The use of excessive force by the police and struggles for accountability

Key findings from the DFG ‘Police Use of Excessive Force’ (KviAPol) research project, May 2023

Laila Abdul-Rahman, Hannah Espín Grau, Luise Klaus and Tobias Singelnstein

Translation: William Burn, carringtoneditorial.com

1. Summary

The DFG ‘Police Use of Excessive Force’ (KviAPol) research project provides the first wide-ranging academic findings on how police officers in Germany use excessive force and how such occurrences are handled by the criminal justice system and victims. These findings are based on a survey of victims with over 3,300 participants, and over 60 qualitative interviews with police officers, judges, public prosecutors, victims advice centres, and lawyers. The term excessive use of force is taken to refer to acts which are beyond the bounds of what is acceptable from the perspective of the person evaluating the act. This does not necessarily coincide with considering an act to be unlawful. It does, however, mean that the force was considered to be excessive from the perspective of at least one individual.1

Respondents to the survey reported the excessive use of force by the police particularly commonly for operations at mass events such as demonstrations and football matches. However, operational situations not connected to mass events, such as conflict situations or identity checks, also played a substantial role (20%). Young men reported most often that they had experienced police violence. According to statements from victims, male officers aged up to 30 used force most often. The survey data and interviews both show that marginalised people are particularly affected by excessive police violence.

Serious physical injuries were reported by 19% of victims. The most common psychological consequences reported by victims were ‘anger and fear of the police’, ‘increased alertness’, and avoiding certain situations or places. The expert interviews indicated that experiencing police violence can cause strong feelings of powerlessness and a loss of trust in the police and the state.

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1 This conceptualisation was chosen because in many cases there is no clear or universally accepted distinction between what is an acceptable use of force or what is excessive. Instead, it is often the case that a range of subjectively influenced perspectives contend for mastery of how the situation is interpreted. Exploring the excessive use of force by the police from the perspective of the social sciences requires considering and investigating this process of evaluation from the perspectives of the various parties concerned.
Police operational situations are complex social interaction events. Individual, situational and organisational factors can play a role in the excessive use of force. Survey respondents and interview partners identified a range of factors on the part of the police which can cause situations to escalate. The most common were poor communication, stress, excessive stress, discriminatory behaviour and inadequate operational planning. On the part of victims, questioning the legality of the police action concerned, discussions, insults, disrespect and a refusal to comply can encourage police violence. Police fears of losing control in a given situation can have a particular influence on the process of escalation.

Incidents of police violence are assessed situationally by observers and those involved and also retrospectively against various normative benchmarks. The law is only one benchmark out of several. For example, interviews with police officers showed that, for the police, considerations of legitimacy and practicability were factors alongside questions of the legality of using force. Pragmatic considerations of efficiency and efficacy can therefore override legal requirements. Victims, witnesses and members of the criminal justice system also develop their own individual perspectives of an event, using these various benchmarks to do so.

Among both police officers and victims, our data makes it possible to identify specific ways of dealing with the use of force by the police where it is problematised as excessive. On the side of the police, alongside operational debriefings and informal conversations, police reporting played a key role. At the same time, it was evident that police officers felt there were significant barriers to criticising how their colleagues used violence, let alone making criminal complaints. It was also apparent there was a low level of willingness among victims to make official complaints (9%). In their view, the main reason not to make a complaint was the low chance of success in criminal proceedings, along with the difficulty of identifying police officers, concerns about reprisals and a lack of evidential material. In practice this means that the majority of cases of suspected use of illegal force by the police remain are not known to the authorities. For example, 14% of victims reported criminal proceedings taking place in their case.

Both official statistics and the data collected illustrate a distinctive practice among public prosecutors when handling criminal proceedings in cases of suspected illegal police violence. Over 90% of cases were dropped, while it was extremely rare for charges to be brought: according to public prosecution statistics, this occurred in 2% of cases. The findings of this project show that this exceptionally low rate of charging cannot be attributed to unjustified complaints alone; it is also due to the distinctive structural features of these cases. Gathering evidence after the event is often difficult, while it is always challenging for police officers as witnesses to incriminate their colleagues, and the neutrality of police investigations can only be guaranteed to a limited extent. Given the fact that public prosecutors work closely with the police on a daily basis, it is clear that taking an unbiased approach to these cases is particularly demanding. Their high workload also makes it harder to challenge assumptions about police defendants or witnesses who are often considered particularly credible and reliable. Conversely, this constellation of factors can at the same time lead to assumptions about the victims of police violence, consequently making them appear less credible.

