The impact of hearings on prosecutorial decision-making

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Background I

• Increasing use of penal orders in Switzerland under the 2011 Code of Criminal Procedure
• Penal orders are **convictions issued by prosecutors or legal clerks, not by a judge**
• Penal orders are an option only for minor cases:
  • *Fines*
  • *Day-fine penalty (max. 180 days)*
  • *Custodial sentence (max. 180 days)*
  • *Sanction can be conditional or unconditional*
Background II

• **Advantages:**
  • Quick procedure and fast verdict
  • Cheap (short procedure)

• **Criticism:**
  • Frequently no hearing of defendant or victim by prosecutor
  • No further evidence collected, often based only on police report
  • Lack of fundamental procedural rights (right to be heard etc.)
  • Prosecutor issues verdict → lack of judicial control
  • Defendant might not understand the penal order
  • Penal orders with higher risk of wrongful convictions

• Around 95% of criminal proceedings in Switzerland end up with a penal order
Research Aims I

- What effects do personal hearings have during the procedure?
- Positive effect of hearings on the defendant?
  - Procedural fairness (having a voice) effects, legitimacy of verdict and acceptance of punishment
  - Punishment perceived more intensively
  - Better understanding of the procedure
- Negative effect of hearings on the defendant?
  - Time consuming for the defendant
  - Procedure resp. prosecutor could be perceived as unfair
  - Criminal identity (labelling) could be strengthened
Research Aims II

- Effect of hearings on verdicts?
  - Empathy of prosecutors might mitigate sentences
  - Defendants might bring up mitigating circumstances

- Effects of penal orders and hearings are simply not known yet
Research Method

• Randomized Controlled Trial (RCT)
• Surveys among defendants (after trial): Independent variables will be
  • Defendant’s knowledge about the procedure
  • Defendants’ perceived procedural fairness
  • Criminal identity / techniques of neutralization
  • Perceived fairness of punishment
• Survey among prosecutors/clerks
  • Information about the procedure
  • Measure of emotions / empathy towards defendant
• After 24 months: Assessment of reoffending
Sample size (in %)

<table>
<thead>
<tr>
<th>Category</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatment Group</td>
<td>524</td>
<td>48.5</td>
</tr>
<tr>
<td>Control Group</td>
<td>185</td>
<td>17.1</td>
</tr>
<tr>
<td>Mandatory hearing</td>
<td>53</td>
<td>4.9</td>
</tr>
<tr>
<td>Decision to not to bring proceedings</td>
<td>240</td>
<td>22.2</td>
</tr>
<tr>
<td>Rest</td>
<td>79</td>
<td>7.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1081</td>
<td>100</td>
</tr>
</tbody>
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«Costs» of hearings
Workload of prosecutors and duration of the case

**Workload (in h)**

- Control: 2 h
- Treatment: 4 h

**Duration of case (in days)**

- Control: 20 days
- Treatment: 60 days

*Data source: Case survey, Juris*
Point of view of the convicted person

- **duration of procedure too long (Index)**
  - Control: 0.2
  - Treatment: 0.0
  - Data source: Offender survey

- **procedure unpleasant (Index)**
  - Control: 0.1
  - Treatment: 0.0
  - Data source: Offender survey
Benefits of the hearings
Convicted Person: Knowledge about the procedure

Data source: Offender survey
Prosecutors: Level of information about the case

*Data source: Case survey*
Convicted person: Procedural justice perceptions

Data source: Offender survey
Number of rejections

Rejections

<table>
<thead>
<tr>
<th>cases with rejections (in %)</th>
<th>control</th>
<th>treatment</th>
</tr>
</thead>
</table>

Data source: Juris
Conclusions

• Cases with hearings require more time and lead to a longer case duration
• Better understanding of the procedure if hearing has taken place
• Procedure is considered to be fairer if a hearing has taken place
• Less rejections if a hearing has taken place (however not statistically significant)

→ Hearings have a highly positive impact, however at the cost of additional ressources
Thank you for your attention!

For comments and questions feel free to contact us:

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