



Carol Hagemann-White
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Thomas Meysen (eds.)

Interventions Against Child Abuse and Violence Against Women

Ethics and culture in practice and policy

Cultural Encounters in
Intervention Against Violence, Vol I

Verlag Barbara Budrich



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Verlag Barbara Budrich
Opladen • Berlin • Toronto 2019

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Chapter 9

Protection and Self-Determination

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1 Introduction

The responsibility of the state to protect women against intimate partner violence and trafficking for sexual exploitation and children against abuse and neglect builds on a broad consensus across the European Union. The demand for intervention to end the violence and to support the persons concerned is laid down not only in international instruments but also in the national laws (see chapters 5 to 7). The state is bound to exercise due diligence if (potential) violence comes to its notice. Professionals in contact with the persons concerned have a legal and/or ethical duty to act. If violence is known to occur, entering the private sphere of families and individual persons' lives is not a matter of professional discretion. Although often the children, parents, women or men themselves call the police or reach out to someone else for help, it can be the case that it is not the person concerned who decides whether the state takes action to end the violence or to assess the situation.

Acting for the welfare of others is a classic problem of pedagogy which also arises in the discussion of interventions against violence. Micha Brumlik (2004) proposes an advocacy ethic stating that intervention is justified even without the consent or even the knowledge of those concerned, if needed to maintain a minimum of physical and mental integrity and human dignity. Holger Ziegler (2014) argues that the question is not whether it is ever justified to provide "unsolicited help", but on what grounds. He demands proof of the intrinsic functionality of the interventions as well as respect for human dignity (p. 269). Christoph Schickhardt (2012) asks when it may be justified to intervene in the interest of the present or future well-being of a child. To the extent that children are not yet capable of responsibly deciding their best interests, it may be necessary and justified to intervene against their wishes (pp. 219–222). Friederike Wapler (2015) explores paternalistic justification for all individuals who experience limitations in their ability to make autonomous decisions in their own interest, and applies this to those who live in a situation of coercion, violence or manipulation, explicitly referring to women. According to Wapler, paternalistic measures could be called for but would have to offer participation or transparency and should always give room to the wishes of the person concerned (p. 341; see also chapter 4 on ethical theory).

Not only the encroachment on the rights to freedom from state intervention but also the proactive offer of support that a person has not asked for have a bearing on the self-determination of women, parents and children. Professionals manoeuvre the lines between a caring and besieging and an empowering, self-determination strengthening offer of help

(Dallmann & Volz 2013; Großmaß 2006). Support, no matter how good the intentions, has roots in paternalism (Ziegler 2014; Neumann 2013; Olk & Otto 1987) as well as in ideals of (restoring) self-determination (see chapter 11 on empowerment) and, hence, has to be aware of the risks of colonialising living environments (Thiersch 2016; Gängler & Rauschenbach 1986). Therefore an unsolicited offer of support, even though it often can be justified, needs a legitimisation itself. A fortiori, this holds true for measures to protect and support, as they frequently initiate significant changes to the life course of the persons concerned. Professionals in helping roles have their own views, estimation of the situation and what might be supportive, and by doing so implicitly or explicitly are in competition with the persons in need. This requires a high level of reflexivity (Schön 1983) and negotiation of the different kinds of knowledge and a potentially differing assessment of the situation.

Informational self-determination is a similarly sensitive issue in the field of protection against violence. The Charter of Fundamental Rights of the European Union limits rightful information sharing to having a basis of consent or a legitimate basis laid down by law (article 8). The protection of personal information is thus a human right. As a question of ethics it clashes with the possible necessity of gathering or sharing information without consent to secure protection from further harm. In child protection, the failure to provide the statutory social services with relevant information has been identified in various serious case reviews as one of the causes that contributed to a child maltreatment death (NZFH 2019, pp. 77ff.; Sidebotham et al. 2016, pp. 163ff.). Policy makers and legislators reacted and in most countries around the world implemented mandatory reporting mechanisms or notification duties (Mathews & Bross 2015; European Commission 2010, pp. 40–41). The role as guardian to protect children from harm brings the state in a different position towards parenting than towards a woman's choice of partners. In consequence, intervention approaches to indications of intimate partner violence or trafficking are more diverse (see chapters 6 and 7).

On a general level, the legitimacy for not fully respecting self-determination can be found in the duty of the state to protect victims from any further acts of violence (article 18 Istanbul Convention) as well as to protect children from all forms of physical or mental violence, neglect and sexual abuse (article 19 UN Convention on the Rights of the Child (CRC)). This duty has to be seen against the background of article 12(3) Istanbul Convention which demands all these measures to take into account the needs of victims and to respect their human rights, including the personal freedom of action. This correlates with the duty to hear the child's views and to give them due weight in accordance with the age and maturity of the child (article 12 CRC).

