The level of attrition in domestic violence: A valid indicator of the efficiency of a criminal justice system?

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Introduction

The term *attrition* finds its roots in the Latin *attritio*, which means *to rub* (Merriam-Webster, 2017). Gradually, the word took different meanings, keeping however the image of the gradual diminishing or weakening of something by abrasion or friction. In the field of criminology, attrition has been defined as “the process whereby cases drop out of the criminal justice system at one of a number of potential points of exit from that system” (Lea, Lanvers and Shaw, 2003, p. 583). Instead of using the concept of *drop out* some authors refer to the *loss* or the *filtering out* of cases throughout the criminal justice system (Heiskanen, van der Brugge and Jehle, 2014, p. 151; Jehle, 2012). Criminologists have been applying the concept of attrition mainly since the publication, in 1967, of the report on *The challenge of crime in a free society* by the United States of America President’s Commission. That report illustrated the attrition process through a representation of the criminal justice system as a funnel that received 2,780,180 index crimes in 1965, of which only 6.5% led to a sentence (President’s Commission on Law Enforcement, 1967, pp. 8-9). A *sieve* would be a better metaphor, however, because the mesh blocks some particles, while the funnel only slows their passage but, in the end, allows them all to pass (Killias, Aebi and Kuhn, 2012, p. 344).

The fact that the criminal justice process has the structure of a sieve means that only very few of the crimes committed end up with their author being incarcerated. In that perspective, the literature on punitiveness considers that a low incarceration rate per crime may reflect the limited ability of a system to solve crimes, but it may also reflect a low level of punitiveness, something that is usually seen by criminologists as a positive characteristic of a criminal justice system (Blumstein, Tonry and Van Ness, 2005). For example, Finland, and the Nordic countries in general, has repeatedly been presented as a model for the rest of the world because of their limited use of incarceration (Lappi-Seppälä and Tonry, 2011; Pratt, 2008). On the contrary, the literature on attrition, and in particular the one studying attrition in domestic violence (hereafter DV) offences, tends to focus on low incarceration rates per crime as indicators of the inefficiency of the system (see e.g. Hester, 2006; Walby, Armstrong and Strid, 2011).

Attrition should be operationalized through research designs that follow offences, offenders or cases throughout the criminal justice system and estimate the percentage that are disposed of at each stage of that system. This percentage is commonly known as the *attrition rate* and corresponds to the percentage of offences (or offenders, or cases) that *do not reach* a specific

stage (e.g. prosecution, court or prison) of the criminal justice system. Nevertheless, there is a risk of confusion in the specialized literature because sometimes the attrition rate is presented as the percentage of offences that effectively *reach* one of these stages (Walby et al., 2011). Technically, the latter should not be considered as an attrition rate, but as an indicator known as *certainty of conviction* when it refers to the percentage of offenders known to the police who have been convicted, and as *certainty of punishment* when it refers to the percentage of offenders known to the police or convicted who have been incarcerated (Blumstein et al., 2005). For example, in the year 2005, in eight Western European countries, there were 35 persons convicted for homicide per 100 persons known to the police for the same offence (Aebi and Linde, 2012b), which corresponds to an attrition rate of 65% and a certainty of conviction of 35%. Moreover, the indicator of the certainty of conviction is sometimes referred to as the *conviction rate* (Council of Europe, 2016; Walby et al., 2017) or the *conviction ratio* (Jehle, 2012).

This article analyses the level of attrition, from police files to prosecution services and court records, for all DV cases recorded by the police forces of the canton of Vaud, Switzerland, during the first six months of 2012 (N=592)¹. According to the classification used in the Swiss criminal justice statistics (Zoder, 2012), DV is defined in this article as physical and psychological violence committed between intimate partners (current or ex-husbands or boyfriends/girlfriends, within a year of the breakup of the relationship). In particular, the article tries to answer the following questions: What is the rate of attrition? How can that rate be explained? Is that rate comparable to the one observed in similar studies conducted in Europe? The answers provided by the empirical research will also lead to a more general question: Is the rate of attrition a valid indicator of the efficiency of a criminal justice system to deal with domestic violence? The validity of an indicator is defined as its capacity to measure in an effective way the phenomenon under study (Aebi & Linde, 2012a). In that perspective, the European Commission for the efficiency of justice (hereafter CEPEJ) does not provide a specific definition of *efficiency* (see CEPEJ, 2018), but it was created to improve the judicial protection granted by the European Convention on Human Rights which, in its article 13, guarantees the “right to an effective remedy” to everyone whose rights and freedoms are

¹ Vaud is the third biggest canton of Switzerland in terms of population and is located in the French-speaking region of the country. In 2012, year of reference for this research, it had 729,971 inhabitants (almost 10% of the total population of the country), of which 32% were non-Swiss citizens with a status of permanent residents and 1.5% were foreigners without such status. The capital of the canton is Lausanne, a city that had 154,237 inhabitants in 2012 (Statistique Vaud, 2017).

violated (Johnsen, 2017). Ideally, this would imply reversing the situation to the one that existed before such violation, but in practice it usually means compensating the victim and punishing the offender. In particular, the literature on DV quoted above puts the accent on the punishing of the offender through a conviction.

