

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

Country briefing: **Ireland**

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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 the 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; creating a time line 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 1st 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 in official record-keeping.

The Irish sample of 100 cases is drawn from across the Republic of Ireland as a whole, which has a population of 4.25 million. Both key institutions relevant to this study are centralised, meaning single points of contact for negotiating access, which was agreed early in the process. However, since the police and DPP record systems are not unified, data had to be collected across both. Data forms were completed by staff in the respective offices, under the supervision of project partners: this process revealed a number of discrepancies, which were resolved in the final data set on the basis of the DPP forms, since they receive the case file at a later date. The sample, whilst including cases that are 'no crimed', may have missed those where prosecutors upgrade an original police classification of sexual assault to rape.

The data for all countries is presented in more detail in the final report which will be available at www.cwasu.org from May 31, 2009. Country specific briefing documents focus on attrition and emerging comparative findings.

Law and procedure

Ireland has a consent based definition of rape, covered by two separate statutes. 'Common law rape' is confined to intercourse and is gendered in that only a man can commit it on a female victim. A reform in 1990 created a gender-neutral crime, and extended the reach to all forms of penetration and included penetration (vaginal only) by objects. Marital rape has been recognised as a criminal offence since 1990.

Rapes are reported to the police (Gardaí), and there is a special unit - based in the capital, Dublin - which deals with the offences of domestic violence, rape and sexual assault, and child abuse. It has an advisory role and may, in complex cases, take the lead in investigations. Complainants are offered a forensic medical examination at one of five Sexual Assault Treatment Units across Ireland; but in more rural areas, the examination may be undertaken by family doctors or other unspecialised examiners (O'Shea, 2006).

The initial investigation is done by the police, who may also lay the first charge, but decisions on prosecution, and on what charges, are made by the Director of Public Prosecutions (DPP). Ireland has an adversarial, common law, criminal procedure, which means the DPP must instruct lawyers (counsel) to prosecute the case in court. Rape and aggravated sexual assault are prosecuted in the Central Criminal Court.

In theory, victims have the right to bring a private prosecution through the District Court, but cannot challenge or pursue alternative proceedings if the DPP has discontinued the charge. In practice, private prosecutions rarely occur (Bacik et al, 1998). Victims are entitled to separate legal representation if an issue relating to their previous sexual history is raised at court. However, many do not make use of this provision

Attrition in reported rape cases

The attrition data is 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.