The story shifts when self-determination leaves the field of protection and support and enters the arena of the criminal justice system. Trafficking, intimate partner violence and child abuse and neglect are punishable offences, with legal concepts in the criminal codes varying across countries. For victims, criminal prosecution can play an important role on their way to a self-determined life by having the perpetrator's wrongdoing officially acknowledged and "any liability for the violence being taken off them and placed where it belongs" (quote of a survivor of sexual violence in Unabhängige Kommission 2019, pp. 216ff.). The sovereign power to enforce sanctions, though, remains with the state. Still, women and children exercise agency differently, find different pathways to restore their lives as survivors of violence and, therefore, criminal prosecution and interaction with the criminal justice system can be an inadequate route to justice and to meeting their needs (Rehman et al. 2013). The examination can be not only stress- and painful but also harmful to victims (FRA 2017). In addition, the conviction of perpetrators might fail for reasons that at least partly lie in the sphere of the victims; they might retract their evidence (Smee 2013) or their witness statements might not be believed (Unabhängige Kommiss-

sion 2019), which might place further burden on them. Whatever the individual case may be, self-determination or the lack of it is an utterly important issue for women and children as victims also in contact with the criminal justice system.

2 Protection and self-determination: tensions and hierarchies

If indications or knowledge of intimate partner violence, trafficking for sexual exploitation or child abuse and neglect come to the attention of the state or the protection or help system, self-determination comes under pressure and complicated questions arise: who decides whether and how much a woman needs support to escape the violence or might want to maintain her living circumstances? To what extent do parents have a say when their parenting is assessed and when are support and protection measures taken? Do women have a right to live in a partnership where there has been violence if there are children involved? Are children co-creators of interventions to support their safe and flourishing development?

Exploring the protection systems on the three forms of violence in the four countries, it emerges that conflicting priorities between the duty to protect and self-determination are present across the field but dealt with quite differently. The formal as well as informal rules and regulations of the particular systems call for decisions about when the duty to protect trumps self-determination and when the freedom to autonomy is paramount. Due to the basic situation of paternalism in childhood (Wapler 2015) this plays out differently when the autonomy of children as well as of parents is in question, as it does situations of weighing the autonomy of adults. No matter how hierarchies are preset on a legal-structural level, the professionals have to handle the ethical dilemma and practical constraints in the individual situations. They differ in their awareness that they might, at the same time, act in line with, and act in conflict with the individual rights of the persons concerned, and they reflect differently on the implications of this fact. The following traces how these tensions played out in the 24 multi-disciplinary group discussions with professionals in the CEIN-AV project (for methodology see chapter 2) and is based on 12 working papers, one on each form of violence in each country (<http://ceinav-jrp.blogspot.com/p/working-paper.html>).

Intervention can only be triggered if the situation comes to the knowledge of someone who is able to act. Women or young persons might reach out by themselves, in other cases non-professionals such as family members, friends, neighbours, colleagues or professionals in contact with the persons concerned can see indicators or have direct observations. As long as the person who suffers the violence reaches out and receives the help s/he asks for, her or his self-determination is initially respected. There are also cases in which they reach out and do not find help nonetheless, because they are not believed, no appropriate measure is available or professionals only accept a different form of intervention. While this also affects the question of self-determination the attention often concentrates on cases where a woman or child has not yet reached out but other people become aware of potential violence.

Professionals in the group discussions on intimate partner violence and trafficking agreed that the woman should be asked before interventions are initiated. In Germany, reaching out to the woman and offering support without her asking for protection or help seemed to be widely acknowledged as good practice, but it was a delicate question how to do that. In Portugal, professionals seemed much less reserved. In case violence was denied, intervention could only go forward if there was either grave danger to the life of the woman or a child was maltreated him-/herself or was witnessing violence by living in the

household. In the field of child abuse and neglect professionals shared a view that child maltreatment calls for action and cannot wait until the parents or the child reach out themselves; the response is a matter of how not if.

The perception that she is a victim, giving her the power to decide what to do. Sometimes, when there is a risk to life, an imminent danger, they [victims] acknowledged and have to go a long way, before we come to her with our, often times, “rescue instinct”. (NGO shelter, DV, Portugal)

Under no circumstances would we press her to make a statement, we know that is useless. As long as she is not stable, she is unable to testify. (counselling centre, TSE, Germany)

You pick up who’s controlled and who’s fine. We give out mascara with phone numbers, meet for coffee, build relationships. A lot of girls are scared by police and authorities. There’s a lot of gut stuff, whole mannerisms, open or quiet and hesitant. (faith-based NGO, TSE, England/Wales)

And here, in my opinion, it is very important to assess how far to go or how far to go into other institutions in these situations. (social worker, CAN, Slovenia)

Especially when there are no children involved in situations of violence, the question arose whether, after years of oppression, a woman in an abusive relationship can have (sufficient) self-determination to seek help or, if protection is provided, she will be able use the newly given freedom. Again, professionals in the German group discussions clearly stated that “*by no means*” would they initiate protection against a woman’s will, but would give her time until she knows what she wants. In Slovenia as well as England and Wales, several professionals seemed to have a notion that it is necessary to lead the way after “*a certain freedom of choice has been taken away*” from the woman and perceived themselves as the ones who help the women to make the “*right choice*”. A feeling that their “*hands were tied*” seemed to leave them dissatisfied if they respected the woman’s decision not to make use of support services or protection measures.