The first part of the article discusses the operationalisation of the concept of attrition and presents an overview of the main results of contemporary European studies on that subject. This is followed by a short presentation of key aspects of the Swiss criminal justice system that will help the reader understand the findings. The latter are presented after a section that introduces the sample used in this research as well as its methodology. The discussion places such findings in the context of the previous research on attrition presented at the beginning. Finally, the conclusion includes the answers to the questions stated above, highlights the limits of this study, and include suggestions for further research.

Previous research on attrition in domestic violence

Attrition rates can be calculated for all offences or for specific offences and can refer to the cases disposed during the whole criminal justice procedure or at specific stages of it. In the United Kingdom, for example, Ratcliffe (2011) estimated that 41% of the crimes identified through the Crime Survey for England and Wales were reported to the police, 29% were recorded by them, 2.1% reached the courts, 1.5% led to a suspect being found guilty, and 0.4% ended up with a custodial sentence being imposed, which represents an overall attrition rate of 99.6%. In a comparative perspective, Jehle (2012) studied attrition from the police to the court stage for a group of six European countries in 2006, and found attrition rates of 70% for robbery, 83% for assault, and 84% for rape. One particularity of these is that they operationalize attrition rates at the macro level, because they compare the total number of crimes identified at each stage of the criminal justice system in a given year. A weak point of that approach is that the offenders identified by the police in one year are not necessarily sentenced or sent to prison during the same year. Researchers have acknowledged this limitation but continued using this kind of analysis, accepting as a premise the hypothesis that, unless a country introduces a major change of its criminal law or its statistical counting rules, attrition rates do not vary radically from one year to the other. In Western Europe, that

hypothesis was corroborated by a research that studied trends in attrition rates from 1990 to 2006 (Aebi and Linde, 2012b).

An additional weak point of the macro level approach is that there is no control over the reclassification of offences that may take place across the different stages of the criminal justice system. For example, Gregory and Lees (1996) found that 20 out of the 185 cases of rape and sexual assault recorded by two London police stations from September 1988 to September 1990 received a different classification at the judicial level. In particular, two were reclassified into a more serious crime and 18 were downgraded to less serious crime (Gregory and Lees 1996). The main reason for reclassification is related to the fact that the police intervention takes place in a context of emergency and, as a consequence, the police officers cannot easily measure the real extent of the damages and the intention of the author. Even if the police files include the information collected during the whole police investigation, some elements can only be known during the justice proceedings². At that moment, the victim can also invoke new facts that imply additional offences. As a consequence, we included in this study a specific analysis of the reclassification of police recorded offences by the prosecutors and the judges.

An alternative way of operationalising attrition rates consists in selecting and following throughout the criminal justice system a *sample* of offences, offenders or cases, adopting thus a micro level perspective. For example, in a study that showed a wide diversity in the levels of attrition in reported cases of rape in 11 European nations, Lovett and Kelly (2009) included *case-tracking* samples, which consisted in a follow up of samples that included 70 to 90 rape cases per country. Similarly, in the United Kingdom, several studies followed samples of cases of rapes known to the police and found attrition rates that were usually superior to 90% (Bunting, 2008; Gregory and Lees, 1996; Kelly, Lovett and Regan, 2005; Lea et al., 2003). In Switzerland, Aebi (2006) followed a sample of 900 drug-addicts participating in the Swiss heroin prescription programs in the 1990s. He found attrition rates of 96% from self-reported offences to police interpellations, and of roughly 99% to court convictions, for the offences committed during the six months preceding their admission to the program (Aebi, 2006, p. 108).

² Switzerland applies a system of *output* statistics, which means that the final data included in them is not based on the first report of the police officers (i.e. *input* statistics) but on the one that is transmitted to the criminal justice system after the police investigation. This means that, theoretically, the level of reclassification should be lower than in countries using an input system (Aebi, 2010).

