



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

Country briefing: GERMANY

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Introduction

Attrition – the process by which the majority of 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; it is the first study to do this.

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 respective 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 variables and categories in the project database.

The German sample was gathered in Stuttgart. Negotiating access took more than six months, beginning with the Interior Ministry, and including the Prosecutor's Office because all case files are archived there. The sampling strategy had to be adapted in light of local record keeping practices¹ to ensure all relevant cases were included. Even with this change the first list showed a significant discrepancy between identified cases and the official statistics (NCS) for the region. It took five rounds of searches across police databases to compile a list that was

¹ Stuttgart Police do not produce reporting figures, only prosecution statistics, because as soon as the case has been qualified by the prosecutor, the legal coding of the case will be adapted in the police data system.

likely to include all the relevant cases. Despite these rigorous efforts the final comparison with the NCS still shows a discrepancy that cannot be explained.

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 31 May 2009. Country specific briefing documents focus on attrition and emerging comparative findings.

Law and procedure

Rape and sexual coercion are combined in a single paragraph in the German Penal Code, with both defined as a ‘violation of sexual self-determination’. The definition extends a force-based framing to encompass exploitation and abuse of power, with rape confined to penetrative offences. Marital rape has been a state offence since 1997. The statute is gender-neutral in relation to both victim and perpetrator. A series of aggravating factors can increase the potential sentence, including: particularly degrading sexual acts; use of a weapon; multiple assailants; and endangering the victim’s life. The sentencing guidelines for rape begin at a minimum of one year’s imprisonment up to a life sentence, with no less than ten years for sexual murder.

Germany is a Federal Republic composed of 16 semi-autonomous states (*Länder*), which counter-balance federal powers. Rape is usually reported to the police, although a report can be made directly to the prosecutor or District Court. Most *Länder* have a dedicated sexual assault unit within the police. There is no single model for forensic examinations and provision varies by *Länder* and region. Local provision, therefore, ranges considerably, and there are only a few cities where victims can have a forensic examination without reporting to the police (see section of full report on England & Wales).

The procedure for reported sexual offences consists of an investigation, charge, an intermediate court stage and trial. The state prosecutor has responsibility for the investigation. Prosecutors can collect evidence themselves, but normally this is done by the police. Whilst the police have the duty to investigate, only the prosecutor has the power to decide to continue or drop the case. Victims can withdraw their co-operation and may retract the complaint; because rape is a ‘state offence’ it is in principle possible to prosecute without a victim’s support, although in practice this is extremely unlikely. Rape and sexual coercion cases are heard in the District Court before three professional judges and two lay magistrates.

There are specific protections for victims of sexual offences, including: restrictions on previous sexual history evidence; the possibility of asking that the defendant to leave the courtroom whilst the victim gives evidence; and the use of video testimony. Expert interviews suggest that the latter is regarded as an exceptional measure. Victims also have additional rights:

- to legal advice and psycho-social support (advocacy);
- to become a party to the case in order to claim compensation from the defendant, who, if convicted, must also pay their legal costs;
- to be a party in the criminal prosecution as an ‘auxiliary prosecutor’ (*Nebenklägerin*);
- to a lawyer to represent them during the trial.

Attrition in reported rape cases

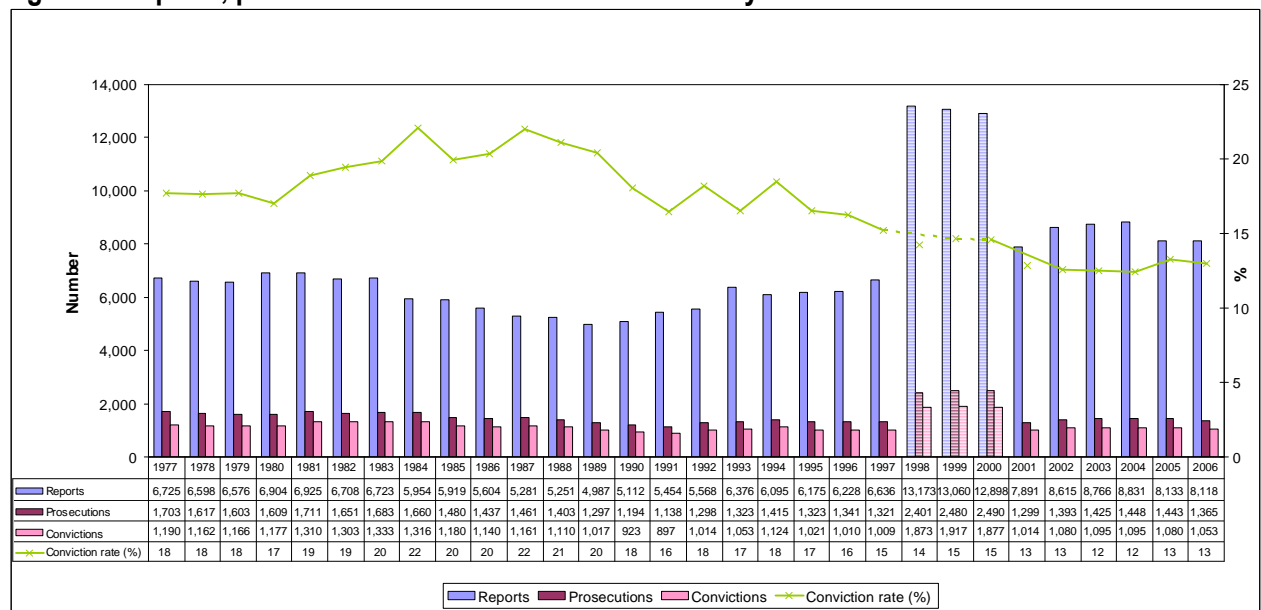
The attrition data are presented in two sections, the first outlining the national statistics and the second reporting detailed case tracking analysis of the 100 cases. All comparisons made are with the other countries participating in the study.

