

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

European briefing

Kelly, L and Lovett, J (April 2009)

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 - all 27 EU member and the 3 accession states, as well as Iceland and Switzerland since these had been included in the previous studies - for the years 2001-2007. This data supplemented that collected on previous projects (Regan and Kelly, 2003) and enabled us to plot trends over time across three decades. We were able to do this for 26 countries, others either did not respond or provided incomplete data.

The second strand 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.

This is the first in-depth trans-European attrition in which original data has been collected using the same methodology. 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 was 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.

In this EU briefing we focus on the comparative data for the 23 countries, whilst also presenting emerging findings from the case tracking and promising practices. Country specific briefings in the countries where original data was collected are also being produced for in country briefing meetings. The findings will be presented in more detail in the final report - in English - available at www.cwasu.org from May 31, 2009.

Law and procedure

Both statute law and the procedure for dealing with reported rapes varies considerably across Europe, and the project has endeavoured to capture this through detailed analysis of both for the 11 countries participating in the study. In each case the legal code, process of investigation and prosecution and how trials are conducted were investigated and have been converted into a visual map. The rights of victims in the legal process have also been documented. The sample of countries has been purposively selected to include differences in legal codes and processes.

The key differences identified are listed here.

In penal law:

- whether rape is defined in terms of lack of consent or the presence of force/threat;
- whether rape, including marital rape, is a state offence;
- what behaviours are covered, with some laws still quite narrow and others much more extensive, even extending beyond penetration;
- whether there is a lesser crime to rape, used for sexual assault without penetration and/or marital rape;
- the age limit for statutory rape;
- whether the law is gender-neutral for both victimisation and perpetration or gendered with respect to one or both;

In procedural law:

- whether victims are able to withdraw their complaint, or the crime is defined as a 'state offence' which means from the principle of legality the state has the duty to investigate and prosecute;
- which agency has responsibility for the investigation/evidence gathering and/or charging - in most European countries these are the responsibility of prosecutors and/or investigative judges, but in a minority the police are responsible for early investigation and can lay the initial charge;
- whether there are specialised facilities and medical staff undertaking forensic

examinations and whether it possible to have an examination without having previously reported to the police;

- whether the trial process is adversarial or investigative;
- whether the allegation is tried by a jury, a mixed court or solely by professional judges and whether the verdict (conviction or acquittal) can be appealed and retried or, in the case of conviction, reversed;
- the extent - from minimal to extensive - of rights and protections which victims of sexual offences are entitled to, including whether they have a right to legal advice, psycho-social support and to be a party to the case.