Where debates about violence in society and the criminal justice system followed the use of force by the police, the police's interpretation of these events proves to be particularly assertive. This in turn illustrates the police's distinctive power when it comes to defining events (“Definitionsmacht”).

*The findings of the KviAPol research project are presented in detail in “Gewalt im Amt, Übermäßige polizeiliche Gewaltanwendung und ihre Aufarbeitung”, first published on 17 May 2023 by Campus Verlag (German language, Open Access, 495 pp., DOI: 10.12907/978-3-593-45438-2).*
2. Findings on individual aspects

Violence is part of the day-to-day work of the police. Under strict conditions, police officers can use direct force in order to carry out police actions. However, mistakes, transgressions and abuse repeatedly occur. Victims have been raising this issue for a long time, and such incidents are attracting increasing attention in public debates under the headline of ‘police violence’.

2.1 Frequency, situations, forms and consequences (book chapter 4)

According to public prosecution statistics published by the Federal Statistical Office, in 2021 public prosecutors in Germany handled 2,790 investigations into police officers concerning the illegal use of force. In addition to the suspected cases recorded by authorities, our findings indicate there is a substantial dark figure. In the project’s survey of victims, only 14% reported that criminal proceedings took place in their case. The remaining 86% of cases went unrecorded. This indicates the need to assume there is a substantial dark figure for this type of offence, many times the number of known suspected cases.

Most respondents to the victim survey reported coming into contact with the police during a mass event. These mass events were demonstrations and political activism in 55% of reports, while 25% involved football matches and other mass events. Operations not connected with mass events (20%) are heterogeneous, although they particularly involved conflict situations where the police were called. They also included traffic stops and identity checks, and operations originally targeted at third parties and where the victim had been observing, or documenting, or where they had intervened. Most incidents occurred in public spaces.

The majority of victims (72%) were male, while 23% were female and 3% gender non-conforming. At an average age of 25.9, they were more likely to be young. While demonstrations/political activism had the highest proportion of non-males (female: 32%, gender non-conforming 4%), the area of football/other mass events was strongly dominated by males (91%). Overall, 16% of respondents came from migrant backgrounds, while People of Colour (PoC) accounted for 5% of the sample. Most of the respondents from migrant backgrounds (24%) and PoC (11%) were involved in operations not connected to mass events, primarily identity checks and conflicts where the police were called.

According to reports by respondents, the majority of police officers who used force were aged under 30. Multiple female officers were generally present at these incidents, but not all used violence. In 26% of the cases, violence was used by female officers only. One or more female officers were present in 81% of cases, but these officers only used violence in 27% of cases.

According to respondents, the most common forms of violence were pushes and punches, while irritants such as pepper spray, and water canons played a considerable role in mass events. Serious injuries such as broken bones and injuries to joints and sensory organs were reported by 19% of respondents. Victims were more likely to suffer serious injuries in cases involving strangulation, restraint or shackling.

The more serious the injuries were, the greater the psychological impact. Respondents particularly raised issues of losing trust in the police and the state, feeling powerless, and avoidance behaviours. Non-male victims reported serious physical and psychological effects. Older people also often suffered serious injuries. PoC did not suffer more serious physical injuries than white people, although the psychological burden was greater for them.
2.2. Interaction and escalation (Chapter 5)

Situations involving the use of force by the police can be described as complex, frequently confusing and highly tense interaction events, which are prompted as well by external circumstances as by an interaction of mutual actions and reactions. By drawing on the victims survey and interviews with police officers and advice centres, it was possible to identify a range of circumstances which particularly contribute to escalation.

A quarter (25%) of respondents to the victims survey considered police intervention to be the decisive moment in the escalation (cf. Table 15 on book p. 163). Above all, this concerned how the action was carried out. Participants in interviews with police officers and civil society representatives stressed the significance of de-escalating communication. A lack of transparency and clarity around actions were emphasised as causes of failures to communicate, along with a failure to respect politeness forms, such as how to address members of the public. For 12% of respondents it was not possible to identify what had caused the violence, which also suggests deficiencies in communication.