This article follows that micro level approach and therefore we focused our review of the literature on European studies that used a similar methodology to measure attrition in DV. To the best of our knowledge, such studies has been conducted only in the United Kingdom and often put the accent on attrition due to the withdraw of the complaint. Hence, Hester et al. (2003; Hester, 2006) followed 869 DV incidents recorded by the Northumbria (England) police in 2001. They observed that 222 (26%) of them resulted in an arrest, 60 individuals were charged for criminal offences (27% of those arrested and 7% of the incidents), 31 individuals were convicted (52% of those charged, 14% of those arrested, and 4% of the incidents), and 4 of the convictions involved custodial sentences (13% of the convictions and 0.5% of the incidents). This corresponds to an attrition rate of 96.5% from police recorded incidents to persons convicted, which rises to 99.6% if one considers only the persons convicted to custodial sentences. Analyzing the results, Hester (2006) considered that attrition in DV cases was explained by the lack of evidence for a conviction by a court and the difficulties for the victims to follow a trial. Similarly, an analysis conducted jointly by the United Kingdom Crown Prosecution Service Inspectorate and the Inspectorate of Constabulary (HMIC and HMCPSI, 2004) followed a sample of 463 incidents recorded by six police forces in March 2003. The results showed that 118 (25%) of the incidents resulted in a crime being recorded because in most cases the victims had withdrawn their complaints. These incidents led to 71 arrests being made and 25 offenders being charged. Finally, 13 offenders were convicted, which corresponds to an overall attrition rate of 97.2%. At the same time, the study followed another sample of 418 cases treated by the Crown Prosecution Services (i.e. cases that had passed the police stage of the criminal process) and finalized in March 2003. Among them, 210 led to a conviction, of which 186 corresponded to guilty pleas and 24 to convictions after trial (HMIC and HMCPSI, 2004). This corresponds to an attrition rate of 55.5% from the prosecution to the court level, including guilty pleas.

Focusing on the court level, Cook et al. (2004) followed 216 domestic violence case files treated by Specialist Domestic Violence Courts during three months of 2003 in 5 different sites (Cardiff, Derby, Leeds, West London, and Wolverhampton). They found that 18% of the cases dropped out of the system before trial, either because they had been withdrawn (11%) or discontinued (7%). The cases that reached the court led to 69 defendants (32% of the total sample) pleading or being found guilty (Cook et al., 2004). Robinson and Cook (2006) conducted supplementary analysis of the data and found that half of the victims had decided to retract. They conclude that retraction is one of the causes of attrition, but it is not

necessarily a synonym of a failure of the justice system (Robinson and Cook, 2006). Retraction was also studied by Barrow-Grint (2016) who followed 50 cases registered by the Thames Valley Police in 2014 and found out that, in most cases, the withdrawal of the complaint had taken place during the 5 days that followed the violent episode. Summarizing the results of most of these studies (Hester et al., 2003; HMIC and HMCPSI, 2004; Cook et al., 2004) and one that followed a different research design (Hester and Westmarland, 2005), Hester (2006) considered that the patterns of attrition were “depressingly similar” (Hester, 2006: 81).

At the same time, even if theoretically the level of attrition in domestic violent cases should be lower than the average because the victim knows the author and therefore the police can easily identify him or her, empirical research has not corroborated that hypothesis. In practice, the level of attrition in DV is similar and sometimes higher than the one observed for offences in general in the United Kingdom (HMIC and HMCPSI, 2004).

The Swiss criminal justice system in a European perspective

Switzerland has a Roman law criminal justice system, and the Swiss Criminal Code (SCC) makes a distinction between *contraventions* (sanctioned with a fine), *misdemeanours* (which carry a custodial sentence not exceeding three years or a monetary penalty), and *felonies* (which carry a custodial sentence of more than three years). The difference between a fine (whose maximum amount is 10,000 Swiss Francs) and a monetary penalty is that the second is considered as an *alternative* to a custodial sentence (*diversion*) while the fine is a sanction in itself (arts. 10 and 103 SCC). The Swiss Federal Code of Criminal Procedure (SCP) introduced in 2011 abolished the position of investigating judge and replaced it by the prosecutor, who leads the criminal investigation and can impose custodial sanctions of up to six months. As a consequence, currently the vast majority of convictions are not pronounced by a court but are based on *orders* imposed by the prosecutor, which are “not a judgment of first instance, but an offer to the parties for an out-of-court settlement of the criminal case or a proposed judgment” and that the defendant can only accept or refuse by raising a written objection within three days, something that seldom happens (Gilliéron, 2014, pp. 226-228). In particular, according to the national data collected by the Swiss Supreme Court for the CEPEJ, out of the 499,312 cases received by the public prosecution services in 2012, only 2.1% were brought

before a court, while the rest ended up with different types of orders imposed by the prosecutor (CEPEJ, 2014: 274).