I often experience that it is very important that women do not have to do anything when they come to us the first time. They need to be listened to – what should they even do with self-determination? They have been dominated for years. They look surprised and overwhelmed when I ask them “What do YOU want? How are you?” They often don’t know. Maybe it never was there, it also may have been destroyed over the years. (intervention centre, DV, Germany)

That can be the case even where they do understand, they still don’t want to leave because he says he won’t do it again, or you’ll be homeless, you’ll have no money and that’s time and time again why women choose to stay, even if they know they’re being abused. (lawyer, DV, England/Wales)

(...) any intervention plan has to be done according to the woman’s will. Because, in the end, we realise that women are the experts of their own risk, of the risk they are living. ... We wait that the victim does the complaint herself. (NGO women’s centre, DV, Portugal)

The idea that women cannot make good choices can be linked to a perception of them as subaltern and marginalised. When they are seen and treated as incapable of well-founded decisions, the result can easily be “epistemic violence” (Spivak 1988; Fricker 2007). In this framework, a division between professionals as knowers and the persons concerned as not knowers emerges, and did appear in some of the group discussions. In particular (but not only) when persons from a minority were involved, professionals tend to count themselves among the knowers with the power to select who the non-knowers are, along

with entitlement to decide what is best for them. Some professionals explained that arrangements had to be made for women, parents or children who then had only to accept or reject. But for many, the dilemma of self-determination was apparent when it came to different views on whether anything has to change and if so, what.

His safety is always first and foremost so, although he's said that, we need to make sure he's protected ... and explain that we're doing this for him. (teacher, CAN, England/Wales)

I have a difficulty with the belief that I know what's good for another person. I want to persuade others, because I think that's good for them, that this is the only right way for them ... And here unfortunately ... If someone kept telling me what was good for me, I don't know if I'd accept it very well. I don't know how respected I'd feel. (NGO representative, DV, Slovenia)

From what I read until now, I absolutely do not have the feeling that she is with this man voluntarily. She is with him, because she is afraid of him and because she still does not know how she can escape this man. I have the feeling she screams in all directions please, how do I get rid of him? ... she does not want to stay in that relationship, she just does not know how to get out of it. (shelter worker, DV, Germany)

Or interpreters actually saying to women "have you really thought about the impact this is going to have on the children, on the community, what will your mother at home think." (police, DV, England/Wales)

3 Unsolicited offer of support and gathering information

Entering the private sphere of family life and sexuality does not only touch essential human rights but also involves intimate information. Access to privacy is limited unless the persons concerned open the "doors", start to disclose their situation and to cooperate with the professionals who are willing to end the violence and support them. In Germany, a trustful relationship is seen as crucial in many cases to gain an accurate understanding of the child's or women's situation. Professionals reflect that straining the trustful relationship or putting it on the line by gathering information behind the back of the family or without consent can have influence on the options to help and protect. Depending on how it is done, this influence can enable access to support or damage the relationship upon which support depends (Beckmann & Meysen 2015).

Do we invade with the apparatus of the state and hope that this ends the violence? There's also the risk that the threats get more severe, that he says ... here, a lot more will happen. And from there on the violence doesn't surface anymore. (advisory centre, DV, Germany)

And then the victim stopped coming to the sessions. I don't have any information about whether the violence stopped or at least didn't intensify. (social worker, DV, Slovenia)

Some of the professionals working in the field of intimate partner violence said they would respect the freedom of an adult to live in a violent relationship. Some also called for caution not to cause a "lasting disruption of the family peace" which was contested by the question of how a violent situation could be referred to as "peace". In Slovenia a distinction was made between private actors such as NGOs and the state. In the latter case, self-determina-

tion was seen as overruled by the state's duty to act. Similar discussions came up in England/Wales on trafficking when more than the one woman could be affected and information was needed to protect the others as well (see also below). Professionals working in the field of intimate partner violence and trafficking for sexual exploitation drew the line when children were involved. Indications that a child was present led to the notion of an obligatory search for access to the situation of the child. The same applies to the field of child protection. If the concern was sufficient professionals are required to gather further information, investigate and assess. Self-determination in child protection seems to be out of question: if the child is being abused the professionals must act. The child's will, in contrast to the women's will, seemed to have no relevance for the question whether the professionals should take action and get in contact with the child and the relevant family. Only in Germany, where helping relationships are of high value for professionals, did considerations come up that gathering information should be transparent, even if conducted without consent.

Women, men, children, mothers and fathers might not be willing to share their information and views with someone from outside. The dilemma of taking too much or not enough action was particularly present in Germany and Portugal, where professional judgement is far less delegated to guidelines (England and Wales) or normative requirements (Slovenia) (Meysen & Kelly 2018). Still, in the group discussions across countries, forms of violence, and stakeholder groups, various professionals showed an awareness that unconsented action can put help and protection at risk. The situation was repeatedly referred to as a "tightrope walk".

This is the governmental dilemma, is it not? It's a bit ... Marriage and Family are protected by the constitution. It's the "germ cell" of our society ... it [constitution] protects family and marriage. On the other hand the state has to [intervene], because some persons are not capable of managing this on their own" (police, DV, Germany)

Minority women quite frequently were considered as not knowing about their rights (see chapter 8). Approaching potentially abused or trafficked women to provide them with the necessary information that enables them to seek help and protection might therefore be seen as a moral duty, even if they are contacted proactively and it is an unsolicited offer. In addition, it was discussed that women do not always see the advantages to themselves but see many risks if they leave the violent situation. Showing them alternatives, even if they are imposed on the women, might increase the level of their self-determination in comparison to solely being told what to do. Choices can be made as long as the decision when and how to act and to initiate a further process of intervention stays with them. Not all agreed that making use of services and searching for ways towards protection should be voluntary and pointed to coercive situations the women cannot escape.

