When it Comes to the Crunch: Public Prosecution of Domestic Violence. Results from the Empirical Analysis of Criminal Proceedings in Cases of Domestic Violence

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Abstract. This report introduces the results of an empirical analysis of criminal proceedings in cases of domestic violence, which have been registered in the decade from starting the networking within the Co-operation- and Intervention-project against Domestic Violence in Kiel (KIK), Germany, in 1997 since 2005. The results highlight the effects after implementing intervention strategies against domestic violence according to the changes in legislative frameworks, successfully exemplifying victim orientated prevention in Germany. Assessing the effects, conclusions are drawn how to improve the strategic approach of crime prevention in the field of domestic violence which is flexible enough and recognises diversities in managing the needs for the victim orientated strategies in prevention of domestic violence.

Introduction

Co-operative Networks and the Legislative Framework of the “Anti-Violence-Act”

Starting with the women’s movement in the early 1970ies, when in Germany the first women’s shelter houses have been built up, the issue of domestic violence had been risen up to the public debates and the media discourse, and Non-Governmental-Organisations strengthened their influence to put it on the political agenda. At December the 11th 2001, rather more than twenty-five years later, the Anti-Violence-Act (“Gewaltschutzgesetz – GewSchG”)\(^1\) has come into force. The legislative framework provides punitive civil injunctions combined with accessory criminal law action. In practice, the interventions in cases of domestic violence combine criminal sanction by penal law, that also include offender treatment programmes, with punitive fine by civil law - with remarkable effects!

Regional co-operative networks include a state-wide co-operation and linking up of various counselling and assistance institutions which are concerned with violence against women like counselling centres for women and women’s shelters, counselling institutions and meeting points for migrant women, counselling centres for substance addicts and offender training courses. To intervene and prevent domestic violence, they are working together with the police, lawyers as well as the office of court assistance (“Gerichtshilfe”) and public prosecutors and – when it comes to the crunch: they bring it to the criminal court.

The Changes in Police Responses to Violence Against Women

Women who have experienced violence cross a (social and judiciary) threshold when they report an offence to the police or when they seek for civil protection. In the most of the cases, the police provides crisis intervention to prevent further violent behaviour, pro-active de-escalation strategies by taking the perpetrator away for even a short-time arrest at the police station. Furthermore it is standing for the empowerment of the victims of domestic violence to report domestic violence to the police. In the social climate against domestic violence, supportive structures have been built up. The victims, the offenders as well as relatives and friends or colleagues find relevant information (e.g. in the Internet: http://www.kik-sh.uni-kiel.de) but also concrete action-taking advices about what to do in cases of domestic violence.

Empirical Analysis

Research Questions

A systematic evaluation of the court assistance files for Kiel allows a quantitative analysis of individual cases and can give insight into the kind and extent of violence against women. A differentiation of qualitative types will help to understand the process of decision making (within criminal law). Since violence against women is systematically recorded by the police force in Kiel, since the systematisation with the mark "GF" is continued in the subsequent treatment by the public prosecutor's office in Kiel and since violence against women is the primary field of work of the court assistance, there is an exemplary data pool on violence against women. Thanks to the local and institutional affiliation with the Department for Sanction Law and Criminology at Kiel University, this data pool can be exploited in the prospective research project.

The first step would thus consist of capturing the police operations of the central police department in Kiel (diary entries) and to compare them to the court assistance data on individual cases with regard to type, structure, social background (e.g. with reference to individual cases, the frequency and gravity of the offence), social consequences (interventions aiming at a solution of the conflict, cooperation with counselling and assistance institutions, decisions on imprisonment). Aspects of the social work in the specific counselling institutions for women should also be included. The focus of our scientific interest is the classification of cases of violence against women and hence the questions:

- Which cases are subsequently treated where (typology of cases)?
- What are the recommendations that employees of the court assistance give to the Kiel public prosecutor's office (analysis of decision structures)?