When the defendant has accepted responsibility or the latter has been established, the prosecutor issues a *penal order* (art. 352 SCP), which can consist in a fine, a monetary penalty (up to 180 daily penal units), a community service sanction (up to 720 hours), or a custodial sentence of no more than six months. Apart from that, prosecutors can also impose three other types of order that lead to the temporary or permanent closing of the procedures: *suspension order*, *no-proceedings order*, and *abandoning of the proceedings order*. Thus, the public prosecutor may suspend an investigation for up to six months if, for example, the offender or his or her whereabouts are unknown, a private settlement proceeding or another type of proceeding is ongoing and it seems appropriate to await their outcome, or a decision on the substance of the case depends on how the consequences of the offence develop (*Suspension order*, art 314 SCP). This possibility is particularly relevant in the case of DV because the Swiss Criminal Code foresees that, in the case of common assault, repeated acts of aggression, threats or coercion between partners or ex-partners (within a year of the separation or divorce), the public prosecutor or the court may suspend the proceedings for six months on request of the victim (*Discontinuation of proceedings*, art. 55a SCC). If the victim does not revoke her request within the six months, the prosecutor shall order the abandonment of the proceedings (*Abandoning proceedings order*, art. 319 SCP)³. In practice, the effect of this combination of the suspension order with the abandoning proceedings order could be compared to one produced by the withdrawal of the complaint that still exists in other countries, like the United Kingdom. Finally, the public prosecutor shall rule that no proceedings will take place if, on the basis of the complaint or the police report, it is established that the elements of the offence concerned or the procedural requirements have clearly not been fulfilled, if there are procedural impediments, or if there are other reasons (i.e. the offender is seriously affected by the consequences of his act or he has proceed to a reparation of the loss or damage) for waiving the prosecution (*No proceedings order*, art. 310 SCP).

³ The *Abandoning Proceedings order* (art. 319 SCP) also allows the public prosecutor to order the complete or partial abandonment of the proceedings, for example, if the conduct does not fulfil the elements of an offence, the suspicions do not justify bringing charges, it is impossible to fulfil the procedural requirements, or it is essential in the interests of a victim who was under the age of 18 at the time of the offence and this interest clearly overrides the interest of the state in a prosecution.

Data and methods

The operationalization of domestic violence in police files

The identification of DV in police statistics is particularly problematic because the latter usually follow a classification based primarily on the type of offence recorded and not on the relationship between offender and victim. For example, studying long-term trends in DV is quite difficult because of the lack of reliable data on basic indicators —such as the number of female victims of intimate partner violence— until the beginning of the 2000s, when DV became a criminal policy priority in Western Europe (Tonry 2014). In Switzerland, the issue was solved at the federal level in 2009, with the introduction of a new statistical system for police recorded offences⁴. Assuming that, from a practical point of view, it is unrealistic to ask police officers to register the personal links between victims and offender for every intervention, the Swiss Federal Statistical Office (OFS) established a list of offences for which such ties must be systematically recorded. This list contains offences that typically can take place in the context of DV, including namely all kinds of intentional homicide, assault and battery, rape and sexual assault, as well as sexual harassment, threats, insults, coercion, endangering life, abduction, defamation, and misuse of telecommunications installations (for a full list, see Zoder 2012). When one of these offences takes place, the police records whether it took place between partners or former partners (within a year of the breakup of the relationship), between parents and children, or between persons linked by other family ties. This was the criterion used for extracting the database for this research, but restricting the cases to the ones involving partners and former partners. It must be mentioned, however, that the main DV offence is often accompanied by other transgressions of the law –identified in this research as *ancillary offences*– which are not in the OFS list, but which are also recorded by the police inside the same case (see Table 1).

⁴ Until then, in the canton of Vaud it was possible to identify most of the cases through a *domestic violence form* that was introduced in the early 2000s as a strategy to deal more efficiently with this phenomenon. This form is filled by the police officers after a DV intervention, in such a way that, if the police is called to intervene again at the same address, a specific squad can be mobilized. However, when the offence is a very serious one, such as homicide or rape, the police follows the specific protocol foreseen for these offences and the form is not necessarily filled. As a consequence, research on DV conducted in the canton of Vaud during the first decade of the 2000s (Jaquier, 2010) usually did not include the most serious offences and its findings cannot be compared to the ones presented in this article.

The counting unit

Research on attrition faces a classical methodological problem caused by the fact that the counting units used at different levels of the criminal justice system are not necessarily the same. (e.g., the prisoner in prison statistics, the conviction or the person convicted in court statistics, the case in prosecution statistics, and the number of offences and of suspects in police statistics). In several of the studies quoted throughout this article, the authors start with the number of offences recorded by the police (see e.g. Hester 2006) or revealed in crimes surveys (see e.g. Ratcliffe 2011), which they later compared with the number of persons convicted or imprisoned. Nevertheless, the passage from the offence to the person as a counting unit remains problematic because a suspect may be accused of several offences, a sentence imposed by a court on an offender usually includes more than one offence, but all these offences can lead to only one person entering into prison. In this research, we had access to an original police database in such a way that it was possible to use four counting units (case, offence, offender, and victim) at the level of police files, and follow three of them (case, offence and offender) in prosecution and court records. The attrition process was measured using the case as the counting unit.

