



Universität St.Gallen

The impact of hearings on prosecutorial decision-making

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Background I

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

Background II

- Often based on police report only
- No legal requirement to hear defendants or victims in person (only if deemed necessary by prosecutor)
→ hearing in only around **6%** of the cases
- Defendant can, within 10 days, ask for judicial review
- Otherwise penal order becomes a final conviction
- In only **2.4%** of the cases, the defendant asks for judicial review

Background III

- Advantages:
 - Quick procedure and fast verdict
 - Cheap (short procedure)
- Criticism:
 - Frequently no hearing of defendant or victim by prosecutor
 - No further evidence collected, often based only on police report
 - Lack of fundamental procedural rights (right to be heard etc.)
 - Prosecutor issues verdict → lack of judicial control
 - Defendant might not understand the penal order
 - Penal orders with higher risk of wrongful convictions
- More than 90% of criminal proceedings in Switzerland end up with a penal order

Research Aims I

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

Research Aims II

- Effect of hearings on verdicts?
 - Empathy of prosecutors might mitigate sentences
 - Defendants might bring up mitigating circumstances
- Effects of penal orders and hearings are simply not known yet

Research Method

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

Sample size (in %)

	N	%
Treatment Group	50	11.6
Control Group	208	48.4
Mandatory hearing	4	0.9
Decision to not to bring proceedings	150	34.9
Rest	18	4.2
Total	430	100

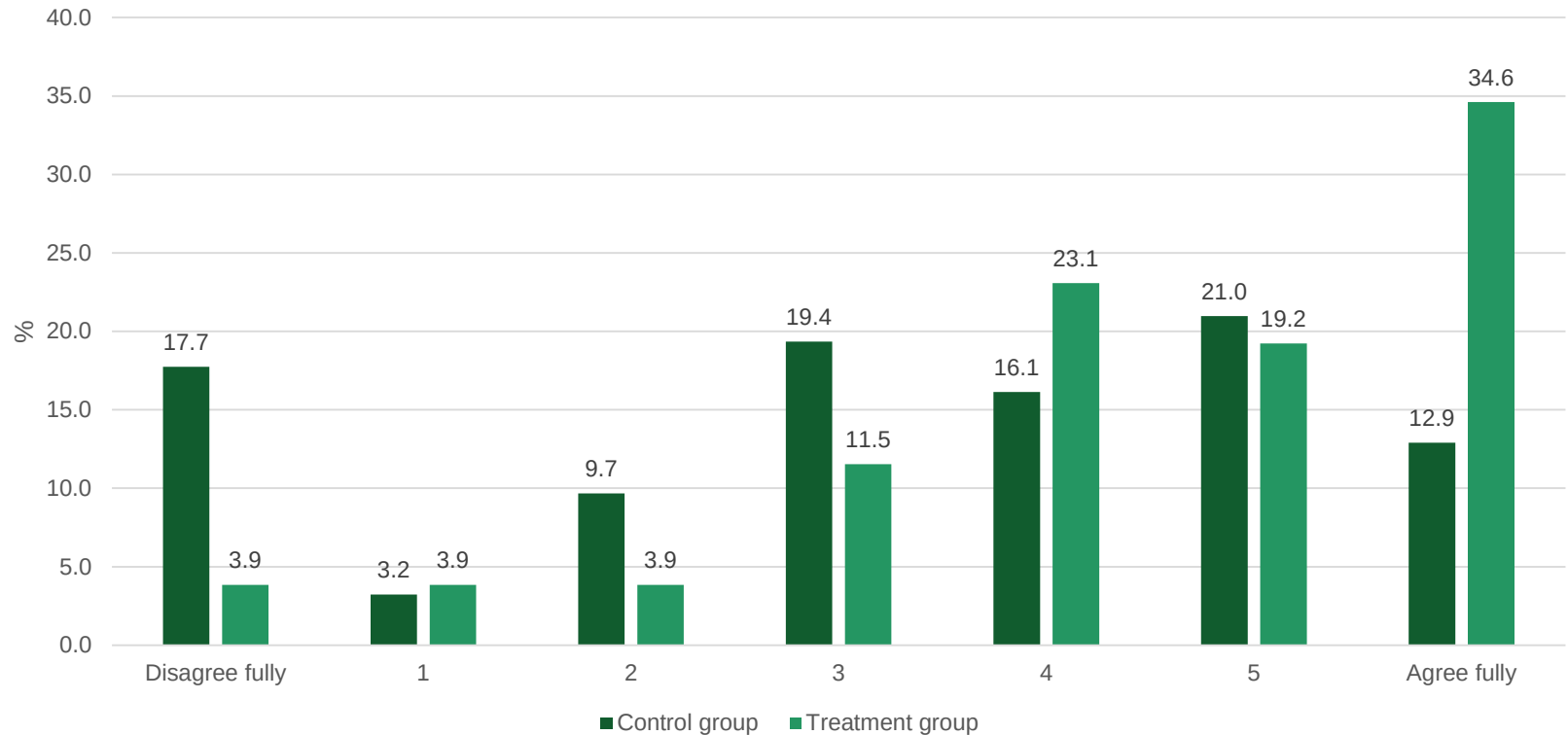
36 of 50 in treatment group (72 %) appeared for hearing