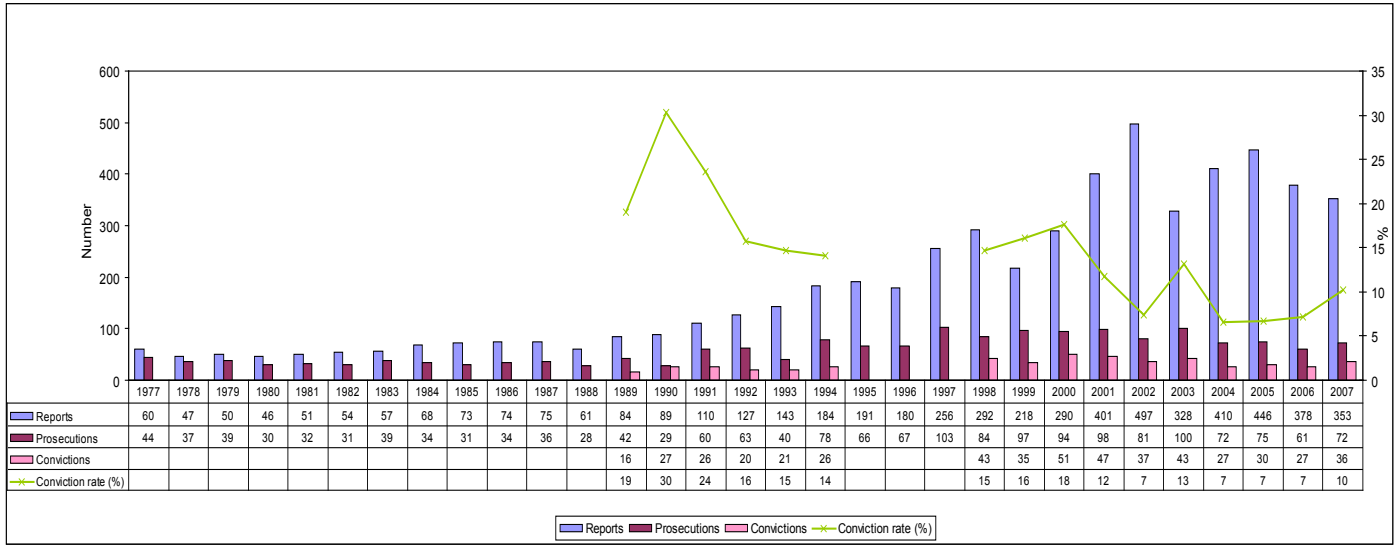
National statistics

For many years the only available figures on prosecutions and convictions for rape in Ireland were provided in the Garda Annual Reports on Crime. Figures in our previous report (Regan & Kelly, 2003) were collated from this source, which monitored reports, proceedings and convictions but only for the year in which the initial complaint was made. Since the majority of reported cases will not reach conclusion within a year, issues have been raised about the accuracy of these figures, especially with respect to convictions (Hamilton, 2008). From 1998 the Irish Courts Service has produced national data on the annual number of prosecutions and convictions. In the current study both sources have been combined. Figure 1, therefore, presents, for the years 1977 to 1997, the Garda Annual Report figures on the number of prosecutions, and from 1998 police data is only for reports, with the Courts Service data providing the figures on prosecution and conviction.

The number of reported rapes in Ireland has increased between 1977-2002; rising from just 60 in 1977 to 363 in 2002 - an increase of 505%. However, a recent downward trend is evident following a peak in 2002, when just short of 500 cases were reported. Ireland has a mid-range reporting rate in Europe at 8.98 per 100,000 population, considerably lower than the 26.14 in England and Wales and 46.51 in Sweden.

Despite concerns about the accuracy of the pre-1998 data the trends are so stark that it is evident that the number of prosecutions has not increased in line with reporting. Indeed, given the fact that the earlier figures are underestimates, it appears that the number of prosecutions has increased only slightly over the period, and decreased dramatically as a proportion of reports - from 73% in 1977 to 20% in 2007. Even only looking at 1998-2007, prosecutions as a proportion of reports have decreased. Between 1998-2000 the average prosecution rate was 35%, whereas between 2005-2007 it was 18%. Conviction rates also show a similar decline: between 1998-2000 the average conviction rate was 16% of reports, in the latest period (2005-2007) this has fallen to 8%. The proportion of convictions within cases prosecuted has remained stable; so the problem here appears to be one of 'under-prosecution'. More accurate data means that Ireland no longer has the lowest conviction rate in Europe.

Figure 1: Reports, prosecutions and convictions for rape in Ireland 1977-2007



Source: Reports 1977-2007 and prosecutions 1977-1997 from Garda Annual Reports; prosecutions and convictions 1998-2007 from Annual Report of the Courts Service. Note: Conviction data 1989-1994 refer only to convictions for rape leading to a sentence of imprisonment and are from The Law on Sexual Offences: A Discussion Paper (Department of Justice, Equality and Law Reform, 1998).

Case tracking

Victim profile

- The vast majority were female, with 4 male.
- Most were aged 18-30 (72%), white and originating from Ireland or other European countries, including Northern Ireland and England.
- More than half were single, with 28% in relationships.
- Over half were employed or students, more than a third were unemployed.
- About a fifth were recorded as having a mental health issue - one of the highest proportions in the study - and 6% had a disability.
- Over three-quarters (78%) had consumed alcohol around the time of the assault, one of the highest proportion in the study, and 10% had consumed drugs¹.

Suspect profile

- All were male, and on average older than victims.
- Whilst similar in origins, ethnic origin was slightly more mixed.
- Just under half (47%) were single, 43% married or in a relationship (data was missing here for 26).

¹ It is not possible to establish how intoxicated victims were since this information was not collected in Ireland.

- Over half were either in employment or students (55%), with fewer unemployed (27%) than among victims.
- Very few had a mental health problem, and a similar proportion to victims had a disability.
- Eighty-eight percent of the suspects for whom information was available had consumed alcohol at or around the time of the assault, and a small number were known to have consumed drugs.
- Over a third were previously known to the police, having been accused of offences, and more than a quarter (27%) had previous convictions, only two for sexual offences.

Offences and contexts

- All cases reported in Ireland were rapes.
- The assaults occurred in a variety of locations, but over half in private settings - the homes of victims and/or suspects.
- The largest group in terms of relationship were current/ex-partners (24%) and only a fifth (20%) were strangers.
- Over a third of victims (38%) had documented injuries, a weapon was used in only one case. The level of documented injuries is, in part a function of the relatively high proportion who were forensically examined compared to other countries.

Attrition

More than two thirds of cases were reported by the victim (69%), but a much higher proportion than in other countries by a known other (23%). Virtually all victims were interviewed at least once, although fewer (85%) provided a formal statement. Still fewer (76%) underwent a forensic medical examination. Table 1 shows case progress and attrition in the Irish sample over the stages of investigation, charge and court.

