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From Loss of Authority to Resistance

When interaction with the police escalates

Resistance is an ambivalent behaviour, which, on the one hand, is necessary in certain situations to maintain democratic conditions, but on the other hand, it can also lead to anarchic conditions in society. After a brief historical summary of the resistance of the population in post-war Germany against political decisions and social authorities, the author concentrates on the resistance against police officers who can no longer rely on the natural authority of their office in the 21st century: Any form of direct coercion must be reflected in the present with regard to legal consequences. The comparative example of petty theft shows that resistance to police officers is not an offence typical of young people. Resistance is concentrated in the night hours at weekends on public streets, paths and squares, and the perpetrators are very often under the influence of alcohol. In the further course, the stages in the escalation process between citizen and police officer are followed in a differentiated way, taking into account the reason for the intervention. The first level of analysis is the announcement of the police action at the scene and the citizen's reaction to it. The second level examines the implementation of police action and the subsequent reaction of the citizen. The third level evaluates further police actions and the subsequent reactions of the counterpart. As a result, it can be noted that from the time the police use physical violence, it can hardly be expected that the situation will calm down. De-escalation measures must therefore be introduced prior to initial acts of physical aggression; on the one hand, the focus is on verbal communication, and, on the other hand, on the replacement of the police officer by a colleague during a verbally intensified interaction process with the citizen.



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What do we actually think about criticism when we are confronted with alleged misconduct? Do we accept this criticism and promise – at least outwardly – to improve, do we ignore the correction more or less without emotion or do we resist it because we feel unjustly treated and deny the other person the competence for this criticism?

When it comes to resistance, the question arises whether this rebellion, especially against authority, is always negative or whether it sometimes has positive aspects. On the one hand, resistance to authority disrupts established forms of organisation, calls power structures into question and can thus encourage the erosion of power relations. On the other hand, resistance in

certain social situations is desirable, if not necessary, to maintain democratic conditions.

It is also an offence for a lawfully convicted offender who has escaped from a prison to resist arrest by the police. There is room for discussion on the form and justification of young people's resistance to European climate policy while breaching their compulsory education. On the other hand, the moral basis of resistance against the Nazi dictatorship is probably unarguable:¹ resistance is not necessarily negative or positive – it is ambivalent.

THE HISTORICAL PERSPECTIVE

Resistance among the population to political decisions and social authorities was first recorded in post-war Germany from the mid-1950s onwards. Initially there were very specific occasions, such as the planned nuclear armament on West German soil or the introduction of universal conscription, but at the beginning of the 1960s the Easter march movement established an attitude of protest that has continued to this day and can ultimately be interpreted as a manifestation of the peace movement.² The ideological environment of the Easter march movement in 1964 foreshadowed the student unrest.³

Despite some purely political goals (protests against the emergency legislation in the Federal Republic of Germany and the American Vietnam War), the student movement can essentially be described as the first anti-authoritarian movement in the Federal Republic of Germany. The demands for higher education reforms (“underneath the robes – fustiness of a thousand years”) and coming to terms with the National Socialist past were directed – from the students' perspective – at fossilised educational and political systems in which uncritical acceptance of authority and sometimes blind obedience had led to

a dead end. With their anti-authoritarian thrust, the students attacked authoritarian structures of state and society.⁴

During the demonstration against the visit of the Shah of Persia on 2 June 1967, the police officers deployed took massive physical action against the students. They were also motivated by the false report that a colleague had been stabbed to death by demonstrators, which was deliberately spread over loudspeakers by their superiors.⁵ The events of that day resulted in the death of Benno Ohnesorg, which was a major catalyst for the radicalisation of the protests that followed.

According to the author, the events of 2 June 1967 contributed significantly to an increasingly critical view of relations of authority in Germany that had not been questioned in the past. Up to that time – at least in rural areas – the pastor, the senior teacher and the village gendarme were considered natural authorities by virtue of their office, whose wishes and instructions had to be complied with without reflection. However, after this point, these professional groups could no longer rely on the unrestricted authority of their social position.