This is a situation of coercion. ... We know how strong the pressure is. And I don't have any illusions. It's very hard to bring the woman to the tipping point just by talking to her. (police, TSE, Germany)

4 Information sharing without consent, knowledge or against the will

In the four countries of our study, there were stark differences in policy and practice on the issues of information sharing, confidentiality in helping relationships and informational self-determination. For example, Germany's child protection system is one of the very few not following the international mainstream of requiring immediate notification or re-

porting, so that the decision about when it is necessary to share information without consent is left to professional judgement (see chapter 5). The systems in England and Wales, Portugal and Slovenia set such professional notification or reporting obligations either in law or in guidelines. In the field of intimate partner violence against adult persons one would expect a higher degree of respect for their self-determination since there is no intergenerational conflict of interest involved. However in some countries this is not the case. In England and Wales referral mechanisms for high risk cases of intimate partner violence have been implemented by calling a multi-agency risk assessment conference (MARAC); consent of the victim-survivor is sought, but can be dispensed with. Cooperation between professionals is elevated to a paramount value (Coy & Kelly 2010). If children are involved, violence against women can be reframed as a matter of child protection (Hester 2011). Immigration laws strongly restrict the self-determination of immigrant women who are trafficked for sexual exploitation (see chapter 7). This has implications in relation to the General Data Protection Regulation when it declares consent that an authority asked for as not “freely” given in the legal sense (article 7, recital 43).

Professionals working to support women to end intimate partner violence are often acting within a legal framework or organisational rules. They may have explicit responsibilities to protect. In England/Wales as well as in Slovenia guidelines or protocols shape practice. Generally prescribed processes seem to be the dominant orientation, and not the wishes and needs of the persons involved nor any ethical reflections. Following the rules appears to trump choice and self-determination. Guidelines and protocols seem to be followed without further reflection about the implications and circumstances for the individual person concerned.

We'll prepare everything, we'll be in agreement, in a process, but in the end we'll follow the domestic violence protocol. (social worker, DV, Slovenia)

(...) surely if you're a worker and you're governed by these procedures, you would follow them. (specialist NGO, DV, England/Wales)

In Portugal, professionals from different stakeholder groups engaged in emotional conflicts and contradictions on the issue of “victim’s consent” against “state responsibility” arguing with re-victimisation.

If it [the women's will] is not taken into account this attitude will break the relation of trust with the professionals and the women will feel diminished by the institutions, in a similar way as they have been by the offender. (NGO, DV, Portugal)

Between professionals in the group discussions in Germany the duty to respect confidentiality was unanimously given high value. Supporting self-determination and empowerment was the goal to be achieved through helping women to discover their own resources and expanding their scope of action.

It is important that self-determination is preserved because otherwise there is no advice and counselling for the woman. (intervention centre, DV, Germany)

Across the four countries the narrative shifted if children lived in the household in which intimate partner violence took place. Children can legitimise, and beyond that can be seen as calling for unconsented information sharing. In England and Wales, some practitioners spoke of threatening the women with removal of the children as a powerful lever to persuade them into taking the action the agencies expected. Moreover, parents who (potentially) abuse or

neglect their children are scarcely allowed informational self-determination. The decision to share information among agencies is seen as a decision at the full discretion of the agencies in Portugal. For professionals in England/Wales, even if an ethical dilemma is perceived at all (e.g. by health care professionals), it is always overridden by notification duties. References are made to serious case reviews to legitimise sharing information at the earliest point. Professionals in Germany handle the issue with a high norm of transparency. It is seen as a matter of course that parents are informed. Their wishes might not be taken into account but they are at least given the chance to express their point of view.

That's an interesting one where it says both parents have not given consent to share information ... by the time it gets to conference level, the threshold's been met to share information because if you don't, it's detrimental to the child (...). (statutory service social worker, CAN, England/Wales)

I would try to be very transparent. (social worker, social services, CAN, Germany)

Transparency can be challenging in direct contact with family members. Therefore, ways of working around the transparency requirement came up several times. With children who disclose their situation to a professional there seems to be a stronger sense that passing on the information without consent is an ethical issue. Nevertheless, it was almost always overridden across the four countries. Concerns that children might subsequently withdraw their statements were dealt with as “anxieties” of professionals secondary to the necessities of safeguarding issues. In Portugal, children seemed to have no say at all. Some remorse could be sensed that professionals in child protection in principle act over the heads of children. Other than in England/Wales, where unconsented information sharing almost seemed to have become an end in itself and the possible effects on the help process were not discussed, there seemed to be a clear awareness in the other three countries that acting against the will or knowledge has to be weighed in every single case. Professionals need to make a decision whether to strain their trustful relationship with parents and children or whether it is necessary to put it on the line. When professionals see a need to share information but do not want to confront parents and perhaps unsettle the working relationship with them, they sometimes work around transparency to make sure the information reaches the responsible professional or authority.