Table 1: Case progress and attrition in the Irish sample

Stage of legal process	Case progress and outcome	Ireland N / %
Investigation	Victim interviewed	97
	Suspect identified	79
	Suspect interviewed	69
Charge	Suspect charged	18
Court	Went to court	16
	Pending	2
	Victim withdrawal	2
	Suspect absconded	2
	Acquittal	2
	Conviction*	8

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

Over three quarters of suspects were identified and the majority were interviewed. However, despite fairly low attrition at the early stages of the legal process, only 18 suspects were charged, with 16 making it through to trial. In the majority of the 51 cases discontinued during the investigation (61%, n=31) the reason for not proceeding was insufficient evidence, and in most of the remainder (25%, n=13) it was the victim's decision to retract or withdraw co-operation. Discontinuance was more likely: where the victim had a mental health problem (25% versus 18% in the whole sample); the victim had consumed alcohol (88% versus 78%); the suspect had consumed alcohol (80% versus 60%).

Of the 16 cases which went to trial, eight resulted in a conviction - with the remainder acquitted, discontinued, withdrawn or pending. All eight offenders received a custodial sentence of between 4.5 and 15 years, in the higher range of sentences in the study.

Although a conviction rate of 8% is low, especially considering the number of suspects who were apprehended and questioned, the data are in line with the national statistics.

Table 2 provides more detailed analysis of the points at which attrition occurred, who took the decisions and the reasons for this.

Table 2: Detailed attrition point analysis for the Irish sample

When case fell out	Whose decision	Why case fell out	N / %
Early investigation	Victim	Declined to complete initial process	9
		Retraction	7
		Withdrawal of co-operation	6
	Police	False allegation	3
		Offender not identified	2
		No evidence of sexual assault	1
		Offender not located	1
		Suspect died	1
	Prosecutor	Insufficient evidence	2
No evidence of sexual assault		1	
Early investigation total			33
Mid investigation	Victim	Retraction	2
		Withdrawal of co-operation	2
		Declined to complete initial process	1
	Police	False allegation	5
		Offender not identified	1
Prosecutor	Insufficient evidence	17	
Mid investigation total			28
Late investigation	Victim	Withdrawal of co-operation	3
		Retraction	1
	Police	Offender not identified	2
		False allegation	1
	Prosecutor	Insufficient evidence	13
		No evidence of sexual assault	1
Late investigation total			21
Just before court	Victim	Withdrawal of co-operation	1
Just before court total			1
At court before case heard	Victim	Withdrawal of co-operation	2
		Suspect absconded	2
At court before case heard total			4
At court during/at conclusion of case	Judge	Acquittal/Evidential issues	1
	Jury	Acquittal	1
At court during/at conclusion of case total			2
Unknown			1
Convictions/pending			10
TOTAL			100

As with several other countries, and most adversarial systems, the majority (82%) of cases were discontinued during the investigation, and in a third this was in the early stages. In a third (34%) of cases the decision was taken by the prosecutor, on evidential grounds. There was a higher representation in this sub-sample of: victims with mental health problems and/or who had consumed alcohol; cases where victim and suspect knew one another.

In just under a third (31%) of cases victims chose not to proceed by: declining to complete the initial processes; withdrawing co-operation or retracting their complaint. Between the police investigation being completed and the case coming to court there were a further three victim withdrawals/retractions, two of which involved suspects who were current partners and two in which the investigation had lasted around two years.

In less than a fifth (17%) of cases the decision to discontinue was taken by police. This was mainly due to evidential issues, including failure to identify the offender or cases being designated false allegations (n=9). At 9% Ireland has one of the highest rates of false allegations, albeit that it is only slightly higher than that found in other research (Kelly et al, 2005). In all nine cases the victim had consumed alcohol at the time of the assault, including one who was described as 'heavily intoxicated'; four involved well known suspects (two ex-partners, one family member and a colleague).

Further analysis of the cases resulting in convictions revealed factors that made this outcome more likely:

- documented injuries (n=7 of 8);
- having been previously accused of criminal offences, especially rape (n=5 of 8);
- being arrested prior to interview and held in custody or remand (n=8);
- assaults by strangers (50% of convictions compared to 20% in the sample);
- the offender (n=7 of 8) having consumed alcohol prior to the offence.

Whilst some cases in which victims had drunk alcohol resulted in a conviction (n=5) this was a lower proportion than in the sample as a whole. Four out of eight victims had been assigned counsel, one late in the investigation, three at or just before trial, suggesting that sexual history evidence was raised in at least half of the convicted cases.

Conclusions

The data from Ireland 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 substantially over the last two decades, Ireland has a mid-range reporting rate.
- There has been a significant fall in the rate of prosecutions in recent years.
- The conviction rate of 10% is among the lowest in Europe, but more accurate data shows Ireland does not have the lowest rate.

From the case tracking data.

- The majority of attrition, similar to England and Wales, Scotland and Sweden takes place in early and mid investigation (82%).
- A high proportion, compared to other countries, were designated false reports (9%).
- The majority of cases resulting in a conviction reflect stereotypes of rape and rapists.

References

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