New forms of living together were followed by anti-authoritarian educational practice, which led to the critical questioning of every form of authority. Since then the police have regularly been under pressure to legitimise their actions in enforcing the state monopoly on the use of force. Interaction with the citizen has become more complex, and any form of direct coercion must always be considered in terms of its legal consequences.⁶

THE POLICE AND THE RESISTANCE

“Resistance” is probably one of the most emotive words within the police force. It is associated with physical aggression com-

mitted by the citizen, ranging from spitting on the officer to life-threatening injuries. Pursuant to Section 113 of the German Penal Code (StGB), resistance to enforcement officers is defined as follows: “Whoever, by force or threat of force, resists a public official or a soldier in the Federal Armed Forces charged with enforcing laws, statutory instruments, judgments, judicial decisions or directions in the performance of such an official act incurs a penalty of imprisonment for a term not exceeding three years or a fine.”⁷

It is likely that there are only a few police officers who have not yet pressed charges for resisting enforcement officers. If, in particular, after conflictual interaction with the citizen, it is to be expected that the latter will report bodily injury caused by a police officer, the officer’s report against the citizen for resistance is an obvious consequence that documents the legitimacy of his or her own conduct.

RESISTANCE AGAINST POLICE OFFICERS

In 2017 there were 22,340 cases of resistance against police officers in Germany; this is equivalent to 0.4 % of all offences recorded in the Federal Republic this year.⁸ Acts of resistance are thus not mass offences, such as the 1,156,422 cases of petty theft, which account for 20.1 % of all recorded offences. The offence already includes the threat of violence, so there is virtually no attempt to resist and almost all cases are therefore committed crimes. People who are reported to the police for resisting arrest are almost exclusively the ones whose personal data the police have recorded: Of the 22,340 cases of resistance, 22,180 (99.3 %) were therefore solved.⁹ Of the 21,652 suspects identified, 18,807 were male (86.9 %) and 2,845 female (13.1 %). The percentage of non-German suspects (6,650) is 30.7 %, which

is about the same as the percentage of all suspects registered in 2017 (30.4 %) after excluding breaches of residence, asylum and freedom of movement laws/EU. In all acts of resistance, a firearm was used as a threat 22 times and fired four times.

If the age distribution of suspects of resistance is compared with the age distribution of those who commit petty theft, it is noticeable that acts of resistance against law enforcement officers are not an offence typical for young people (see Figure 1, page 26).

The most significant differences in the age distribution of resistance compared to petty theft are found among children (less than 14 years old), adolescents (14 to 17 years old) and 60-year-olds and older, who are much more likely to be affected by petty theft than by resistance; in the case of the latter offence, the 30- to 39-year-old suspects are especially conspicuous according to police crime statistics. It is possible to make finer differentiations of resistance by filtering the Police Crime Statistics of the Free State of Bavaria. The 1,456 cases of resistance to law enforcement officers in 2017 are clearly concentrated on weekends:¹⁰ while the number of cases between Monday and Thursday ranges between 155 and 187 cases, it rises to 221 cases on Friday and peaks at 294 cases on Saturday, decreasing slightly to 261 cases on Sunday. This distribution over the days of the week also proves to be stable in the longitudinal section in Bavaria from 1992 to 2008.¹¹

The peak time of the day for resistance offences against police officers in Bavaria is at night (see Figure 2, page 26).

Figure 2 shows that acts of resistance continuously increase slightly from 6 a.m. to 6 p.m. They increase considerably between 6:00 p.m. and 9:00 p.m. before reaching the definite peak of registrations by midnight; in the hours that follow, there