Findings from the convict survey

- Experiment ongoing since November 2017 at Prosecutor's Office of St. Gallen
- Aim: Expanding the experiment to other prosecutor's offices
- Presentation of some preliminary findings from the convict survey
- Survey participation: 22 % (400 invitations sent, 88 responses)
- Survey completion: 92 % (81 from 88 completed)

Survey questions to the convicts

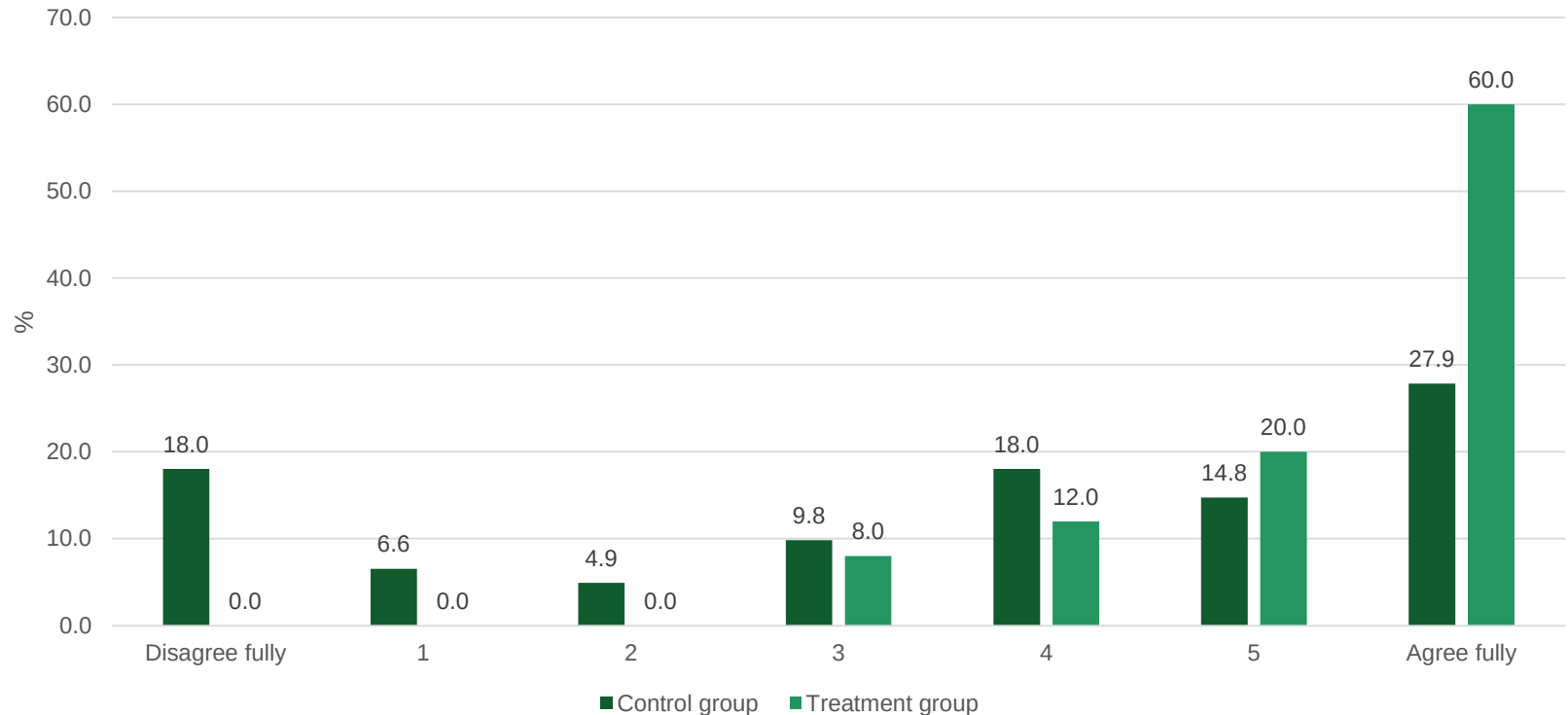
«My perspective was adequately taken into account by the public prosecutor» (Treatment group n = 26, Control group n = 62, in %)