The sample

The sample used in this research is based on all the cases (N=592) of DV recorded by the police between 1st January and 30th June 2012. The time period considered was decided taken into account that a period of six months provides a sample that is larger than the ones used in similar studies (see the previous section) and that, according to the length of the criminal justice proceedings in Switzerland, the vast majority of the cases would have been closed by the second semester of 2014, when the data collection took place (see below).

Researchers were granted access to an anonymized police database, which included the characteristic of the case (e.g. date, place and offences recorded), the victim and the suspect (e.g. age, gender, country of birth, and professional activity). Personal data protection legislation did not allow extracting information on offences and victimisations committed before the period of reference, which could have been useful for the study of recidivism, and the database did not allow establishing whether foreign victims and suspects had the status of permanent or non-permanent residents.

The link between police and court files was established case by case because there is no common database between the two institutions. Researchers then consulted the physical files stored in the five different prosecutorial offices and four different tribunals of the canton and collected the required information, which was added directly to the original database.

All the cases registered by the police (N=592) were identified at the justice level. Twenty-three cases had been filed for lack of evidence, two had been transmitted to the justice of other states and 18 were still in treatment and, as consequence, could not be accessed (see Figure 3). The low number of cases that had not been closed at the moment of the data collection (n=18) corroborates that the time period chosen for the study was appropriate. Thus, the justice database includes 549 cases. In some of the analyses presented in this article, the number is slightly lower because there were some missing data regarding specific variables.

Findings

The profile of domestic violence cases

Figure 1 presents the distribution of the offences recorded by the police and the justice authorities. In the case of the justice authorities, the qualification of the offence corresponds to the one made by the prosecutors –in the cases that did not reach the courts– or by the courts.

Figure 1 here

Figure 1 shows that roughly one third of the offences treated by the criminal justice system correspond to *battery only causing pain* (art. 126 SCC), which constitutes a contravention because it is sanctioned with a fine. *Insults* (art. 177 SCC) and *threats* (art. 180 SCC) represent almost half of the offences (nearly one fourth each) treated by the criminal justice system. Both are considered as misdemeanours. In the case of insults, the sanction is a monetary penalty that cannot exceed 90 daily penalty units, while in the case of threats, the sanctions range from a fine to a custodial sentence not exceeding three years. Lastly, *common assault* (art. 123 SCC) represents 5.5% of the offences recorded by the police, but it increases to 11.6% when prosecutors reclassify the offences. Common assault also constitutes a misdemeanour and carries the same range of sanctions foreseen for threats. For these four contraventions and misdemeanours, which represent almost 90% of DV offences, the code foresees that the

offender is prosecuted *ex officio* if he or she commits the offence repeatedly against her or his current or previous partner, within a year of the separation or divorce (art. 126 SCC).

The rest of offences include the ones that represented less than 5% of the total number of offences and are presented in Table 1 in Appendix. It can be seen that the most serious offences are included in this group, which includes mainly murder, rape, serious assault, and other sexual offences. Table 1 also gives a general overview of the reclassification of offences by the judicial authorities, which are analysed in the following section.

The reclassification of offences

It can be seen in Table 1 in Appendix that the passage from the police level to the justice level implies an increase of 24% in the number of offences (from 1,132 to 1,408). At the same time, it implies a decrease of 4% in the number of cases (from 592 to 567) due to the two cases transferred to another jurisdiction and the 23 that were filed for lack of evidence.

In order to study the specific phenomenon of the reclassification of offences, a random subsample of 245 cases was selected. For each case, the most serious offence according to both sources of data (police and justice authorities) was identified and then compared. The seriousness of the offence was established according to the sanction foreseen in the Swiss Criminal Code.

The analysis shows that a reclassification took place in 55.8% of the cases. In two thirds of them, the reclassification led to an aggravation of the original offence (i.e. the offence recorded by the police was reclassified as a more serious offence by the prosecutors), while in the remaining third, the reclassification led to a less serious offence than the original one. Table 1 presents several examples of the aggravation of the classification. In the case of battery only causing pain there were 351 cases in the police files but 455 at the judicial level, threats grew from 278 to 312, common assault from 62 to 163, and rape from 8 to 17. The most common reclassification implied the passage from battery only causing pain to common assault. Table 1 shows that the latter represented only 5.5% of the offences recorded by the police but increased to 11.6% of the offences dealt with by the prosecutors and the courts.