Well, he is acting a bit behind the back? (family court judge). *Yes!* (social worker, social services, CAN, Germany)

Sharp contrasts between the countries appeared in professionals' views in the field of trafficking for sexual exploitation of women. In Germany, professional secrecy was of highest value and a legal obligation. Those in a helping role claimed never to breach trust. Professionals in the criminal justice system underlined the importance of providing information even if the specific victim could not be named without her consent. As an example police suggested the counselling service could share context knowledge, such as the location of a brothel where trafficked women might be found. A similar but stronger tendency to blame helping professionals for hiding behind data protection arose in England and Wales. In consequence, wishes of a potential victim of trafficking can be overruled in England/Wales in view of the need to ensure a woman's or other potential victims' safety (“public protection”). An exception was a feminist NGO position that no action should be taken without the victim's express agreement. Conflicts between agencies on this issue could be found in the Slovenian group discussions. Professionals in private NGOs noted that they always needed the woman's consent and would never act without it. But those working in the administrative or criminal justice system cited official

procedures that demand information sharing. Police (not only) in Germany deemed data protection to be perpetrator protection. In Portugal, consent was seen as an “*ambiguous concept*”. Though acknowledging the importance of inter-agency collaboration, professionals gave more weight to the survivors’ will in regard to information sharing. Lawyers in all four countries confirmed that they are duty bound to act only on instructions and with their client’s express consent.

Non-disclosure obligations and such. That also is a protection of the rights of a person, so to say, that you do not pass on information and that is very, very important to us. (advice centre, TSE, Germany)

I do not pass on nothing to no one, of course. Never. (lawyer, TSE, Germany)

The whole consent issue is massive. I think it’s a non-issue and agencies have hidden behind in the past to do nothing. (police officer, TSE, England/Wales)

5 Intervention without consent

In the context of family, the duty and right to intervene to end intergenerational violence involving children has developed towards a consensus across Europe. In the case of adult women the state has to respect freedom of choice for intimate partner and sexual relationships, but if state authorities, particularly the police, are informed of any danger of imminent harm to an adult, this knowledge usually initiates a duty to act. Nonetheless, such paternalistic actions need to be legitimised. From an ethical standpoint, disregard of self-determination cannot be justified in hindsight nor on the basis of self-referential “good promotion theories” (Brock 1988). Intervention without explicit consent only has an ethical foundation if self-respect or human dignity of the person concerned is at stake (see chapter 4 on ethical theory; Ziegler 2014).

Creating living circumstances in which women and children can live and develop free from violence can be described as a process of co-production and change. It involves the persons concerned as well as a broad spectrum of professionals. The success of support and protection is increased if intervention is grounded on participation and ethical practice (Pluto 2007). This in turn presupposes trust in the professionals’ sincere care, benevolence, reliability and taking of responsibility. To encounter women, men, children, and parents with respect, to esteem their dignity even if there is unacceptable behaviour requires a reflective professional identity (Thiersch 2011). Therefore, handling ethical issues of self-determination in interventions against violence is not static. It is contextualised in relation to emotional and other resources of a person to make self-determined decisions at the particular time. Systems and professionals take widely different approaches to end violence and support survivors.

5.1 Intervention without consent and violence against children

In the transgenerational context of child protection, parental self-determination can be restricted. Child abuse and neglect calls for paternalistic intervention if parents or carers are not able to prevent the risk of further harm themselves even after support has been offered or accepted. Child protection systems assign tasks and responsibilities to the various actors. For professionals in contact with children, parents, and families in England and Wales

the referral to the statutory social services stood at the forefront. Whether to notify or not seemed to be the primary question and thresholds that trigger a report were discussed. The cooperation of professionals was clearly placed above the cooperation with parents. A relationship of trust with the child also was seen as a secondary consideration, clearly over-ridden by the duties to work together as professionals to safeguard children. A participant claimed that there was “*no conflict of mandates*” because professionals must act – whether that is a referral, an assessment followed by a plan, or a stronger, immediate intervention to remove a child. Whenever the issues came up that professionals should engage with parents and children, should build a trustful working relationship to support the parents to make changes, and should let the child have a say through participating, they were pushed to the side in the same breath.

(...) if you had a medical report that the injuries were more likely than not to have been caused by being struck with an object, I don't think you would get a social worker or team looking at support for the family, you'd get a social work team looking at immediately safeguarding a child from further physical harm, and emotional harm. (lawyer, CAN, England/Wales)

In Slovenia, the participants were aware of the rules but had doubts that it is always best for the child to follow them. This mainly referred to the high norm that child abuse is a crime, that the past actions need to be investigated, and that the criminal justice system has to be involved (see also below). Concerns about false criminal complaints were discussed, though at the same time, the importance of interdisciplinary cooperation and coordination was emphasised. In that respect, professionals expressed the need for more explicit guidelines that would give a clearer orientation about the steps and measures to be taken in case of child abuse and neglect. With some professionals, taking responsibility to protect a child was incompatible with the helping role of the professional, which made it possible to avoid the question of consent.