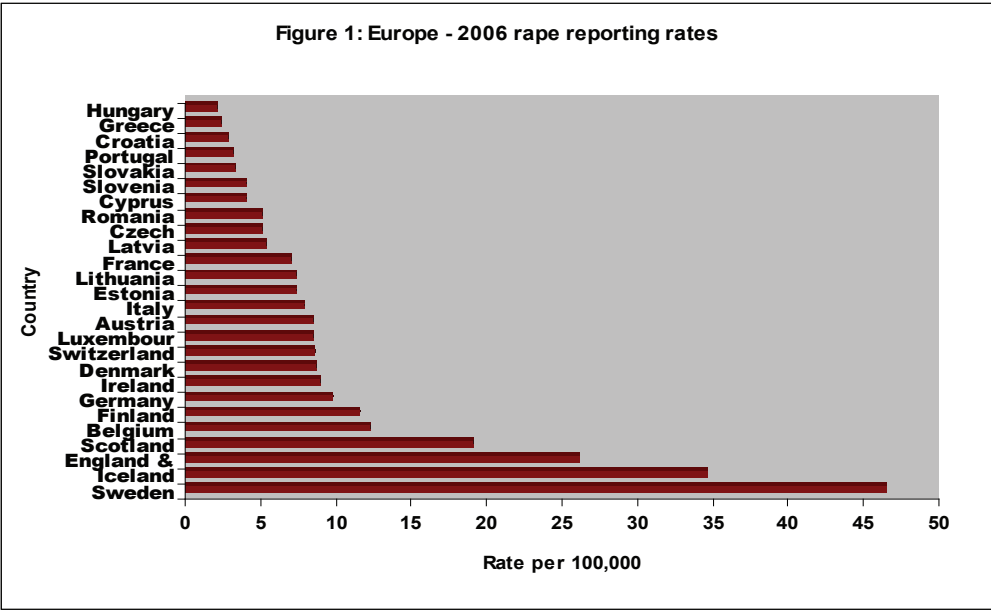
Attrition in reported rape cases

That we have data from 26 countries is an increase on the 21 in the previous study (Regan & Kelly, 2003); and within this the complete datasets have increased from 11 to 17. there are also more complete datasets from 17 as opposed to 11. Nevertheless, these gaps in data recording, and the failure of some states to provide any statistics at all, suggest that the concerns raised in the previous study remain (Ibid). It remains the case that mechanisms for monitoring even the most basic indicators of response to violence against women are inadequate; despite repeated statements by the Council of Europe, the European Women's Lobby and the United Nations that these are fundamental requirements of an adequate state response. We note here also the dearth of prevalence studies on sexual violence across Europe, meaning that we currently know neither how common it is, nor the proportion that are reported. Data from countries where studies have done show much lower reporting rates than for domestic violence.

Here we present two layers of analysis, the first comparing reporting and conviction across the 26 countries for 2006, followed by an exploration of the similarities and differences in trends over time. 2006 was the last year when we could be confident that data on prosecutions and convictions was complete, given the considerable delays in finalising official statistics.

Figure 1 presents reporting rates per 100,000 of the population, a more accurate figure than simply the raw numbers, for 2006 and show a huge range.

- Ten countries have low reporting rates at less than 6 per 100,000.
- A further ten have mid-range rates of between 6 and 10 per 100,000.
- Six have high reporting rates of more than 10 per 100,000.



Among the high reporting rates there is also a marked range between the 12 for Finland and the 46.5 for Sweden. Whilst there is the possibility that there are different prevalence rates for rape across Europe (but as noted above we currently lack the research evidence to explore this), there are also other potential influences at work. These would include: widening the definition of rape in law; procedural rules which require police to record all reports, even those which are eventually 'no crimed'; the creation of better responses to victims which increase their confidence in the criminal justice system. It is also worth noting that the vast majority of the high report countries are in northern Europe and have extensive histories of addressing violence against women. At the same time there are also countries with such histories, and where legal and procedural reform has taken place, which are in the mid-range group, notably Austria and Germany.