The increase in the number of offences shown in Table 1 implies that the prosecutors and the courts reclassify some offences, but also introduced new ones. The main offence that was introduced by them was *damage to data*, which consists in altering, deleting or rendering

unusable data that is stored or transmitted electronically (art. 144 SCC). This offence was introduced in forty-nine cases; while the qualification of *misuse of telecommunications installation*, which was used by the police in 29 cases was not kept by the prosecutors and the judges. At the same time, the judicial authorities introduced several times the qualification of *attempts*, especially for the most serious offences. That was the case for murder (n=2 cases), rape (n=2), serious assault (n=1), unlawful entry (n=1), and indecent assault (n=1). They also introduce a case of *negligent* assault.

The number of offences included in each case of domestic violence

According to police records, almost 60% of the cases of DV included more than one offence. In particular, two offences were recorded in 35% of the cases, three in 23.1% of them, and four in 1.2% of them. The rest of the cases (40.7%) included only one offence. Figure 2 presents this distribution of the number of offences by case and allows a comparison with the one observed at the justice level.

Figure 2 here

The Figure provides an additional illustration of the introduction of new offences by the prosecutors and the courts. For example, the police did not identify a single case with more than 4 offences, while, at the level of the judicial authorities, 6% of the cases included 5 or more offences. The percentage of cases with 4 offences also increased from 1% at the police level to 8% at the justice level, while the cases with three offences remained more or less stable. On the contrary, the cases including only one or two offences decreased from 41% to 31% and from 35% to 31% respectively.

Attrition pattern

The way in which the 592 cases registered by the police were dealt with by the criminal justice system is presented in Figure 3. The vertical (shadowed) path illustrates the attrition process as it has been classically studied.

Figure 3 here

Figure 3 shows that 96% of all cases recorded by the police were treated by the justice authorities, and that 12% of them led to a sanction imposed by a prosecutor (penalty order)

and 8% to a sanction imposed by a court. Thus, all in all, 20% of the cases registered by the police led to a conviction, which means that the overall attrition rate was 80%.

The horizontal paths show how the rest of the cases were diverted during the proceedings. At the police level, 0.3% were transmitted to the justice authorities of another canton and 4% were closed for lack of evidence. At the justice level, the court acquitted the suspect in 0.8% of the cases, while the prosecutors filed 72% of the cases through different types of orders: 2% by a suspension order, 8% by a no-proceedings order, and 62% by an abandoning of the proceedings order. Finally, 3% of the cases were still in treatment by mid-2015. If one makes the hypothesis that the distribution of the cases transferred to another canton (0.3%) and the ones pending (3%) is similar to the one of the cases closed, it can be estimated that roughly 21% of all cases could lead to a conviction and the attrition rate would thus be 79%.

Discussion

The overall attrition rate observed in this research is 80%, which means that 20% of the cases of DV known to the police led to a conviction. From an abstract point of view, that level of attrition could be considered as high and deserves an explanation. As mentioned in the introduction, when attrition rates are calculated as we have done it in this article, the criminal justice system resembles a sieve in which only a few cases reach the end. The risk of this kind of analysis is to consider the criminal proceedings as a linear process and conclude that the standard for efficiency would be to have each crime reported to the police, who will identify the author and charge him/her before the court finds him/her guilty and imposes an appropriate prison sentence (Bryden and Lengnick, 1997). In this perspective, cases in which the suspected offender was innocent or was diverted during the process will be considered as “lost”, “filtered out” or “dropped out” when indeed the system has processed them differently. In Europe, research has shown that the main actors of the attrition process are the police and the prosecutors who can take a lot of case-ending decisions (Jehle, 2012; Jehle, Smit and Zila, 2008). In particular, the police act as a filter when it has discretionary powers that allows them to transmit or not the cases to the prosecutors on the basis of the seriousness of the offences, the degree of evidence, or the withdrawal of the complaint by the victim. In a similar way, prosecutors, can act also as a filter between the police and the courts by imposing a sanction –usually in the form of a penal order– that does not necessarily

require the approval of the court and may not appear in conviction statistics, thus reducing artificially the level of attrition. Our empirical research has clearly illustrated the weight of these interventions at the prosecutor stage in Switzerland, while our review of the literature showed that they play a major role at the police stage in the United Kingdom.

In that comparative perspective, an attrition rate of 80% could be considered as relatively low because the ones found in the United Kingdom are usually above 90% (Hester, 2006; HMIC and HMCPSI, 2004). However, comparisons based on data produced by the criminal justice agencies are particularly problematic because such data are influenced by legal, statistical and criminal policy factors —such as the definitions of offences and characteristics of the justice system, the statistical counting rules applied when collecting the data, and the interest in pursuing particular offences— which have a stronger influence than the substantial factors, which relate to the real frequency of an offence (Aebi, 2010; von Hofer, 2000). For example, in this research, 96% of the police recorded cases were transmitted to the prosecutors, while in the United Kingdom, according to the research conducted by HMIC and HMCPSI (2004), only 25% of the cases known to the police resulted in a recorded crime, mainly because the victim had decided to withdraw the complaint. As we have seen, the difference comes from the fact that, under the current Swiss legislation, the victim cannot withdraw the complaint at the police level, but she can ask the prosecutor to suspend the procedure for six months and, after that period, the prosecutor can directly order the abandoning of the proceedings. In this research, 62% of the cases were filed through an abandoning of the proceedings order.