The research project is intended to tackle these questions on the regional level first. With the extension of the KIELER IK to the state-wide follow-up project KIK for Schleswig-Holstein, however, an extension of the investigation to the state level will have to be considered subsequent to the prospective duration of the project which lasts until 2005. The prospective research project lays the foundation for a sociologically-founded investigation and classification of violence against women with reference to its context and its consequences.
Methods

An evaluation of court assistance files concerning violence against women can thus provide information on the type and structure, the social context and the (social) consequences of violence against women. It focuses on a reconstruction of the characteristics of the accused and the criminal procedure (pre-history, socio-economic data of the accused as well as kind, extent and intensity (repetition and degree) of violence). This will be supplemented by statements and reactions of the victim, the social environment and (esp. in the case of recurring offences) earlier interventions by counselling and assistance institutions as well as reactions of the institutions of social control. The analyses of reconstructed individual cases was classified and summarised in an exemplary typology. A complete survey was assessed on this part of the investigation.

Accordingly, the research project analysed the court assistance files and the decision processes in cases of violence against women. The court assistance files concerning violence against women were documented systematically and will be evaluated from a sociological point of view².

Data

A central aspect of the networking is the use of a central database³. According to the preliminary conception of the KIK, the social services of the judiciary, i.e. probation and court assistance, was included in the cooperation as well⁴.

In cases of violence against women, the Kiel prosecutor calls in court assistance routinely and at an early stage in the framework of offender-victim-compensation. With its investigations of the offence and the offender and with its respective report, court assistance aids the court in decisions to frame the criminal sanction if appropriate in alliance with offender treatment programme.

Since the 1996 Probation and Court Assistance Law for Schleswig-Holstein went into effect and since the start of the prototype project KIELER IK in 1997, the Kiel prosecutor's office has been calling in court assistance routinely and at an early stage, i.e. already during the investigation procedures. In addition to investigation activities, their tasks comprise the drawing up of a report which is to facilitate decisions on criminal sanctions by penal law in the framework of a prognostic evaluation of the accused.

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² At the end of the project, the findings can be integrated into the KIK. All the preparatory work, such as the documentation of court assistance files concerning violence against women can be continued within the framework of the KIK and can be exploited in the interests of sustained development. The research project will thus give an important push for continuing and developing what already exists. The actors and the pertinent technical instruments are largely in an initial phase, the phase of “tools in the making”, which contains a high potential of integrating impulses from outside.

³ A computer-aided database is meant to record information on biographic events, cf. Schmitt (1999: 15f). Already in the database this will as far as possible be coupled with information on interventions by the different institutions. This will also allow assessing the cooperation of the different assistance or counselling institutions with institutions of social control as well as the organisation of the procedures that refer to one another. Flaws in the cooperation can thus be documented in the interests of quality assurance. They can then be discussed in project discussions and can eventually be reduced.

The cases of violence against women that were handled by the court assistance were documented for the years 1997 to 2005. The aim of this investigation was to record the calling-in of court assistance, the recommendations given in the court assistance report as well as the measures and interventions taken by court assistance in cooperation with other institutions (which offer counselling and assistance). At the same time the relevant features of the assignment by the public prosecutor's office and of its execution as well as the introduction and contential specification of the assignment will be queried systematically.

In the research project, the complete survey of $n=735$ police records of domestic violence and the selectivity processes in public prosecution from 1997 to 2005 has been analysed with the following results.

**Results**

**Police Records of Domestic Violence**

With two thirds of the of domestic violence records, the majority was reported to the police as a pre-criminal behaviour like “loud arguing”, “smashing doors” e.g.. For that, an increased number of cases of domestic violence has been reported to the police since the Anti-Violence-Act has become into force. This might be regarded as an effect of a stronger social control (c.f. fig. 1).

![Figure 1. Increased Reports of Domestic Violence with Constant Rates of Criminal Behaviour](image)

Whereas the police interventions in cases of pre-criminal behaviour leads to various counselling and assistance institutions which are concerned with violence against women
like counselling centres for women and women's shelters, counselling institutions and meeting points for migrant women, counselling centres for substance addicts and offender training courses as part of the regional co-operative networks, the records of ‘criminal behaviour’ have been consequently prosecuted. To research the processes of public prosecution, these records of the criminal behaviour in domestic violence context has been examined within the networking of the police, lawyers as well as the court assistance, public prosecutors and the criminal court.

Criminal Prosecution of Domestic Violence

To explore which kind of domestic violence has been prosecuted, which were the routines in the criminal proceedings and what is the formal charges to final judgement, which of the files come to criminal court. The empirical analysis was based on a sample of n=104 prosecuted records of domestic violence - which is nearly one third of the whole amount of the annual criminal proceedings in domestic violence in Kiel. Empirical data shows prosecuted domestic violence in a variety of criminal offences as there are damage of property, insult, injuries, harassment and assault (c.f. fig. 2).