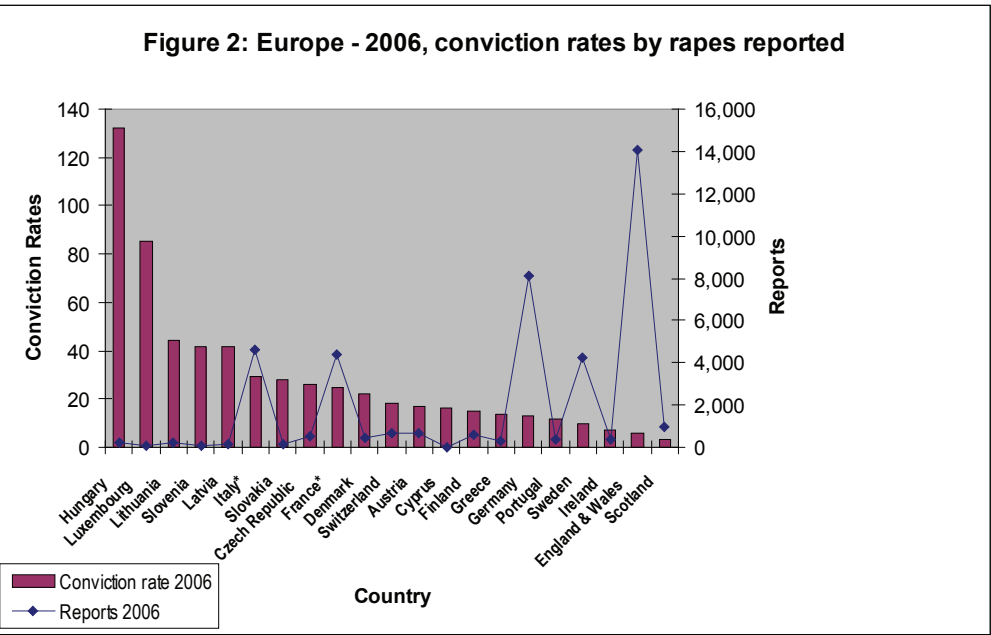


Figure 2 compares reported rapes and convictions for 2006 across the 21 countries for which this data was available, and it too shows considerable variation. Indeed some of the data here is nothing short of anomalous, with five countries with much higher conviction rates than reporting. Whilst it is in principle possible that there are year on year fluctuations in reporting, alongside delays in cases coming to court, that might account for this pattern, the case of Hungary (see Figure 6) dealt with later suggests that there are data inaccuracies at work here. For four of the five countries in this group there are doubts about the internal validity of the data provided. What is most evident at the other end of this chart is that three of the countries with the highest reporting rates have among the lowest conviction rates. This is the classic attrition pattern noted in previous studies - increased reporting but falling rates of prosecution and conviction. In a context where legal and procedural reform have sought to encourage reporting and to address rape beyond the stereotyped 'real rape' - committed by a stranger, using a weapon, and where the victim is injured - this is a disappointing finding.

All national time series data sets were analysed across time to identify key trends. This analysis revealed that two-thirds fitted the classic attrition pattern (see Table 1) - increased reporting and falling conviction rates. Only three countries had the pattern one would expect: rising reports echoed in rising levels of conviction (Denmark, France and Luxembourg). Three had a pattern of falling reporting with falls in convictions paralleling this process, and then there were the anomalous group of Hungary and Poland with falling reports and rising convictions. An example from each type is presented to explore in more depth below. We can draw some tentative conclusions here though already.

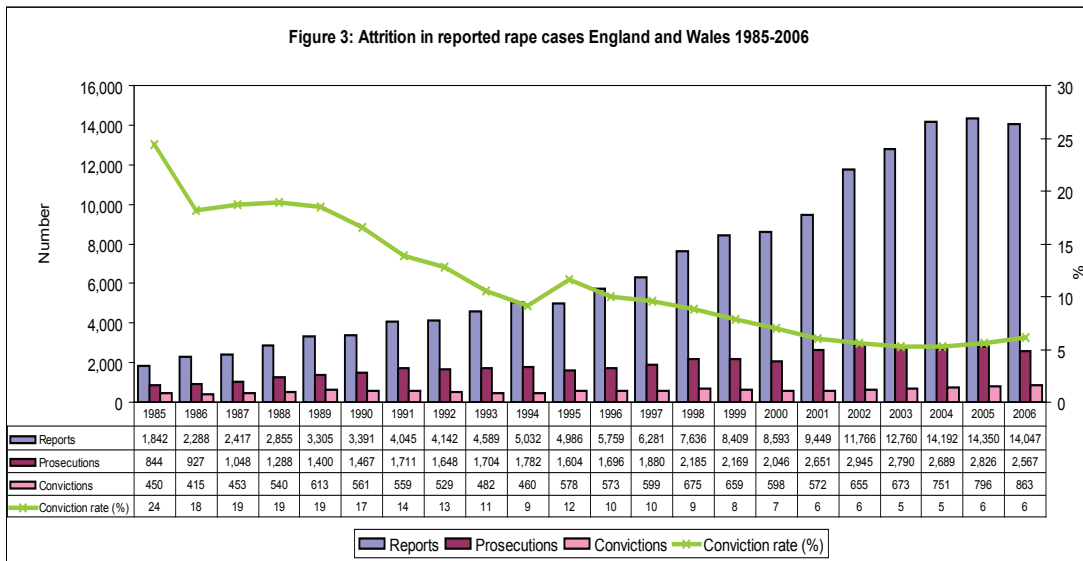
- Reporting rates per 100,000 vary considerably across Europe from a low of less than three to 46.5.
- In over two-thirds of European countries the trend in reporting is upwards, with some countries showing particularly marked increases, and others steadier growth.
- Only a tiny proportion of countries have matched increased reporting with parallel increases in prosecution and conviction.
- Attrition in reported rape cases has risen across much of Europe over the last two decades, with two thirds of countries having marked falls in conviction rates since 2000.