The attrition rate observed in this study is also lower than the one observed at the level of the whole Swiss criminal justice system. In the latter, we have seen that the attrition rate for 2012 was 97.9%, as only 2.1% of the cases reached a court (CEPEJ, 2014), while in the cases of DV followed in this research, that percentage was multiplied by more than four as 8.8% of the cases reached a court. In addition, 90% of the DV cases that reached the courts (45 out of 50) ended up with a conviction.

Another interesting result is that in more than half of the DV cases (55.8%), the prosecutors and judges proceeded to a requalification of the most serious offence recorded by the police, which led to an aggravation of two thirds of them and an attenuation of the other third. Prosecutors and judges also add new offences and introduced the concepts of negligence and attempts. Hence, the passage from the police to the prosecution and court stages of the criminal justice system implied a consistent increase in the number of offences recorded and

their seriousness. This finding casts some doubts about the validity of attrition studies based on data collected at the macro level, which do not take into account these variations. In this research, the influence of the reclassification could be controlled because the counting unit was the case, and each case had been followed throughout the criminal justice system in order to establish the attrition pattern. On the contrary, most macro-level studies of attrition are based simply on the number of offences of the same kind treated at the different stages of the criminal procedure.

Conclusion

Any conclusion made on the basis of the analysis presented in this article must start by highlighting the limitations of police recorded offences for the study of the real magnitude of any sort of crime. The cases of DV identified by the police represent only a fraction of the ones effectively committed. As a comparison, according to the Swiss survey on DV –which was part of the International Violence Against Women Survey or IVAWS (Johnson et al., 2007)– only 27.6% of the victims of DV reported the case to the police, 6.9% filled a formal complaint, and 3.4% obtained the offender's conviction (Killias, Simonin and De Puy, 2005, p. 84). Taking that limitation into consideration, in this article we analysed the way in which the criminal justice system dealt with the 592 cases of DV registered by the police of the canton of Vaud, Switzerland, during the first semester of 2012, with the aim of answering three research questions.

The first question was: What is the rate of attrition? Our findings show that 20% of the cases led to a conviction. In particular, 12% of the cases led to a conviction imposed by the prosecutor under the form of a penalty order, and 8% led to a conviction imposed by a court. This means that the attrition rate is 80%

The second question was: How can that rate of attrition be explained? Our findings show that the main reason is that the criminal justice system is seldom confronted to felonies or very serious offences, which could lead to a custodial sentence of more than six months. In particular, roughly 90% of the DV offences treated by the criminal justice system corresponded to one contravention (battery only causing pain) and three types of misdemeanours (insults, threats, and common assault). Battery only causing pain and insults

are sanctioned with a fine, while threats and common assault can lead to a fine or a custodial sentence not exceeding three years.

The third question was: Is that rate of attrition comparable to the one observed in similar studies conducted in Europe? As we have seen, such comparisons are not straightforward but, in general, the attrition rate found in Switzerland seems lower than the one observed in the United Kingdom, which is the only country where it was possible to identify similar studies. Moreover, the attrition rate found in this research for DV offences is also lower than the Swiss general attrition rate (i.e. the attrition rate for all offences).

However, criminologists seem divided as to how to interpret the level of attrition of a criminal justice system. As we saw in the introduction, the literature on punitiveness usually consider a high level of attrition (i.e. a low level of convicted or incarcerated offenders) as positive because, instead of reflecting a poor level of efficiency of the system, it could be reflecting a low level of punitiveness. On the contrary, the literature on DV usually considers a high rate of attrition as a negative outcome. A suitable example of this approach can be found in the following statement: “This article explores the process of attrition, where domestic violence cases *fail to make it through* the criminal justice process and do not result in criminal conviction” (Hester, 2006:79; emphasis added)⁵.

The reasons for these divergent interpretations seem related to the extreme sensitiveness of the topic of DV—which has been responsible of major increases in police recorded assaults in Western high developed countries since the 1990s (Tonry, 2014)— but also to the way in which the concept of DV is defined. In that context, DV is usually treated as a homogeneous construct, when in fact the concept includes a huge variety of offences, ranging from the less serious ones foreseen in the criminal code to homicide, the most serious one. We have seen that the attrition rate varies according to the type of offence, and the specific case of the offences with a DV component is no exception to that rule. By combining all these offences in a single construct, the average rate will necessary be influenced by the less serious offences, which are the majority and for which the attrition rate is generally low. Indeed, some of these offences, in particular the ones for which a petty fine is foreseen (e.g. insults or battery only causing pain) usually never reach a court in a system where prosecutors can impose imprisonment sentences up to six months.

