from the content analysis of the 100 cases are presented here covering: victim and suspect profiles; offences and contexts; and attrition. Where comparisons are made here it is with respect to the other 10 countries participating in this study.

Victim profile

- All 99 victims were female, almost 4 in 10 were single, one third in relationships and 18% were divorced/separated.
- There was a slightly younger age profile than in some countries, with two thirds aged 16-30.
- The majority were white (87%), with 8% from non-white ethnic backgrounds, and 64% nationals.
- Over half were either employed or students, with a lower proportion unemployed than in many countries (information missing in 24% of cases).

Suspect profile

- All but one suspect was male, and the majority for whom we have information were in a relationship.
- There was a higher proportion of strangers (41%) than in most other countries, followed by acquaintances (17%), current/ex-partners (16%) and recent acquaintances² (14%).
- Suspects were, on average, slightly older than victims. Half were Austrian citizens, and half were non-nationals, with 8 being asylum seekers or refugees.
- A much higher proportion were employed or students than were unemployed, although these data were missing for many (42%).
- Of cases where the data were available (n=43), one third had previous accusations for criminal offences (14 of 43), and most of this group had been convicted (13 of 43, n=9 for other offences, n=4 for sexual offences).

Offences and contexts

In the Austrian sample both rape and sexual coercion cases were included, although rape cases were by far the majority.

- Four in ten of assaults took place in either the victim's or suspect's home, or a shared home, 51% took place in public and semi-public places.
- Ten per cent of assaults occurred in the context of prostitution, which was higher than in many other countries. All of these assaults occurred in public places, hotels and other venues, and of the five women whose status was known, all were migrants.
- The sample contained an unusually high proportion of stranger assaults (41%). This is reversal of patterns in many other countries, where suspects were most commonly known to the victim.
- A relatively high proportion of assaults involved a weapon, six of which were committed by strangers and four by ex-partners. However, only five cases involving a weapon were linked to the comparatively high proportion of victims who had documented injuries (39%).

² Someone known for less than 24 hours prior to the assault.

The Austrian sample has some distinct characteristics which reflect the stereotype of rape – by a stranger, with a weapon and injuries. At the same time, there were also cases which stretch the boundaries – assaults committed by current/ex-partners and rapes of women who sell sex. There is, therefore, some evidence that women have been enabled to report non-stereotypical cases, but at the same time these are not present in the proportion that prevalence surveys on sexual violence would suggest (Kelly *et al.*, 2005).

Attrition in Vienna

Table 1 records the progress and outcomes of cases across the legal process. Most cases were reported by either the victim (79%) or a known other (7%). However, a higher proportion of cases than in other countries were reported by a professional (10%). All but one victim was interviewed, and all but three made a formal statement. However, less than half (45%) underwent a forensic medical examination, far fewer than in England, Ireland, Portugal and Sweden. The available data do not provide any explanation for this.

Less than one third of cases went to court. However, there were no discontinuances at court or late victim withdrawals, both of which were evident in many other samples. In most cases (25 of 30), the offence charged at court was rape, alongside four of sexual coercion and one of physical assault (this case was originally reported as a rape).

A conviction was the more likely outcome of trials, with 62% convicted and 38% acquitted. Austria has the third highest conviction rate in the study at 18%. Most sentences were custodial, although three were given suspended sentences (one of these was female and another was 69 years old). More than three quarters of the sentences were two years or less – a lower average sentence length than many.

Table 1: Case progress and attrition in Austrian sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	98
	Suspect identified	57
	Suspect interviewed	57
Charge	Suspect charged	31
Court	Referred to court	30
	Pending	1
	Tried at court	29
	Acquittal	11
	Conviction*	18*

*Includes guilty verdicts, guilty pleas and part convictions (for some, not all, offences)

The national statistics, presented above, show that 80% of reported cases are prosecuted, but this category does not measure the rate of charged cases that prosecutors referred to court. Substantial attrition occurs between the early investigation and charging – with 17% of reported cases resulting in a conviction.