By contrast, 17% of respondents believed that the specific behaviour of the officers who used violence caused the escalation. These included deliberate escalation on the one hand, either by individuals or through operational orders. On the other hand, victims also identified what they saw as losing control, stress and frustration, along with the stigmatisation of victims, as reasons for escalation. On the part of the police, interviewees explained that circumstances which could foster escalations could involve time pressure and a lack of manpower which in turn caused stress and excessive demands. They also identified inadequate operational planning as a factor. There were also reports of individual officers who repeatedly went ‘overboard’, as well as instructions from those in charge of operations which could encourage the excessive escalation of violence.

In 19% of cases, victims reported that the point of escalation came when they did not follow an instruction. This included merely asking questions such as querying the legal basis for the action or asking about officers’ ID cards. Other factors here were complaints or discussions, but also provocations and insults. For 15% of respondents, the moment of escalation involved an action carried out by themselves or another person present, such as covering their face or setting off pyrotechnics. This also included legal forms of behaviour, such as observing or filming operations. On the part of the police, it appeared that a key motive behind the action taken in the situations investigated was a desire to maintain situational dominance or to avoid the loss of control. This can also explain why behaviour already perceived to be disrespectful, minor disruptions to police operations or other irritations can lead to violence. Incidents where victims respond in a way the police do not expect (due to psychological impairment or intoxication due to alcohol or other drugs, for example) may require specific skills in order to resolve the situation without further escalation.

Overall, one-third (33%) of respondents felt they had been discriminated against during the incident they described, while a further 15% agreed with this view at least in part. It was more common for non-male respondents and PoC to report discrimination. According to the interviews, marginalised groups such as racialized persons, LGBTIQ* persons, homeless people or other oppressed groups are at particular risk of discrimination during interactions with the police and have less power to make complaints. The interviews and victims survey showed that these cases did not necessarily involve deliberate or conscious discrimination. Indeed, racist knowledge and unconscious stereotypes can influence the interaction. These stereotypes are entrenched in the police in forms such as experiential knowledge and organisational practices.
2.3 Assessing police violence (Chapter 6)

Those involved in incidents where police violence occurs evaluate the incident both while it is taking place and afterwards. Victims, police officers and witnesses disambiguate what are generally ambiguous situations for themselves and draw conclusions. The various parties can therefore come to different conclusions. These assessments are undertaken on the basis of various benchmarks; these serve as normative sets which shape an individual’s process of assessment. These benchmarks include legal regulations covering the use of force by the police. Following on from US research by Stoughton, Noble and Alpert, our investigation shows that there are social and political yardsticks, each with its own priorities for assessment, which exists alongside this legal benchmark. The various benchmarks are used in different ways by the various participants and observers.

The law understands police violence to be exceptional power which is only permitted within narrow limits. Even though police officers repeatedly stress during interviews that their actions are guided by the law, it is evident that using violence is part of the day-to-day work of the police and has been correspondingly normalised. At the same time it became apparent that even in the police, there were uncertainties and diverging views on the legality of using violence. There is a comparatively high threshold for police officers to describe the use of force as excessive. The interviews included an assessment of individual cases where colleagues had “gone overboard”.

In addition to the law, the other two benchmarks were also factors for police officers, as was the question of whether using violence appeared legitimate and especially whether it seemed necessary for reasons of practicality. In this regard, aspects of personal safety, efficiency and efficacy are of central importance from the perspective of the police. Pragmatic considerations of this kind can override legal aspects. The interviews with public prosecutors and judges showed that police considerations of practicality and interpretations of this kind can also influence practice in judicial decision-making.

For victims, a key issue alongside the legality of the violence was more than anything its legitimacy. In other words, did they perceive the police’s actions to be fair and just, and were the police, in the view of the respondent, fulfilling their duty to protect? Only around a fifth (19%) of victims criticised the initial police operation out of which the incident arose. Most respondents criticised the time at which the violence (22%) occurred, such as complaining that violence was used too quickly. Others criticised how the violence was employed, such as exacerbating a dangerous situation or taking action against bystanders (19%). Victims criticised the intensity of the violence (17%) or what were presumed to be illegitimate motives on the part of individual officers (15%).