Source: BKA 2017

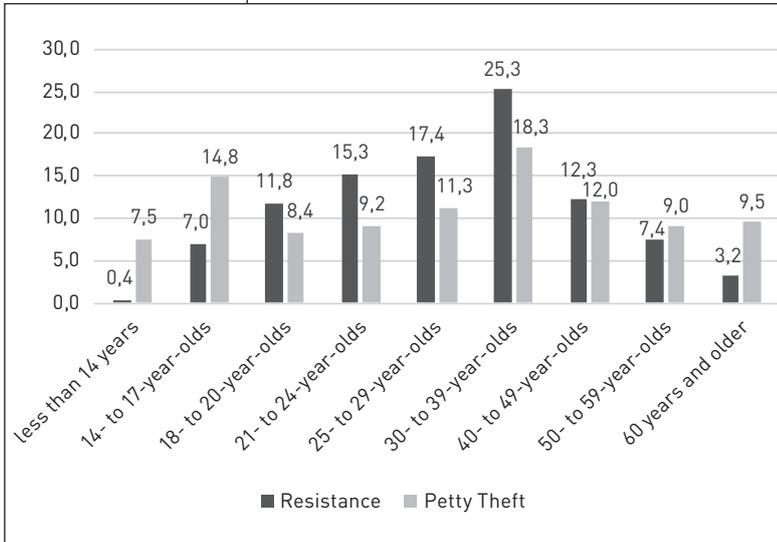


Figure 1: Age distribution of suspects (in %)

are again significant decreases.¹² The distribution of acts of resistance over weekdays and times of the day is therefore largely identical to other acts of violence, such as assault.¹³

In Bavaria, acts of resistance against police officers occur mainly on public streets, paths and squares (645 out of 1,456 cases; 44.3 %). These are followed by a wide margin by the crime scenes marked as “private apartments” (294 cases; 20.2 %) and “police station, including the police

Source: Bavarian State Ministry of the Interior, for Sports and Transport 2017

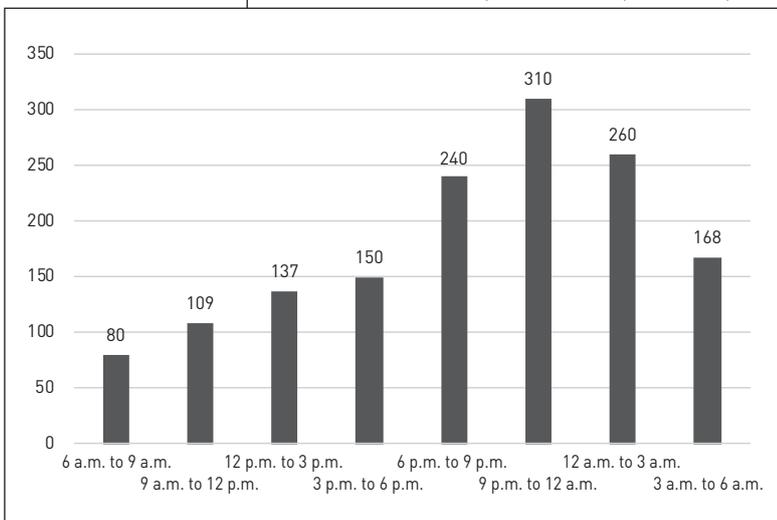


Figure 2: Times in 3-hour intervals

vehicle” (161 cases; 11.1 %) follow by a large margin. All other crime scenes have much lower case numbers.

The focus of acts of resistance during the night hours at weekends suggests that the suspects are often under the influence of alcohol at the time of the crime. A study by Özsöz confirms this for all violent crimes. This study also shows that juvenile suspects (14- to 17-year-olds) are most likely to be particularly conspicuous for bodily harm between 10 p.m. and 2 a.m., while the age groups of adolescents (18- to 20-year-olds) and young adults (21- to 24-year-olds) are reported by the police as having committed these offences both during the same period and, to an even greater extent, between 2 a.m. and 4 a.m.¹⁴ There is evidence that serious violent crimes committed by young people are closely linked to the influence of alcohol at the time of the crime.¹⁵

The suspect’s behaviour under the influence of alcohol plays a decisive role in resistance. Of the 302,910 suspects registered in the Police Crime Statistics of the Free State of Bavaria in 2017, 39,716 were under the influence of alcohol at the time of the crime (13.1 %). This percentage is much lower for most offences grouped under offences against property and counterfeiting, such as fraud (2.2 %), embezzlement (3.2 %) and forgery (3.2 %). The average percentage is exceeded by a large number of violent offences such as rape/sexual assault (30.2 %), minor wilful bodily harm (33.6 %) or grievous bodily harm (34.9 %). Resistance to law enforcement officers is at its peak: of the 1,577 registered suspects, 975 are under the influence of alcohol at the time of the crime (61.8 %). Of these 975 suspects, 53 are young people (5.4 %), 127 adolescents (13.0 %) and 143 young adults¹⁶ (14.7 %); the quantitative focus is on the 30 to 40 age group consisting of 251 suspects (25.7 %).