National statistics

Germany has the largest national population in Europe – over 82 million in 2006 (Eurostat, 2008). Whilst it has the second highest number of rapes reported each year, the reporting rate is average compared to other EU countries: 9.85 reported rapes per 100,000 of the population; the Swedish reporting rate is more than four times that of Germany at 46.5.

Figure 1 presents the national figures for reporting, prosecution and conviction between 1977 and 2006. Between 1997 and 2001 statistics for cases of rape and sexual coercion were aggregated, after this they were once again published separately. In order to show long-term trends, figures have been presented here without sexual coercion (apart from 1998-2000) as this is more comparable with other participating countries. Indeed, it was clarification of this legal and statistical change during the current study which provided an explanation for Germany being the exception in the previous study (Regan & Kelly, 2003), in which it was the only country to record an increase in reporting that was echoed by rising prosecution and conviction rates. It is now evident that the increases were, in part, due to the inclusion of sexual coercion cases. The disaggregated figures for rape from 2001-2006 show Germany has a below average conviction rate of 13%. The trends now reflect those in many countries – increasing reporting, flat prosecutions and a declining conviction rate. The conviction rate reached its lowest point of 12% in 2003-04.

Figure 1: Reports, prosecutions and convictions in Germany 1977-2006



Source: Federal Office of Justice, Germany

Notes: The data represents: 1977-97 rape only (§ 177 PC – old); 1998-2000 rape and sexual coercion (§§ 177, 178 PC – new); 2001 onwards rape and grave forms of sexual coercion (including if death results) (§ 177, para 2, 3, 4 and § 178 PC – new)

Case tracking

Victim profile

- The majority of victims were female; 8% were male, one of the highest proportions in the study.
- Victims were aged from 18-93 years, with most aged 21-40 (70%), an older age profile than in the Austrian sample.

- The German sample was ethnically diverse, with about a quarter from black and other non-white backgrounds.
- Four in 10 were in a relationship and the same proportion was single.
- Over half were either employed or students, while just over one third were unemployed.
- Germany had one of the smallest proportions of victims with mental health issues (6%) and/or disabilities (2%).

Suspect profile

- All were male; almost two-thirds were known (64%), with almost one third strangers (22%) or recent acquaintances² (10%).
- Suspects had a fairly similar age distribution to victims, although on average they were slightly older.
- Suspects had a similar ethnic profile to victims, although nationality status was not known for many.
- One third were in a relationship, with over one quarter (28%) single.
- Less than half were employed and one third were unemployed.
- Almost half had been accused of previous offences (15% sexual offences; 33% other offences), and almost one quarter had previous convictions (4% sexual offences; 19% other offences).

Offences and contexts

Whilst the majority of cases in the sample were rapes (n=72), just over one quarter were classified as sexual coercion. Three of the rapes were re-classified later in the investigation – two as sexual coercion, one as bodily injury.

The majority of assaults (63%) occurred in a private space, including the home of the perpetrator, victim or someone else's, or in a shared home. 21% occurred in public spaces (public place or public transport) and 12% in semi-public spaces (pubs, clubs, discos, vehicles and workplaces). 64% were known and 32% were recent acquaintances/strangers.

Current or ex-partners comprised the largest group of suspects (35%) – the highest proportion across all participating countries. This suggests that feminist campaigning, and the resultant legal reform making rape in marriage a state offence, alongside the introduction of the domestic violence removal law in 2000, have created a context conducive for women to report partner rape. Just over one quarter (27%) of cases involved documented injuries and only a small number involved weapons (5%).

Attrition

Most cases were reported by the victim (87%), and virtually all were interviewed by police/prosecutors, with a high proportion (96%) providing a witness statement. However, less than a quarter (23%) had a forensic medical examination – one of the lowest proportions of all participating countries.