The case tracking sample in Vienna reflects this with a conviction rate of 18%. However a major cause of attrition is that 43% of suspects were unidentified. Moreover, of those identified and interviewed only half (31 of 57) were charged.

Table 2 presents more detailed analysis of the attrition process: the stages at which cases drop out, the key decision-makers and the reasons. Around half of all cases are subject to attrition in the early stages of the investigation, with prosecutors and investigative judges making

decisions centred on evidential concerns: primarily failure to identify or locate the suspect and insufficiency of evidence. Unlike in some other countries, neither police nor victims play a key role in attrition: there were only nine victim withdrawals and two retractions. Austria had one of the lowest rates of false allegations at 4%; but, as in other countries, the experts interviewed had much higher estimates.

Table 2: Detailed attrition point analysis in the Vienna sample

When case fell out	Whose decision	Why fell out	N / %
Early investigation	Victim	Victim withdrawal of co-operation	2
		Retraction	1
		Other	1
	Police	Suspect not identified	1
		Retraction	1
	Prosecutor	Suspect not identified	22
		Insufficient evidence	8
		False allegation	3
		No evidence of sexual assault	3
		Victim withdrawal of co-operation	3
Suspect not located		1	
Other		1	
Unknown		2	
Early investigation total			49
Mid investigation	Investigative Judge	Suspect not identified	2
		False allegation	1
		No evidence of sexual assault	1
	Prosecutor	Victim withdrawal of co-operation	4
		Suspect not identified	3
		No evidence of sexual assault	2
	Unknown	1	
Mid investigation total			14
Late investigation	Victim	Other	2
	Prosecutor	Offender not identified	1
		Unknown	2
Late investigation total			5
At court during/at conclusion of case			
Unknown/pending			2
Acquittal	Court		11
Convictions	Court		18
TOTAL			99

Of 30 cases that went to court, 18 were convicted, 11 ended in an acquittal and one case was still pending. Four in ten convictions involved strangers/ recent acquaintances, which is a lower proportion than in the whole sample (55%). The other convicted offenders were all known, but did not include any of the current partners or family members. There were twelve cases where the accused was an ex-partner; five of which went to court and three resulted in convictions. Two of the cases involving women in prostitution were prosecuted, with one conviction. Seven suspects pleaded guilty to all or some charges, while only two claimed consent and the remainder denied the allegations.

Analysis of the convicted cases revealed some characteristics which made this outcome more likely:

- In two thirds (n=12 of 18) there were documented injuries, and in an even greater number (n=13 of 18) a forensic examination had been conducted.
- Conviction was more likely for the non-white suspects and/or those who were not Austrian nationals, and four of the seven asylum seekers and the one refugee were all convicted.
- Half (n=9) of those convicted had been previously accused of other crimes, and seven had previous convictions, including all of the three accused of sex crimes.

Conclusions

The data from Vienna was both similar and different to other countries in revealing ways, with implications for policy and practice which we summarise here.

From the national data

- Whilst reporting has increased, it has been much slower than in some countries.
- From one of the countries in previous studies (Regan & Kelly, 2003) where the conviction rate was steady, Austria has joined the mainstream trend in Europe of states with falling conviction rates.
- There was no evidence that legal reforms have made a difference to attrition, since the falling rate has continued between 2004 and 2006.

From the case tracking data in Vienna

- The proportion of stranger assaults remains much higher than that found in prevalence studies. There is clearly still work to be done in enabling reporting of non-stereotypical rapes, such as rape in private by partners and known men.
- The proportion of cases designated false allegations was only 4%, and it was not higher than 9% in any country participating in the study. This is strong evidence that the extent of false allegations is exaggerated by professionals, leading to a culture of scepticism (Kelly et al., 2005).
- The majority of cases resulting in a conviction reflect stereotypes of offenders; being disproportionately men who had already come to the attention of the criminal justice system and/or non-nationals.
- However, there were several successful prosecutions of cases involving ex-partners and where the rape happened in the context of prostitution.
- The high rates of strangers in the sample had an impact on attrition, with 41% of all suspects unidentified, of which the vast majority were strangers (n=33) or recent acquaintances (n=3).

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