2.4 How police violence is handled (Chapter 7)

As has been mentioned above, the experience of police violence can have massive physical and psychological consequences. For the victims it often causes a huge shock to their worldview and a feeling of complete powerlessness. Yet only a small proportion of the victims surveyed (9%) made a criminal complaint about the officers after their experiences. From the perspective of 83% of victims² there were strong arguments against making a complaint. The key reasons were the scant prospect of success in criminal proceedings, difficulties with identifying police officers, concerns about reprisals, a lack of objective evidence, and advice from others not to make a criminal complaint. Even individuals who were advised by a lawyer generally chose not to make a complaint, while some chose other ways of dealing with the incident such as contacting advice centres or speaking to friends. In interviews, lawyers said they often advised against making a complaint for the reasons given above. Victims and

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²No information was supplied on complaints by 8% of respondents.
police officers alike reported that police stations sometimes refused to accept complaints about police officers.

For police officers, the use of violence is emotionally charged but still part of day-to-day work. Linked to this criticism is the fact that criticism of police violence (be it in the form of challenging its legality, or making or threatening to make a complaint) can cause a loss of confidence among the officers concerned and in the institution itself. Being accused of excessive violence can cause attitudes of defensiveness and fear of prosecution, disciplinary procedures and professional disadvantages. Such attitudes make it difficult for an individual to seriously engage with their own behaviour.

Interviews with police officers revealed a range of ways of dealing with uncertainties of this kind, some of which are firmly rooted in the institution. Police reporting systems have a particular role to play here. Operational situations where violence was used are subsequently documented in operational reports and therefore presented from the perspective of the officers involved. The interviews showed there was a continuum in this regard, stretching from professional accounts from the perspective of the police on the one hand, through to deliberate misrepresentations on the other (known in police jargon as “Geradeschreiben”). Furthermore, the interviews revealed that police officers face considerable barriers when it comes to making a complaint or unfavourable witness statement which questions the legitimacy of a colleague’s actions.

2.5 Handling by the criminal justice system

It appears that public prosecutors have a specific practice for handling cases of suspected illegal police violence where these cases are reported and come to the attention of the authorities. According to public prosecution statistics these cases have remarkably low charging rates at around 2%, compared to an average charging rate of 22% for all investigations, while the rate of investigations being dropped is very high (cf. Figure 23 on p. 363 of the book). These statistics show that 93% of criminal proceedings against police officers for the illegal use of force were dropped on the grounds of a lack of probable cause under Section 170 para. 2 of the German Code of Criminal Procedure (StPO). Public prosecutors dropped proceedings in 4% of cases even though there was probable cause on the grounds that the offences were minor, or if conditions could be imposed under Section 153a StPO.

Our findings show that this exceptional practice for handling such cases cannot be explained only on the grounds that the complaints were spurious or that the police’s use of force could be justified. Rather, they show that criminal proceedings against police officers who are suspected of committing bodily harm in public office present distinctive structural features. The empirical data reveals that there are five primary circumstances which influence public prosecutors’ specific practice for handling offences of this type:

1. Evidence in these cases is often complicated or contradictory. For example, the officers suspected of an offence cannot be identified in many cases, making it impossible to prosecute them. This represents a critical factor in victims’ decisions not to make a complaint. Furthermore, the victims survey indicated that 40% of cases were dropped under Section 170 (2) of the StPO because the suspect could not be identified. Furthermore, there is also a lack of objective evidence in these cases, creating a conflict between the contradictory statements of the police officers and victims.

2. Police witnesses are therefore particularly significant in criminal proceedings of this kind, yet their role is also an ambivalent one. On the one hand, given their role and frequent social proximity to police officers, the use of violence is emotionally charged but still part of day-to-day work. Linked to this criticism is the fact that criticism of police violence (be it in the form of challenging its legality, or making or threatening to make a complaint) can cause a loss of confidence among the officers concerned and in the institution itself. Being accused of excessive violence can cause attitudes of defensiveness and fear of prosecution, disciplinary procedures and professional disadvantages. Such attitudes make it difficult for an individual to seriously engage with their own behaviour.