But when the safety of the child is at stake, we assess what is the bigger risk. And that for us is always an ethical dilemma, but we do try to respect all the rules and on the other hand try to find these options. (social worker, CAN, Slovenia)

Would I ask the mother about the possible abuse? Looking from the point of view of my profession, no. I am interested to keep the contact. (midwife, CAN, Slovenia)

Working towards parental consent was of importance in the discussions in Portugal. While information was shared among agencies regardless of consent, agreement of the parents was required for the implementation of support services and a help plan. The alternative was to initiate judicial proceedings, which seemed to be a high threshold for professionals. Overall, there seemed to be a reluctance to intervene in the life of families, which left the freedom to self-determination with the parents and raised the threshold of severity at which professionals had to act. Rather striking was the high level of paternalism towards children, whose will was seen as irrelevant in child protection, even if children were older than twelve.

I think that if we really want to help children, we have to look at the parents and families. (teacher, CAN, Portugal)

I think we have to be very careful when we talk about violence, because the term became generalised and now it is applied in such a [trivial] way, and trivialising this is extremely dangerous. (teacher, CAN, Portugal)

In Germany, all professionals emphasised the necessity to act as early as possible, and were determined to do so according to their roles. In health care, education, and child and youth welfare, professionals constantly referred to their relationships of trust to children and/or parents or discussed how to make and maintain such relationships. In consequence unconsented actions were seen as a breach of trust and needed strong justification. The reflection on the effects of interventions on the working relationship and the access to the family led to an individualised decision-making about taking measures without or against the will of parents as well as children. That self-determination cannot always be given in child protection was taken for granted. Paternalistic actions were compensated with a strict requirement for transparency, which gave the persons concerned the alternative to act themselves or could increase the chances of keeping parents and children engaged in the intervention process.

I also think that it is important to make it absolutely clear to the mother: I cannot be silent about this. There is an alternative to this, I'll do it behind your back and I'll notify the authorities. I cannot just let this happen. (social worker emergency care, CAN, Germany)

From the view point of those who intervene directly, we've repeatedly made the experience that even families who didn't want any help in the past say, yes, now we want help. (social worker, home visit services, CAN, Germany)

5.2 Intervention without consent and violence against women

Intimate partner violence is perpetrated against adults. Restricting their self-determination cannot be justified by the “paternalistic basic situation” (Wapler 2015) as in child protection. In Germany, professionals hence agreed on a clear orientation and stressed that nothing will happen against the woman’s will or without her knowledge, respecting that “*each must find her own way*”. The “*failure*” of women to engage with intervention sometimes frustrated professionals but still kept them from doing anything without consent. In Portugal this dilemma led to a lively debate. Professionals positioned themselves on different sides. The intensity invested in the arguments showed the professional implications and the emotional involvement. In Slovenia, some participants passed the dilemma on to the Centre for Social Work that then should “*prepare*” the woman. The question of self-determination was rather dealt with as a matter of the ability of the woman to stand by her will to end the violence. This seemed to switch the focus from the violence and its effects to the women as becoming the problem if not consenting to intervention, leading to discussion of how to support them so that they comply. The stance professionals took in England and Wales was, again, rules-oriented. Multi-disciplinary risk assessment was mandatory. The guidelines to conduct a Domestic Abuse, Stalking and Honour risk assessment (DASH) and to make a referral to a Multi-Agency Risk Assessment Conference (MARAC) were universally accepted processes throughout discussions. Failing to follow the guidelines was seen as letting the woman down, which placed the dilemma on a general level and did not question the individual needs or concerns of the woman. More than once participants said that women had the right to make “*bad decisions*” and to be in “*bad relationships*” but women’s self-determination was always subordinated to the responsibility of agencies, with the notion of empowerment barely engaged with, and only then briefly by specialist NGOs.

We DO have a great intervention system, but nevertheless it fails. They have exhaustingly counselled her and then she walks out and takes back the complaint. (family court judge, DV, Germany)

(...) if they [the husbands] are still there in the family home, we have to be very cautious and do the risk assessment, and a safety plan (...) We wait that the victim does the complaint herself. (NGO women's centre, DV, Portugal) For me, when there is a criminal practice, I have to be relentless, with that woman. I will not give her a second chance. (police officer, DV, Portugal)

(...) Centre for Social Work whose task it is to prepare the victim. (social worker, DV, Slovenia)

Perhaps you help her by not starting with the police, but rather the centre so she gets another kind of support, a wider one, to prepare her for the procedure. (prosecutor, DV, Slovenia)

It seems these three agencies are letting her down by not doing it, by not making a referral. (specialist NGO, DV, England/Wales)

Dynamics shift when children are involved. In all countries showing mothers the consequences of not leaving the violent partner was an option, sometimes meaning a threat to remove the child. Some participants saw this as a powerful lever to persuade women into taking the action the professionals considered necessary. While in England and Wales the situation seemed to change its character towards a child protection case, the dilemma was clearly noticeable. The presence of children sharpens the situation to a point at which professionals can use it as a “door opener” by which the woman can be convinced to accept help and to initiate what professionals think is best for the woman. The question came up how long the protection of the child could wait until the mother takes necessary action. Some denied the women the ability to consider the best interests of the child properly if they were subjected to intimate partner violence. Professionals seem to feel helpless if survivors do not cooperate sufficiently so that protection could be provided and prosecution expedited, which is the reason why they have to bear the tension of not being able to do what they consider to be their mandate. Thus paradoxically, survivors can become the object of frustration of professionals and be seen as “the problem”. Often mothers instead of perpetrators were assigned responsibility for the safety of the children. In our group discussions across countries we could only rarely find reflections about these dynamics or concern that professionals might even infantilise women. A lawyer in England, a professional with a distinct advocacy role, pointed out that women were blamed for the failure to protect their children and then felt abused not just by the perpetrator but also by the services.