Table 1: Attrition trends in national level time series data

| Type 1 Rising reports, falling convictions | Type 2 Rising reports, rising convictions | Type 3 Falling reports, falling convictions | Type 4 Falling reports, rising convictions |
|--|---|---|--|
| Austria | Denmark | Czech Republic | Hungary |
| Cyprus | France | Portugal | Poland |
| England & Wales | Luxembourg | Romania | |
| Estonia | | | |
| Finland | | | |
| Germany | | | |
| Greece | | | |
| Iceland | | | |
| Ireland | | | |
| Italy | | | |
| Lithuania | | | |
| Latvia | | | |
| Scotland | | | |
| Sweden | | | |
| Switzerland | | | |
| N=16 | N=3 | N=3 | N=2 |

Attrition over time: case examples

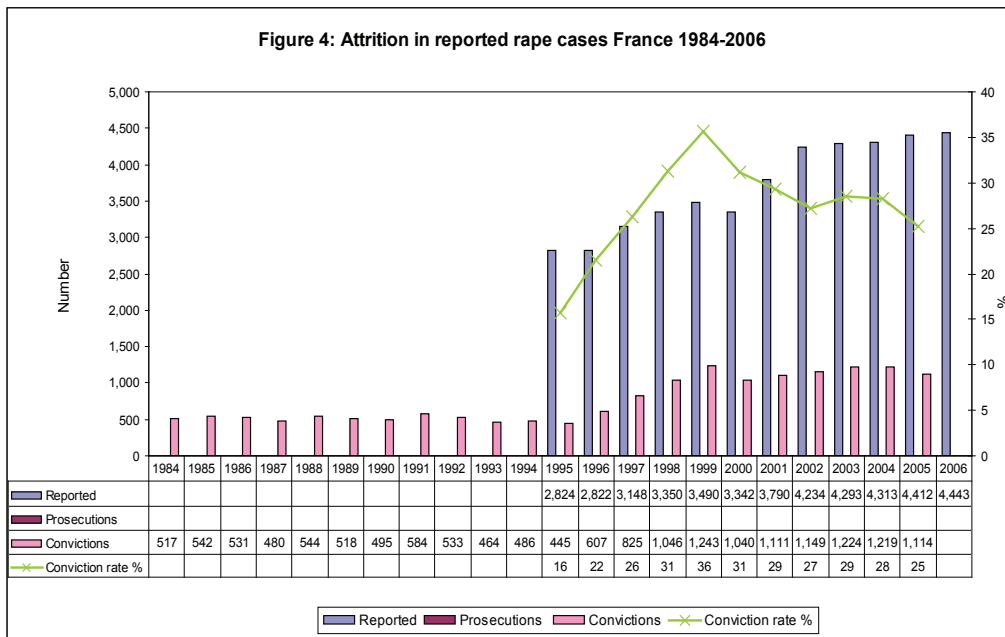
Figure 3 presents the paradigm case for increased attrition rates - England and Wales. Here we have the highest number of reported rapes in any European country, but the second lowest conviction rate. There is a virtually unbroken increase in reporting, with a slight fall in 2006. The number of prosecutions has risen gradually, but not in line with reporting and the number of convictions has increased far more slowly. The result is that the conviction rate as a proportion of reported cases fell to an all time low of 5.3% in 2004, growing slowly to 6.5% in 2007 (figures not on the chart).



There has been a national debate on attrition, with monitoring of all police forces and prosecutor areas across five key indicators¹ since 2006. Moreover the major reforms of sexual offences law, implemented in 2004, have yet to have any visible impact in rape cases. Whilst many countries with rising attrition do not have the same extreme pattern as evident here, there are strong parallels in Scotland and Sweden.

France is one of the three countries where increased reporting rates have, over time been accompanied by an increase in convictions, albeit that the data set is not as complete as many others. At the same time the rate is variable, fluctuating from a high of 35% to a low of 16% in 1995.

¹ Rates for: reporting; no criming; detection; prosecution; conviction.



Portugal is one of a small number of countries where reporting has fallen, and is lower in 2006 than it was in 1996; a drop of a third from a maximum of 551 in 1997 to 341 in 2006. The conviction rate has fallen even more to an average of 13% over the last five years.