⁵ In a similar perspective, Lovett and Kelly (2009) define attrition as “the process by which cases are discontinued, and thus *fail to reach* trial and/or result in a conviction” (Lovett and Kelly, 2009: 17, emphasis added).

An attrition rate of 80% can only be understood when it is placed in that context. The problem stems from the fact that, in most fields of research, a rate of “success” of 20% would seldom be considered as positive. For example, a medical treatment that heals 1 out of 5 patients would immediately lead to the conclusion that “more research is needed”. The key issue is thus the definition of *efficiency*. In that perspective, it is unrealistic to consider a criminal justice system as efficient when each recorded offence leads to a conviction. As we have seen, the criminal justice system does not fit the profile of a linear process, and many of the legislative reforms introduced in Europe since the 1990s were introduced with the explicit purpose of multiplying the bifurcations during that process. Thus, with the aim of reducing the length of the procedures many countries introduced plea bargain or accelerated trials or, as Switzerland, extended the discretionary power of prosecutors. At the same time, all around Europe, alternative ways of solving conflicts were introduced, restorative justice has been encouraged, and community sanctions and measures were developed in order to reduce the use of imprisonment.

In our opinion, the use of an overall rate for attrition in DV creates confusion in the public opinion and should be avoided. Instead of referring to attrition in DV, it would be preferable to refer to attrition in DV homicides, DV serious assaults, and so on and, whenever possible, compare such rates with the ones found for the same offences in non-DV cases. Unless such changes are introduced, our answer to the fourth research question of this article is that the level of attrition in DV is not a valid indicator of the efficiency of a criminal justice system.

Consequently, we consider that further research on the topic of attrition in DV should be conducted by analyzing each type of offence separately and comparing the results with the ones obtained in non DV cases. It would also be necessary to avoid using concepts such as attrition rate, certainty of conviction, certainty of punishment, conviction rate and conviction ratio interchangeably.

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Diagrams and Figures

Figure 1. Distribution of the type of offences included in domestic violence cases according to police and justice records, in percentages (N=592 cases in police records and 567 cases in justice records, from 1 January to 30 June 2012)

Figure 2. Number of offences by case according to the police and the judicial authorities
(N=592 cases in police records and 567 cases in justice records, from 1 January to 30 June 2012)

Figure 3: Pattern of attrition of the cases of domestic violence registered by the police (N=592) in the first semester of 2012 (state as 31 May 2015)

Appendix

Table 1. Distribution of the offences recorded by the police and the justice authorities (prosecutors and courts) in domestic violence cases (N=592 cases)

Offences	Police		Justice		Percent change	Two proportions Z-test
	n	%	n	%		
Battery only causing pain	351	31,0%	455	32,3%	30%	
Insults	293	25,9%	311	22,1%	6%	***
Threats	278	24,6%	312	22,2%	12%	
Common assault	62	5,5%	163	11,6%	163%	****
Misuse of telecommunications installation	29	2,6%	0	0,0%	-100%	****
Criminal damage to property	17	1,5%	17	1,2%	0%	
Indecent assault	11	1,0%	8	0,6%	-27%	
Unlawful entry	9	0,8%	18	1,3%	100%	
Simple theft	9	0,8%	0	0,0%	-100%	***
Rape	8	0,7%	17	1,2%	113%	
Contravention against sexual integrity = Sexual harassment	3	0,3%	8	0,6%	167%	
Extortion	2	0,2%	0	0,0%	-100%	
Serious assault	2	0,2%	1	0,1%	-50%	
Murder	2	0,2%	2	0,1%	0%	
Endangering life	2	0,2%	8	0,6%	300%	
Sexual acts with persons incapable of judgement or Resistance	2	0,2%	4	0,3%	100%	
Attempted murder	2	0,2%	2	0,1%	0%	
Theft	2	0,2%	1	0,1%	-50%	
Coercion	1	0,1%	16	1,1%	1500%	***
Extortion	1	0,1%	0	0,0%	-100%	
Sexual acts with persons incapable of judgement or resistance	1	0,1%	0	0,0%	-100%	
Obscene telephone call	1	0,1%	1	0,1%	0%	
False imprisonment and abduction	1	0,1%	7	0,5%	600%	*
Neglect of duties of care, supervision or education	1	0,1%	0	0,0%	-100%	
Damage to data	0	0,0%	49	3,5%	N.A	****
Attempted rape	0	0,0%	2	0,1%	N.A.	
Ancillary offences	42	3,7%	6	0,4%	-86%	****
Total	1132	100,0%	1408	100,0%	24%	

*p≤0.1; **p≤0.05; ***p≤0.01; **** p≤0.001; N.A.: Not applicable