A high proportion of suspects were identified (79%) and interviewed (74%) during the course of the investigation. Table 1 shows that the key phase of attrition is when the prosecutor takes the decision about whether to proceed. In less than half of cases where the suspect was interviewed a charge was submitted to court. Decisions to discontinue were mainly taken

² Met in the 24 hours preceding the assault.

by prosecutors (n=33 of 40) on evidential grounds, including doubts as to whether a sexual assault had taken place (n=19). Just over one quarter of cases reached trial, with 23% resulting in a conviction, and a low acquittal rate at trial. This conviction rate is 10% higher than the national average reported on in the previous section. It is unclear whether this is the result of a bias in the sample, which happened to contain a higher number of successful prosecutions, or whether the site chosen is more effective in investigation and prosecution. Further research would be needed to clarify which of these is the case.

Table 1: Case progress and attrition in the Stuttgart sample

Phase of legal process	Case progress and outcome	N / %
Investigation	Victim interviewed	98
	Suspect identified	79
	Suspect interviewed	74
Charge	Suspect charged	34
Court	Referred to court	28
	Discontinued	1
	Tried at court	27
	Acquittal	4
	Conviction*	23*

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

Table 2 presents more detail on the attrition points, who took the decision and the reasons why. Discontinuances were almost exclusively the outcome of decisions made by prosecutors. In only a minority (11%) of cases was the victim the key decision-maker, and in only one case was it the police, all of which occurred at an early stage in the investigation. Revealingly, in all cases where the victim withdrew co-operation or retracted the allegation, the suspect was known, and in 10 cases he was a current or ex-partner.

Almost half of all cases were discontinued in the early stages of the investigation: alongside failure to identify the offender, evidential concerns, including that what allegedly took place did not amount to a sexual offence, were the principle reasons. Of the 20 cases where an offender was not identified, the majority (n=15) involved strangers. Only one third of all stranger suspects (n=7 of 22) in the sample were identified.

Revealingly, only 3% were designated false allegations. This is within the 1-9% range of all countries, and is further strong evidence that popular assessments of the scale of this problem, including among police and prosecutors, consistently over-estimate the extent of false allegations (see Elsner & Steffen, 2005; Kelly *et al.*, 2005).

Of the 23 convictions, in all but one case – where the data were missing – a custodial sentence was imposed. These ranged from a minimum of 8 months (the offence was downgraded at court to bodily injury) to a maximum of 4.5 years. A slightly higher proportion of suspects in convicted cases (n=13) were well known to the victim than were strangers/recent acquaintances (n=10). Of the 35 rapes reported by current/ex-partners, 13 (37%) went to court and 9 (26%) resulted in a conviction.

Data analysis revealed a number of factors which made conviction more likely:

- Non-white men were represented at higher rates than in the overall sample (39%, versus 27%), with five of the six reported asylum seekers among those found guilty.
- The proportion of cases involving victim injuries was almost twice as high among convicted cases as in the whole sample (57% compared to 27%).

- Higher proportions of convicted offenders were single (57% compared to 28%) and unemployed (48% compared to 33%).
- The vast majority (78%, n=18 of 23) of convicted offenders had been either previously accused of an offence or convicted of one.
- Three of the four suspects in the whole sample with mental health issues were convicted, two of whom had previous convictions for rape.
- There was a higher conviction rate for rape charges than sexual coercion cases, with 25% compared to 18% resulting in a conviction.

Table 2: Detailed attrition point analysis for the Stuttgart sample

When case fell out	Whose decision	Why fell out	N / %
Early investigation	Victim	Withdrawal of co-operation	9
		Retraction	2
	Police	False allegation	1
	Prosecutor	Suspect not identified	16
		Insufficient evidence	11
		No evidence of sexual assault	8
		Not in public interest	2
Victim withdrawal of co-operation		2	
False allegation	1		
Early investigation total			52
Mid investigation	Prosecutor	No evidence of sexual assault	8
		Suspect not identified	3
		Insufficient evidence	1
Mid investigation total			12
Late investigation	Prosecutor	No evidence of sexual assault	4
		Insufficient evidence	2
		False allegation	1
		Suspect not identified	1
Late investigation total			8
At court during/at conclusion of case	Prosecutor	Not in public interest	1
	Judge	Unknown (Acquitted)	4
At court during/at conclusion of case total			5
Convicted			23
TOTAL			100

Conclusions

The data from Stuttgart were both similar and different to other countries in revealing ways, with implications for policy and practice that we summarise here.

From the national data

- Reporting has increased, but when sexual coercion cases are removed the rate of increase is lower than in many EU countries, and Germany has a low-average reporting rate.
- Germany is no longer the European exception, but has joined the mainstream with increasing attrition rates.
- The fall in the conviction rate is similar to, but greater than, that in Austria, dropping from an average of 20% in the 1980s to an average of 13% since 2000.

From the case tracking data

- Over one third of rapes in the sample were committed by current/ex-partners with one in four of this sub-sample (26%) resulting in a conviction.
- The proportion of cases designated false allegations was only 3%, and it was not higher than 9% in any country participating in the study. This is extremely strong evidence that the extent of false allegations is exaggerated by professionals, but these perceptions create 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.
- There was a 10% higher conviction in the case tracking sample than the national average, the reasons for which were not clear.

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