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the suspect they are not neutral observers. As such, there are indications that complaints against colleagues have the effect of engendering solidarity among police officers. On the other hand, the criminal justice system affords special treatment to police witnesses, and it is not unusual for public prosecutors and judges to consider them particularly credible. This is also explained by the fact that police officers are accustomed to appearing as witnesses in criminal proceedings as part of their professional practice. As “career witnesses” they understand the conventions of investigations and courtrooms and are familiar with the language of the judicial system, making their statements appear particularly professional.

3. Furthermore, during criminal proceedings against police officers, investigations are generally conducted by the police, despite public prosecutors having the authority to handle such cases. Given the requirement for neutrality, a situation involving a colleague presents investigating officers with a considerable challenge, as the European Court of Human Rights has also stressed. Some Länder are seeking to counter this by centralising investigations into such cases, providing specialist training to investigators, and making the offices at least partly independent in organisational terms. However, interviews with the police and members of the criminal justice system indicate that, given the prereflective assumptions held by investigators, such steps are not enough to guarantee that investigations into such cases will be sufficiently neutral.

4. Proceedings against police officers are unusual processes in every respect for public prosecutors. Firstly, these proceedings are unusually demanding to investigate at a time of high workload and inadequate staffing for the criminal justice system. Against this background, interviewees reported that public prosecutors draw heavily on internal police investigations for proceedings against police officers. Secondly, public prosecutors sometimes face particular expectations from the police and the public, such as the expectation that these cases should be resolved quickly.

5. The police and the criminal justice system are connected through an institutional relationship which puts them in very close proximity, which is shaped by the day-to-day cooperation on their shared responsibility for dealing with criminality. Hence a certain image of the police and of police officers persists within the criminal justice system, but this image is put under strain by criminal proceedings in cases of bodily injury in office. As regards the handling of such cases, this image can be reflected in certain presuppositions about police officers on the one hand and victims of police violence on the other, as became evident from interviews. One effect of these presuppositions is that inadequate efforts are made to scrutinise the credibility of police witnesses and defendants. It therefore appears more obvious to public prosecutors and judges to accept the perspectives and interpretations of the police. This can be seen for example, in sceptical attitudes towards victims of police violence, for example, and in accepting police yardsticks for assessing the practicability of using force.

According to public prosecution statistics from the Federal Statistical Office, judgements were handed down in 80 cases involving bodily injury in office during 2021. In these, 27 defendants were convicted, 25 were acquitted, while the court stopped proceedings in 28 cases. The conviction rate here was 34%, significantly lower than the average for all criminal proceedings, at 81%.

2.6 Counter-complaints (Chapter 9)

Overall, a third (31%) of respondents to the victim survey said they were the subject of criminal complaints. Where criminal proceedings followed, 70% were under Sections 113 and/or 115 of the German Criminal Code (StGB), i.e. resisting or assaulting enforcement officers. However, it was rare

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4 Basu v. Germany, No. 215/19, judgement dated 18/10/2022, mn. 36.
for victims of police violence to make complaints about the officers who used force against them. Of those who did make complaints, however, 65% were in turn investigated by the police themselves.

During interviews with lawyers and representatives from advice centres, complaints against victims were often described as “counter-complaints”. The police officers and public prosecutors we interviewed described complaints against the police in the same terms. We were not able to identify trends in our data as to which complaint was made first.

Counter-complaints are handled differently by the criminal justice system. Sometimes the two investigations are combined and in other cases the complaints are handled separately. Due to the assumptions described above regarding the credibility of police perspectives in the criminal justice system, there appears to be a particular trend in the combined model where cases involving bodily injury in office are dropped due to a lack of clear evidence. However, it was also more likely in such cases that charges would be brought on the grounds of resisting a law enforcement officer or suchlike. In some cases guidelines from government ministries state that cases involving resisting law enforcement officers may not be dropped for reasons of expediency (cf. Sect 153 StPO).

2.7 Police dominance and definitional powers

The police hold special definitional powers in society which may be described as functional dominance, as the police are called upon to resolve situations in a binding way, and to impose certain norms, interests and interpretations. On the one hand, police violence is a praxis for the situational assertion of this dominance. On the other hand, as has been shown above, the police have a unique definitional power in how police violence is subsequently assessed and reappraised. Amongst other things, the tendency described above for the criminal justice system to consider police perspectives and interpretations to be particularly plausible perpetuates the dominance of police interpretations in proceedings against police officers.