(...) and find out if it's domestic violence due to the children involved, so it's a safeguarding issue. (emergency nurse, DV, England/Wales)

Do we bypass the victim and protect children or work on her motivation and for how long. (social worker, DV, Slovenia)

Here, there are children at risk (...) we have to move forward. (victims' centre, DV, Portugal)

The group discussions with practitioners in the field of trafficking for sexual exploitation revealed similar frames and patterns as in the field of intimate partner violence. In Portugal consent was identified as an ambiguous concept in trafficking; when women are coerced to work in prostitution while being required to collaborate with criminal investigations to escape it, self-determination becomes a euphemism. Law enforcement professionals pointed to the same tension in Germany, raising the question to what extent women can escape their coercive situation.

We let the women decide for themselves. That's all very fine. But no-one is helping her. If we take her out, then she is at least, she is no longer under pressure in the situation. (police officer, TSE, Germany)

Police carefully questioned the “mission statement” set out by the umbrella association in which it declares that all NGOs have a duty of confidentiality, that nothing will be done against the women’s will, and that contact to authorities will only be made on express request while ultimately accepting it. While the NGOs in Slovenia always needed the woman’s consent to take further action, the state officials had a duty to proceed regardless of consent. Again, practice in England/Wales was aware of the ethical dilemma but it was always dissolved in one direction by giving more weight to “saving lives” in comparison to self-determination; other than a faith-based NGO, a feminist NGO was the only exception.

Self-determination and consent are particularly under pressure in the field of trafficking. On the one hand the illegal residence or the unresolved residency status of many trafficked women brings in the threat of deportation and the requirement of immigration authorities to cooperate with prosecution as gateway to services, thus limiting women’s choices. On the other hand trafficking is a crime that is usually committed not only against a single woman but against a number of other women and is regarded as organised criminality. In Portugal, the severity of the crimes was seen as legitimising to take action without consent. The state’s duty to dismantle trafficking networks as well as to protect other (potential) victims led to an unstable balance between respecting the victims’ choices and professionals’ dedication to end the violence and prosecute the perpetrators. The choice women had, as described in several group discussions, was not about intervention but to take part in a victims programme or to be either deported to the country of her origin or to return to prostitution after the criminal justice system intervened. In the group discussions in England/Wales the “duty of care” was discussed back and forth. Since there was likely to be more than the one woman forced into sex work, several professionals stated that intervention could not be a matter of her choice and willingness. Nevertheless, women were perceived as autonomous and almost in the same sentence as dependent on compliance. This understanding of choice despite no choice was not completely disentangled in any of the group discussions.

We can't force anyone; (...). But as I've said, the will of every victim, for us they were victims, was her own personal will. She decided whether to take part in the offered programmes, to trust, what we, the police, or the NGO people offered, or to return to the environment she had come from. (police officer, TSE, Slovenia)

There is prima facie evidence of a crime, there will be more than one woman in the brothel so I have a duty of care to potentially rescue sometimes, potentially rescue others. (faith-based NGO, TSE, England/Wales)

6 Prosecution and self-determination

The initiation and the process of prosecution of violence such as trafficking, intimate partner violence and child abuse and neglect regularly is not for the victims to decide. The criminal justice system acts on behalf of the state’s monopoly on force and takes control. Self-determination of the victims is decidedly not the guiding principles of criminal pro-

ceedings. While on the one hand criminal prosecution does not depend on the will of the victim prosecution or proceedings on the other hand affect the person's integrity. Someone whose agency and self-worth have already been severely compromised by violence should not be re-victimised. After violent acts of trafficking, intimate partner violence and child abuse and neglect there are plenty of reasons for a victim not to press charges. Victims might face danger or threat to themselves or other family members, may suffer increased violence or may want to uphold the relationship. At the same time sentences are often not satisfying and not sustainable and prosecution can jeopardise other intervention measures. Thus not only is the victim at risk of being re-traumatised, s/he is also re-victimised and made partly responsible for something wrong done to her/him. This defies the principle of empowering victims and opening possibilities to move forward to leave these experiences behind.

While technically prosecution is in the interest of the society; still it cannot be completely independent of the victim. Police, prosecutors, lawyers and criminal court judges underline the need for a credible and consistent testimony of stable victims who are able and willing to appear as witnesses. Secure evidence requires a statement from the victim the only exception being England and Wales, where some possibilities for victimless prosecution exist. Victims therefore do have sort of control not over the start of investigation, but over the success of conviction and outcome. They can withdraw their complaints, refuse testimony and withdraw themselves from proceedings which mostly will result in proceedings being stopped.