In Bavaria, resistance against police officers is also mainly committed by men. Of the total of 1,577 suspects in 2017, 1,411 are male (89.5 %); this percentage even rises to 91.2 % in cases involving alcohol (889 of the 975 suspects).

THE PATH TO RESISTANCE

The Criminological Research Group of the Bavarian Police (KFG) examined the escalation process of violent interactions between citizens and police officers based on a methodological analysis of 347 judicial files.¹⁷ The results of our study are presented below.

The starting points for police operations involving direct coercion are manifold. In some cases, resistance from citizens can be anticipated at an early stage. This is the case, for example, when the police are called to the scene because of aggressive behaviour in public, or when the police officers are insulted and initial acts of aggression against them occur. Citizens' disregard of police instructions is also a warning of an imminent violent confrontation. Resistance is almost inevitable if a person present at the scene of the crime attempts to escape when seen by the police officers. On the other hand, an initially supposedly trivial administrative offence can develop into physical violence on the part of the citizen and/or the police officer.

THE THREE LEVELS

In the analysis we assumed an ideal typical escalation process on three levels:

- ▶ First level: announcement of the police action and the citizen's reaction to it.
- ▶ Second level: execution of the police action and the citizen's reaction to it.
- ▶ Third level: enforcing further police action and the citizen's reaction to it.

This process is ideal because some cases are difficult to categorise in this scheme. If, for example, police officers are attacked

immediately on arrival at the scene, they must defend themselves immediately and cannot announce or explain a measure in advance. If a police measure is not immediately accepted by the citizen or the citizen verbally resists it, the question arises whether the subsequent, more detailed and repeatedly presented justification is already the second level of escalation or whether it is still to be interpreted as an announcement of the measure.

In the vast majority of the 347 cases involving contact between an official and a citizen, the first police action is a request for identification (130 cases), accompanied in most cases by a general information briefing (102 cases). More vigorous forms of intervention and measures affecting liberties, such as a declaration of a ban from premises (41 cases) or a declaration of a search (20 cases), are much less frequent at this stage.¹⁸

Considering that the first police action is rather low-level, the immediate reaction of citizens is surprising (see Figure 3, page 28).

The most frequent type of verbal aggression or verbal abuse is provocative behaviour; citizens react in this way

- ▶ in 67 cases (60.4 %) after simple police actions (conversation, request for identification, stopping in traffic),
- ▶ in 24 cases (21.6 %) after measures without physical contact (addressing the perpetrator, requesting identification, stopping in traffic),
- ▶ in nine cases (8.1 %) following measures involving threatened physical contact (threat of direct coercion, declaration of a search, declaration of blood sampling, separation of conflict parties).
- ▶ in five cases (4.5 %) of announced arrests,
- ▶ in six other cases (5.4 %).¹⁹

Physical aggression exhibited by citizens is much less common at this stage. When this is the case, however, physical