Severe violent behaviour is described as harm, bodily injuries and aggravated assault, and often damage of property, harassment and other elements of coercive perpetuation were reported to be running before or also in that context. This corresponds to the research about the characteristics of the spiral of violent behaviour in domestic violence.

![Figure 2. Criminal Prosecution in Cases of Domestic Violence](image-url)
Sanctioning Domestic Violence

First, the empirical analysis brings up to light, that it is the severe domestic violence that comes to court. The formal charges to final judgement in records of domestic violence are shown up with one fifth of the prosecuted cases in domestic violence has been sanctioned by criminal court. Whereas two thirds are dismissal, the high amount of 43,3 % informal interventions is the final judgement by the prosecutors (c.f. fig. 3).

Another important result is that the offenders with former criminal records are more often sanctioned by the criminal court (c.f. fig. 3). The rate of the severe sanctioned with 39,5% corresponds with 31,5% to the rate of the offenders with (multiple) criminal records from the past in the sample. Not formerly registered offenders and those who do not regret their misbehaviour, who are willing to co-operate with the official institutions, they are more likely to get offered mediation and to participate in anti-aggression-training to prevent future violent behaviour. This form of sanction is set in charge by a highly problem adequate decision making process of the special task-force unit in public prosecution of domestic violence. The public court assistance (so called “Gerichtshilfe”) consists of professionals who are trained on domestic violence and they assist the prosecutors and the court to come up to a special prevention strategy. Finally, the empirical data analysis evolves that the small but hard core of (formerly reported violent) offenders get the strongest sanctions by the criminal courts.

The comparison with the data of selectivity processes in common criminal assault (c.f. fig. 4) with the selectivity processes in domestic violence (c.f. fig. 5) shows, that criminal prosecution of domestic violence is a two up to a four times stronger in sanctioning violent behaviour, if there has no domestic context been registered.
Figure 4. Selectivity Process of Pursuing Formal Charges in Common Criminal Assault

Figure 5. Selectivity Process of Pursuing Formal Charges in Domestic Violence
Summary

The criminal proceedings demonstrate the effects of public prosecution and the strong interventions in cases of severe violent behaviour, which corresponds to the high number of the crisis interventions by the police in every fourth of the cases\(^5\). According to the high amount of the pre-criminal behaviour like “loud arguing”, “smashing doors” e.g., this explains the relatively low evidence (and meaning) of criminal sanctions in the field of domestic violence. Beneath to that, empirical data show a relatively high scored level of civil injunctions like e.g. contact stops with charging a fine when they are offended.

Conclusion

Regardless the outlined success in transposing the legislative framework (“Anti-Violence-Act”) into effective intervention strategies against domestic violence, the women’s rights organisations and their motivational network partners in Germany claim a more restrictive practise in criminal prosecution in cases of domestic violence\(^6\). Thus, they ignore - according to the low rates of criminal offences, the civil injunction as the more effective instrument for prevention in the majority of domestic violence.

The results deliver insight into processes of the (social and juridical) definitions of ‘domestic violence’ as well as how they are concerned with on an individual as well as on the institutional level. Women who have experienced violence, they cross a (social and judiciary) threshold when they report an offence to the police or when they seek for civil protection.

It is evidence based by the results of the empirical analysis of the criminal proceedings, that women prefer the quick and concrete civil injunction as a punitive reaction on domestic violence in the majority of pre-criminal domestic violence. Together with the crisis intervention given by the police, the civil injunction seems to be the more flexible method to women seeking protection against domestic violence. Therefore the almost successful and effective intervention and prevention strategy has to combine immediate crisis intervention by the police with special offender treatment programmes as well as the support for the victim with a predictable short-time reaction of the official institutions to protect the victim. The current crimino-political strategies against domestic violence in Germany follow the multi-agency-approach within the co-operative network providing interventions as criminal sanction by penal law and punitive fine by civil law.

\(^5\) In 2004 the police provided 69 crisis interventions in cases of domestic violence in Kiel.
\(^6\) c.f. Rupp et al. 2005 with empirical evaluation of the Anti-Violence-Act and its punitive instruments by civil injunction; in opposite to the effectiveness of the flexible instrument of civil injunction, other authors claim the criminal proceedings in domestic violence (c.f. Hagemann-White / Kavemann 2004; Kavemann/ Rabe, 2005)
Bibliography


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