Back to the evidence: The victim doesn't want to testify. We don't have photos, we have no access to medical records, than we have nothing. Often called the police, filed a complaint, withdrawn. Then the only witness collapses. (prosecutor, DV, Germany) How do you prosecute at all? (intervention centre, DV, Germany) We don't, proceedings dismissed. (prosecutor, DV, Germany)

The criminal justice system is used to gather information without consent. Police and prosecutors are allowed and can be obliged to investigate secretly. Transparency only becomes a value in court. Therefore, women, parents and children lose control at some points if criminal investigations are initiated. Choice and consent are not considered by law, but are effectively controlled by the power of the victim to deny testimony. Tension with women's self-determination arise when action in the aim to reduce risk and promote safety are taken (Coy 2015). Professionals started a debate on the contradiction on the issue only in the group discussions on intimate partner violence in Portugal and on child abuse and neglect in Germany. Conflicts between stakeholder groups of the criminal justice system and the support oriented systems about the extent to which women should have a say seemed to be avoided in the other group discussions.

I don't think we should be relying on the engagement of survivors. I know it's easier with engagement but if you don't have it you don't have it. It's a bonus if you do have it, but we should be looking at what other information is there available to us as professionals to intervene (...). (prosecutor, DV, England/Wales)

In child protection a distinction was emphasised between "social" and "criminal" investigations. The need to avoid "excessive" intervention was a strong theme in Portugal. In contrast, if the maltreatment was deemed a criminal offence the assessment by the criminal justice system might be an entry to child protection in Slovenia. Representatives of the criminal justice system or closely linked professionals stressed respect for the right of the state to prosecute child abuse. Tensions between professionals from the criminal justice system and the child protection system became apparent in other group discussions of the

other countries as well. But such a call for or request by the criminal justice system to take over was not found in other countries, rather the opposite. In Germany, where the emphasis is on building protection through a relationship of trust with as much self-determination as possible, concerns were expressed that initiating a punitive intervention could jeopardise help for victims. This even was acknowledged by representatives from the criminal justice system. In general, unconsented prosecution stayed in a status of unease in the discussions.

I would firstly report the incident to the police and then it would be assessed. (social worker, social services, CAN, Slovenia)

And then one social worker said, listen, I'm a social worker, I'm not a spy for the police ... We have to find a balance. (police officer, CAN, Germany)

There isn't that ribbon through it – it's really hard to see how those two systems can sit side by side really. (lawyer, CAN, England/Wales)

In awareness of these tensions participants in the group discussions still agreed that perpetrators in general ought to take responsibility for their actions and that there is a need that they can be punished. Especially in the fields of violence against women prosecution and punishment were not only seen as important to send the message that the actions were wrong, are not tolerated and should not be repeated. Some also saw a need of victims for the acknowledgement that the perpetrators actions are not only unacceptable but criminal. For victims prosecution was seen as “*entitlement*” to justice and maybe even to compensation.

Who is interested in criminal prosecution? We as a society have an interest in prosecution. There we release the woman from her responsibility at that point. (...) Sometimes it is also important to just say “you have suffered injustice”. (counselling service, DV, Germany)

7 Conclusions

Being subjected to violence means losing control over one's body and mind. Restoring the freedom of a self-determined life presupposes protection from further abuse and harm. Intervention to protect and support might in itself override self-determination of the persons concerned, professionals may share information or take action without consent. Then again, persons may reach out and find that their needs cannot be met, thus remaining in the situation they want to escape. Finally a person might want to change the situation but not on the conditions the protection system has to offer or might consent to first intervention steps and withdraw the consent at a later point. Thus, self-determination is an important topic not only for the persons concerned but also for professionals. At the same it is a complex and delicate issue especially in the context of violence and close personal relationships. Systems and professional have to find a balance between enabling and guiding decisions which in itself reflects a relationship of unequal power between professionals and the persons professionals seek to protect, help or prosecute.

National systems and within them the different groups of professionals take strikingly different approaches when it comes to the questions of when and how intervention should be enacted, as the data of the CEINAV study shows. Professionals are given more or less discretion and space for professional judgement in the decision-making processes. This

had effects on the level of awareness of and attention for the dilemmas professionals have to navigate through conflicting interests when intervening in the lives of women, men, children, mothers and fathers. While self-determination is rooted in human rights and widely accepted as important, ensuring protection against violence implies that self-determination might be overruled. Obeying the rules was often, but not always prioritised. The available resources had a significant influence on how dilemmas could be manoeuvred in professional decision-making. With exceptions, women were given more autonomy in cases of intimate partner violence than in trafficking for sexual exploitation, due to additional requirements for the access to protection and support. In the field of child abuse and neglect the transgenerational dimension called for a differentiation between parents' and the child's self-determination but for both professionals seemed to limit participation more than for women. If children were witnessing or involved in intimate partner violence a convergence of approaches or even re-framing of the intervention as child protection could be observed. This prompted earlier and more insistent support, resulting in less self-determination for women with children.

In any case, interventions in the fields of intimate partner violence, trafficking and child abuse and neglect demand a lot from professionals. Preserving and restoring self-determination in interventions proved to be a most challenging task. Respecting self-determination not only needs commitment to their exacting job but also reflective creativity in the encounters between professional expertise and procedures and self-determination of the persons they are dedicated to serve.

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