Source: Luff et al. 2018, 160

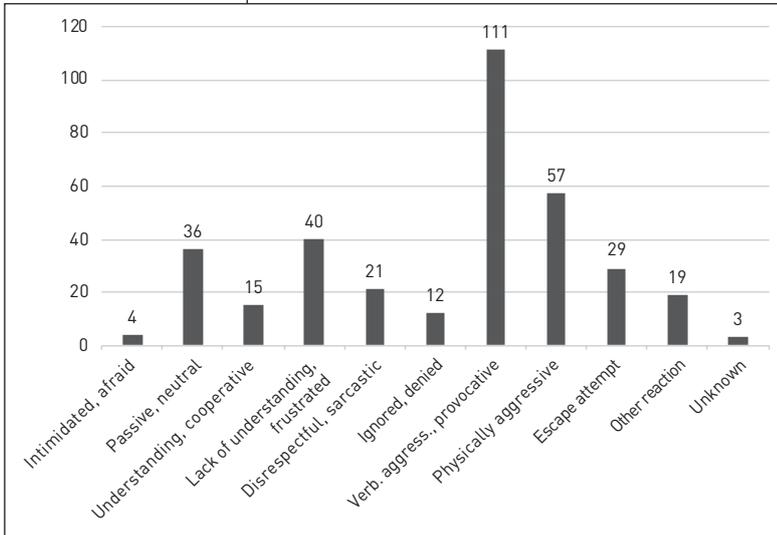


Figure 3: The citizen's initial reaction

violence against police officers is mostly seen among 20- to 29-year-olds.²⁰

A second essential factor that already has a significant influence on the interaction process at this level is alcohol: when the blood-alcohol concentration of a citizen increases, so does his or her verbal or physical aggression.

Police intervention at the first level of escalation has only been completed in 16 of the 347 cases (4.6 %) This applies in particular to cases where the police counterpart was not under the influence of alcohol and no physical aggression or attempt to escape occurred.

Source: Luff et al. 2018, 178

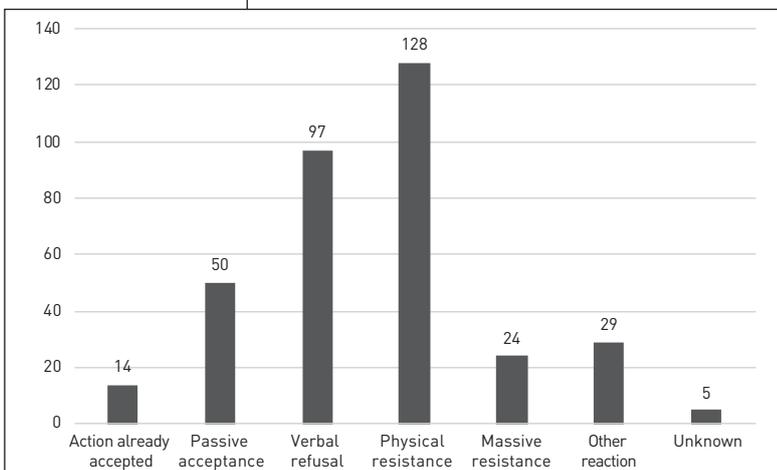


Figure 4: The citizen's second reaction

Having already reacted verbally or physically aggressively to the first action of police officers at the first level in 168 out of 347 cases (48.4 %), police action becomes considerably more intense at the second level of escalation. In 113 cases (32.6 %), measures involving physical contact (pursuit of the victim, use of direct coercion, search of persons, restraint of the victim, taking of blood) are carried out, and in a further 85 cases (24.5 %) arrests are made. The citizens' reactions are shown in Figure 4.

After police measures have been strengthened, the citizens' physical resistance also increases. A total of 152 cases (43.8 %) resulted in physical aggression against the police, with 24 cases of massive resistance, including the deliberate wounding of a police officer. Behaviour at this level should be the basis for pressing charges for resistance against law enforcement officers.

Of the 128 persons who resisted physically at this level, 50 (39.1 %) were between 20 and 29 years old, 25 (19.5 %) between 30 and 39 years old, 29 (22.7 %) between 40 and 59 years old and 13 (10.2 %) 60 years old and over; eleven cases (8.6 %) were registered for those under 20 years old. This level also confirms the aforementioned claim that resistance against police officers is not an offence typical of young people.²¹

After the second level of escalation, a total of 79 of the 347 cases (22.8 %) are closed. If further police measures are taken at the third level, 177 (51.0 %) cases of low-threshold violence and 21 (6.1 %) cases of massive violence are involved.²² The remaining cases are categorised as "further verbal orders" (51 cases; 14.7 %), "other measures" (17 cases; 4.9 %) and "unknown" (two cases; 0.6 %). Figure 5 (see page 29) shows the reactions of citizens at the third level of escalation.