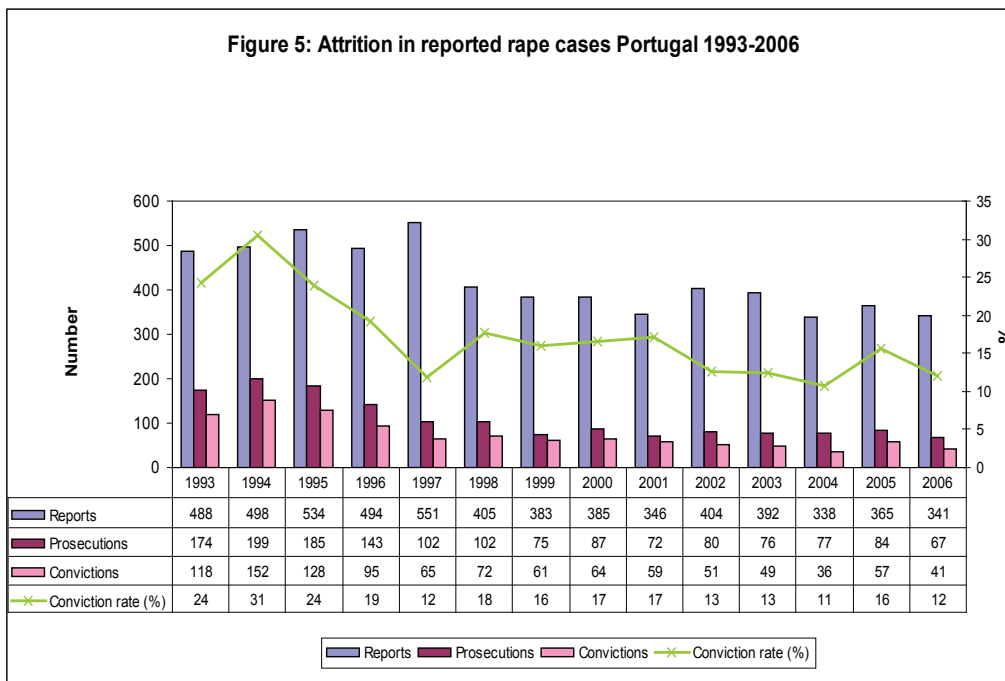
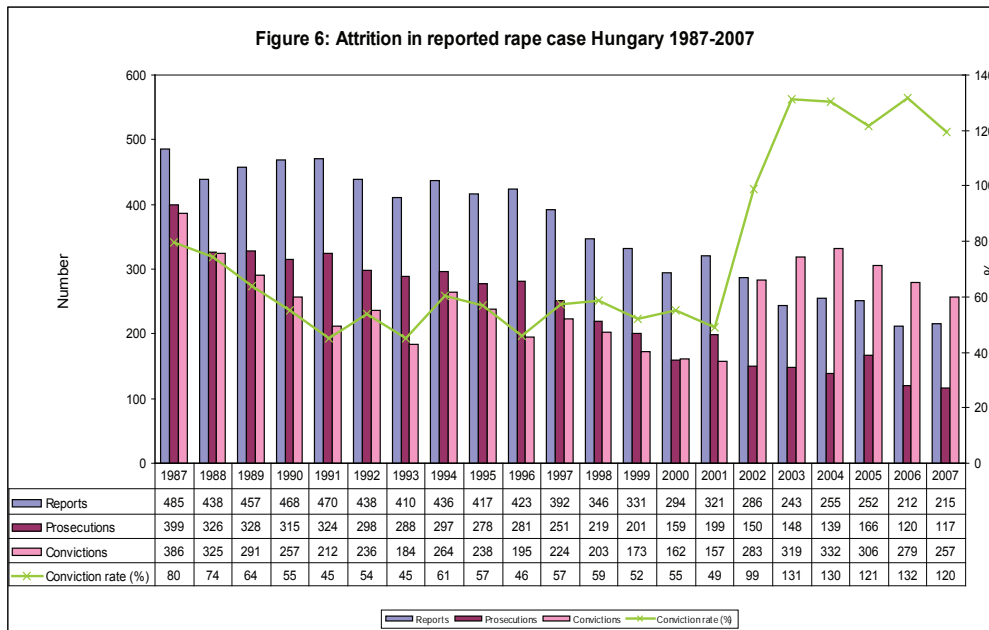


Figure 6 provides strong evidence that there is a problem in the statistics from Hungary. Rather than showing year fluctuation there is a six-year period from 2001-2007 where convictions exceed not only reports but also prosecutions. We conclude, therefore that it is the conviction data that is inaccurate. This needs to be investigated and the official data revised. It is included here as a graphic illustration of why it is important not to just take yearly figures, but to track trends over time.