In this way, the dominance of police interpretations specifically strips the ambiguity away from operations where violence occurred, despite the potential for other interpretations and different assessments. This therefore makes police violence structurally exempt from questioning. While this is conducive to police work, it proves particularly problematic where the definitional powers of the police can be used to perpetrate injustice. This creates a situation for victims of police violence where they are deprived of mechanisms to counteract police dominance and in practice find it extremely difficult to assert their rights. Therein lies the struggle for police accountability.

3. An overview of the KviAPol research project

3.1 Procedure and objectives of the project

The KviAPol project is funded by the Deutsche Forschungsgemeinschaft (DFG). It started operation at Ruhr University Bochum in 2018 and has been based at Goethe University Frankfurt since 2022. Police violence has long been the topic of public debates, but until now there has been no systematic collection of empirical data for Germany. Particularly little attention has been paid to victims’ perspectives and how the criminal justice system handles such cases. It is now possible to fill in these gaps thanks to the findings presented here from this research project.

Due to high levels of public interest in the project, we published our first interim report in 2019 which included findings from the project. We published a second interim report in 2020 dedicated to how
victims of police violence experienced discrimination. In addition to these, numerous other publications have been brought out in the context of the project (see below).

The project findings have been presented at several academic conferences and civil society events, both in Germany and internationally. These included the conference of the Kriminologische Gesellschaft (2019, 2022), the annual conference of the European Society of Criminology (2018, 2021, 2022), the Netzwerk Demokratische Polizei conference in Hanover (2021). Numerous lectures and panel discussions have been held at universities, police training colleges, public authorities, NGOs, victims’ initiatives and activist projects.

3.2 Research design

In the course of the project, a quantitative online survey was conducted of persons (N=3,373) who had experienced police violence which they considered illegal. The online survey ran for 9.5 weeks from 8 November 2018 to 13 January 2019. It was conducted in four languages. Once the survey had been completed, a data cleaning process was carried out which included plausibility and coherence checks. At the end of this process, the sample contained 3,373 cases.

We also carried out 63 qualitative interviews with experts from the police, the criminal justice system and civil society in order to include differing and sometimes controversial perspectives on this topic area. The interviews supported by a discussion guide and the majority were completed in 2019, after which they were transcribed and evaluated. The 22 interviews with police officers included senior officers, detectives and rank-and-file officers. We also held 21 interviews with civil society organisations such as victims advice centres, and 20 interviews with lawyers, judges and public prosecutors.

The sample is not a representative one, so the results of the quantitative survey cannot be generalised to the level of the German population, nor is it possible to calculate prevalence rates. We have given a detailed account of the reasons behind our methodology at various points (cf. Chapter 3.1.1 of the book). One particular reason which made a representative survey impossible was that achieving a sufficiently large sample of victims of police violence from the population as a whole would have required a disproportionately large number of respondents. It was also to be expected that many victims would be members of marginalised groups. We applied a snowball sampling method which included the assistance of gatekeepers and a public appeal for participants. It represents a suitable means by which to survey a target population which is difficult to reach.

Given the size of our sample and the range of cases described in it, it was nevertheless possible to gain fundamental insights into the conditions affecting incidents where police actions were considered excessive and how these incidents unfolded. We were also able to gain insights into victims’ behaviour around reporting complaints and the ways in which the criminal justice system subsequently handled incidents. When combined with the findings from the qualitative interviews, a wide-ranging picture emerges which includes the perspectives of the actors involved. It is not the aim of this type of research in criminology and the social sciences to carry out a judicial review of individual cases.

3.3 Publications associated with the project

2023


2022


2021


2020


2019


3.4 Contacts

KviAPol Research Project
Professur für Kriminologie und Strafrecht
Goethe University Frankfurt
Fachbereich Rechtswissenschaft
Institut für Kriminalwissenschaften und Rechtsphilosophie
60629 Frankfurt am Main
Phone: +49 (0)69 79834346
Email: kviapol@uni-frankfurt.de
Twitter: @kviapol