Passive acceptance of police orders at this level is also much less common than verbal refusal and physical or sometimes massive resistance. At first glance, it appears that the citizens' reactions are less aggressive at the third level of escalation than at the second one. However, this is mainly because of the increasing number of cases that have already been closed at the respective levels. If 14 or 79 cases are filtered out, in which the interaction of the citizen with the police had already ended at both levels, it becomes clear that the citizens' behaviour at these two levels is very similar (see Figure 6).

In addition to the differentiated documentation of incidents at the first three levels of escalation, we have also documented the total number of levels each process has had. Four out of five of the interactions we examined (286 of the 347 cases = 82.4 %) had between two and four levels of escalation, with the "forerunner" being a case with eight levels.

Up to the fourth level, the sufficiently large number of cases so far suggests that there is a relationship between the number of escalation levels and the age of the citizen.²³ Of the 14 cases terminated at the first level, in only four cases (28.6 %) the citizens are 20 to 29 years old, while in eight cases (57.1 %) they are between 40 and 59 years old. Two levels of escalation have been registered 70 times, 26 times (37.1 %) with 20- to 29-year-olds and 15 times (21.4 %) with 40- to 59-year-olds. Of the 136 incidents with three levels of escalation, in 44 cases (32.4 %) citizens are between 20 and 29 years old and in 32 cases (23.5 %) between 40 and 59 years old. And of the 80 incidents with four levels of escalation, 32 (40.0 %) occur among 20- to 29-year-olds, but only 18 (22.5%) among 40- to 59-year-olds. The percentages clearly show that escalating interaction processes with the police mostly last

Source: Luff et al. 2018, 193

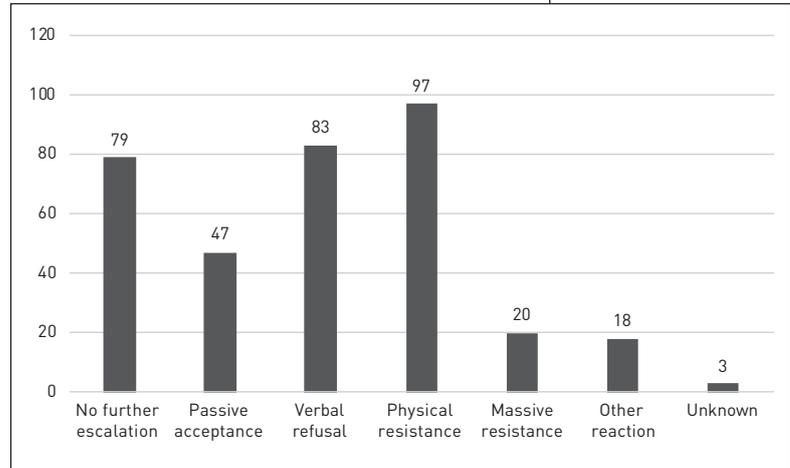


Figure 5: The citizen's third reaction

longer among the 20- to 29-year-olds than among 40- to 59-year-olds.

In summary, it can be concluded from the escalation process outlined above that as soon as the police apply physical violence, it can hardly be expected that the situation will calm down. It can be concluded that police de-escalation measures must be initiated prior to the first acts of physical aggression.

Communication is at the core of de-escalation measures taken by police officers, whether in the form of detailed and repeated explanations of the planned or deployed measure, or in the form of a longer, reas-

Source: Luff et al. 2018, 194

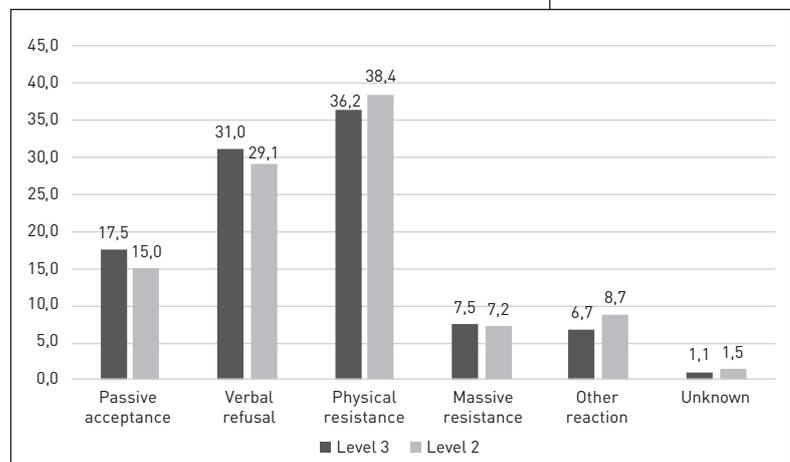


Figure 6: The citizen's second and third reaction (in %)