The case tracking data

Analysis of the 100 cases for each country is ongoing, we present here some highlights and emerging findings.

- The proportion of stranger rapes ranges from 20-41%.
- Rapes by current and ex partners appear in all datasets, ranging in proportion from 16-37%.
- Weapons were rarely used, on average in less than 10% of cases.
- Documented injuries were present in a minority of cases (from 16-45%).

In terms of the legal process there were marked differences in the stages at which most attrition took place.

- The charging rate ranged from 21-62%
- The proportion of cases heard in court ranged from 4-39%.

The proportion of cases designated as false allegations were extremely low, ranging from 2% to a maximum of 9%. This is extremely strong evidence that the extent of false allegations is exaggerated by professionals, but this over-estimation creates a culture of scepticism (Kelly et al, 2005).

Attrition in the early stages of the investigation was as high as 82%, and these high rates were most common among countries with the lowest conviction rates. This raises serious questions about the professionalism of investigation. Cases involving vulnerable victims - those with

mental health problems and/or a disability rarely made it through to the trial phase. Whilst in some countries rapes in the context of current or recent relationships do now result in a conviction, in others very few of these reached the final stages of the process. Acquittal rates at court were also variable, with most a fifth or less, but two countries - including England and Wales - at more than 50%.

There is no obvious or single explanation for these variations; rather a complex interaction of factors - some similar and some different across legal systems - are at work. Some factors that made conviction more likely, however, have emerged.

Offender characteristics:

- are non-white, non-nationals;
- have consumed alcohol;
- being a stranger;
- have previous convictions.

Victim characteristics:

- documented injuries

In short, the majority of cases resulting in a conviction reflect stereotypes of rape and rapists, suggesting that attrition is an institutional issue, embedded in the practices of criminal justice system responses to rape.

Promising practices

Whilst the study has not, to date, identified any changes in law or procedure which have an appreciable effect on attrition, there were examples of what we consider promising practices, especially with respect to the rights of victims to be treated with respect and dignity in the aftermath of sexual violence.

- Most countries have expanded the definition of rape, both in terms of the behaviours and relationships covered.
- Sweden is one of very few countries in which the victim can be a party in the trial alongside the prosecutor. Since 1988, they have also been entitled to a court-appointed lawyer to act, not only as solicitor for the compensation claim, but also as a legal representative in the criminal procedure with the authority to challenge proceedings, for instance by calling new witnesses or requesting that the suspect receive a more severe punishment.
- In England and Wales government has invested in a network of Sexual Assault Referral Centres (now numbering 28 and scheduled for 42 in 2010) where forensic examinations are conducted to a high and consistent quality, and short-term medical

aftercare and social support are available. Whilst most cases are referred by police, almost a quarter are now self-referrals.

- Austria has introduced a package of victims rights, which have particular relevance in rape cases:
 - to appoint a person of trust to accompany them to official interviews;
 - to be interviewed by person of same sex;
 - to free psycho-social and legal support (advocacy) throughout criminal proceedings, this is automatic in sexual offences;
 - to receive information about the legal proceedings and case progress;
 - to actively participate in both the criminal proceedings and the investigation;
 - to appeal the public prosecution's decision to discontinue the case, and even to mount a prosecution as a private citizen.

Conclusion

The majority of women reporting rape across Europe do not see justice done, and rising attrition rates make this more likely in 2009. This is the outcome of the continued influence of stereotypes of rape, rape victims and rapists at all stages of the legal process, and a failure to modernise investigation and prosecution practices. Sexual violence needs to be the subject of the same intense debate and policy development as has been the case with domestic violence if this depressing pattern is to be reversed.

References

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Regan, L. & Kelly, L. (2003) Rape: Still a Forgotten Issue, Briefing Document for Strengthening the Linkages - Consolidating the European Network Project, London: Child & Woman Abuse Studies Unit. Available at: <http://www.rcne.com/downloads/RepsPubs/Attritn.pdf>.

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Funded by the European Commission Daphne II Programme to combat violence against children, young people and women