suring dialogue with the citizen. It may also be appropriate to replace a police officer in a verbally intensified interaction process with the citizen with a colleague who has not experienced the emotionally heated situation at first hand.²⁴

Finally, it should be noted that the escalation processes described above are not the rule but the exception in the interac-

tion between citizens and police. The vast majority of contacts give citizens reason to be satisfied with police behaviour. In the evaluation of their last contact, 48.4 % of citizens in Bavaria were “very satisfied” and 38.5 % “rather satisfied” with the police. The rather dissatisfied (11.4 %) and very dissatisfied (1.7 %) are the exceptions.²⁵

¹ See Broszat 1986, 293 on the morality of resistance during the Nazi era.

² See Luff 1989, 68 f on the first decades of the Easter march movement.

³ Bauß 1991, for example, provides a chronology of the student movement.

⁴ Beitin/Gillen 2018, 12.

⁵ Farin 2010.

⁶ The police officer intervening may regret this in individual cases, such as emergency aid, where immediate intervention is required. However, this development has also led to the fact that such indefensible excesses of violence, such as that of 2 June 1967, will not be repeated.

⁷ Resistance pursuant to Section 113(2) of the German Penal Code becomes a particularly serious case if the perpetrator is carrying a weapon, if the attacked person suffers serious damage to his or her health or if the crime is committed as a joint offense. The threat of punishment in these cases is between six months and five years. In addition, Section 114 of the Penal Code deals with the subject of physical assault on enforcement officers and Section 115 with resistance to or physical assault on persons who are equal to enforcement officers. Sections

113 to 115 of the Penal Code were amended on 30 May 2017. See Eisenberg 2018, 33 on the applicability of the new provisions in substantive juvenile criminal law.

⁸ See BKA 2017 for the figures.

⁹ The average clearance rate for all 5,761,984 offences recorded in Germany in 2017 is 57.1 %.

¹⁰ See Bavarian State Ministry of the Interior, for Sports and Transport 2017 (special evaluation) for these and the following figures.

¹¹ Elsner/Laumer 2015, 37 f.

¹² The daily distribution in Bavaria has also been constant for decades. See Elsner/Laumer 2015, 36 f.

¹³ Luff 2015, 63 f.

¹⁴ Özsöz 2014, 88 f.

¹⁵ Hoops/Holthusen 2019, 155.

¹⁶ 21- to 24-year-olds.

¹⁷ Luff et al. 2018.

¹⁸ Multiple answers were possible because of the high probability that several actions are announced at this level at the same time.

¹⁹ Luff et al. 2018, 162.

²⁰ In order to avoid having an insufficient number of cases, some evaluations

have only included the groups of 20- to 29-year-olds, 30- to 39-year-olds and 40- to 59-year-olds.

²¹ Figure 4 shows only 14 cases where citizens have already accepted the police action, although it has been shown above that in 16 cases the police action completed at the first level of escalation. In one of the two “offending” cases, the parents reported it at a later stage (and thus did not accept the act). In the other case, the citizen followed the approaching service vehicle and struck it with their hand, while the police officers continued driving.

²² By low-threshold violence we mean the breaking of resistance without using weapons and/or restraining the citizen. According to our definition, massive violence occurs when police action has caused physical injuries to citizens.

²³ As the number of cases for the individual categories becomes very small with this type of filtering, we have based this differentiation on only three age groups. In this section, we only compare suspects aged 20 to 29 with those aged 40 to 59.

²⁴ See also Schmalzl 2011 for information on de-escalation in police operations.

²⁵ Özsöz 2016, 40 f.

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