- Statistically significant difference, persons in the control group (no hearing) feel less that their perspective was taken into account

Survey questions to the convicts

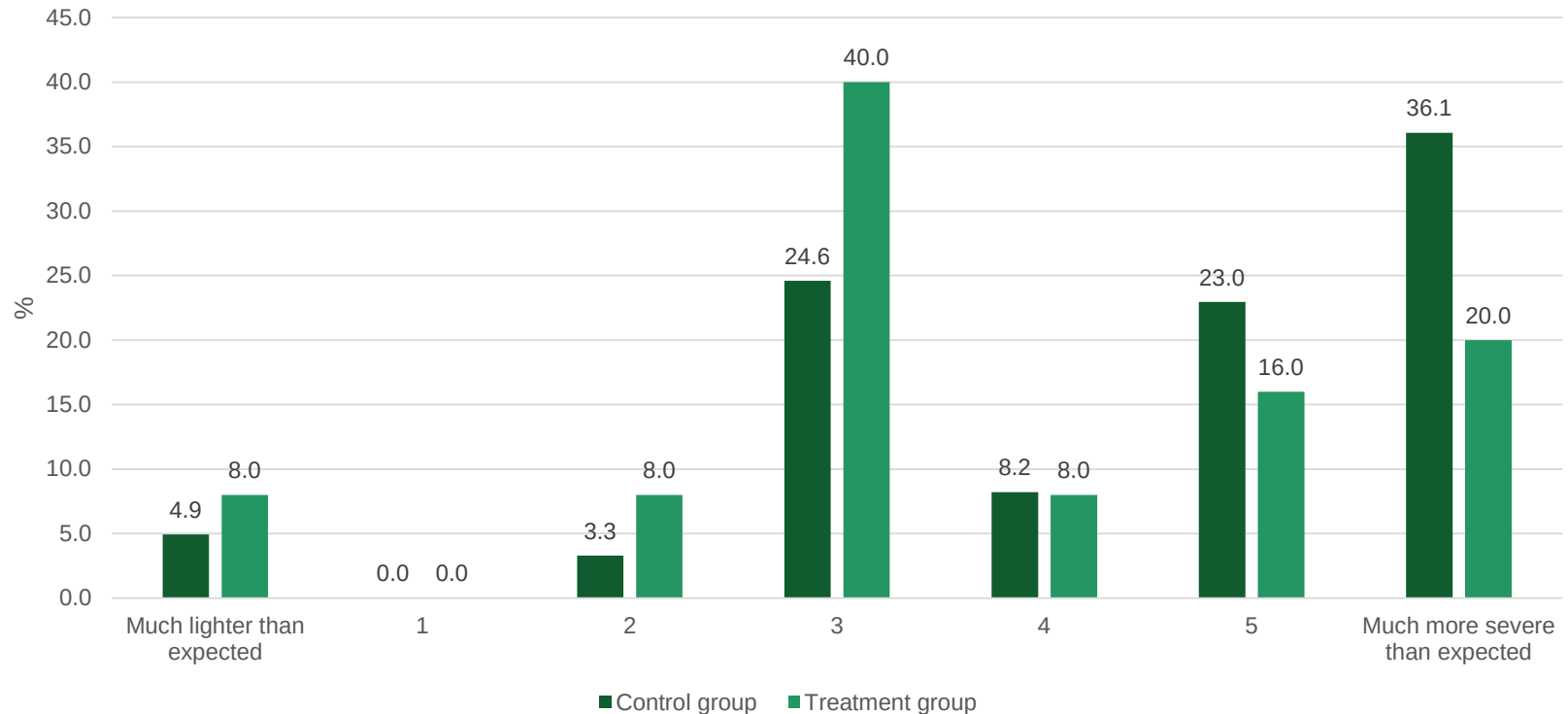
«I was treated fairly by the public prosecutor»
(Treatment group n = 25, Control group n = 61, in %)



- Statistically significant difference, persons in the control group (no hearing) feel treated more unfairly by prosecutor

Survey questions to the convicts

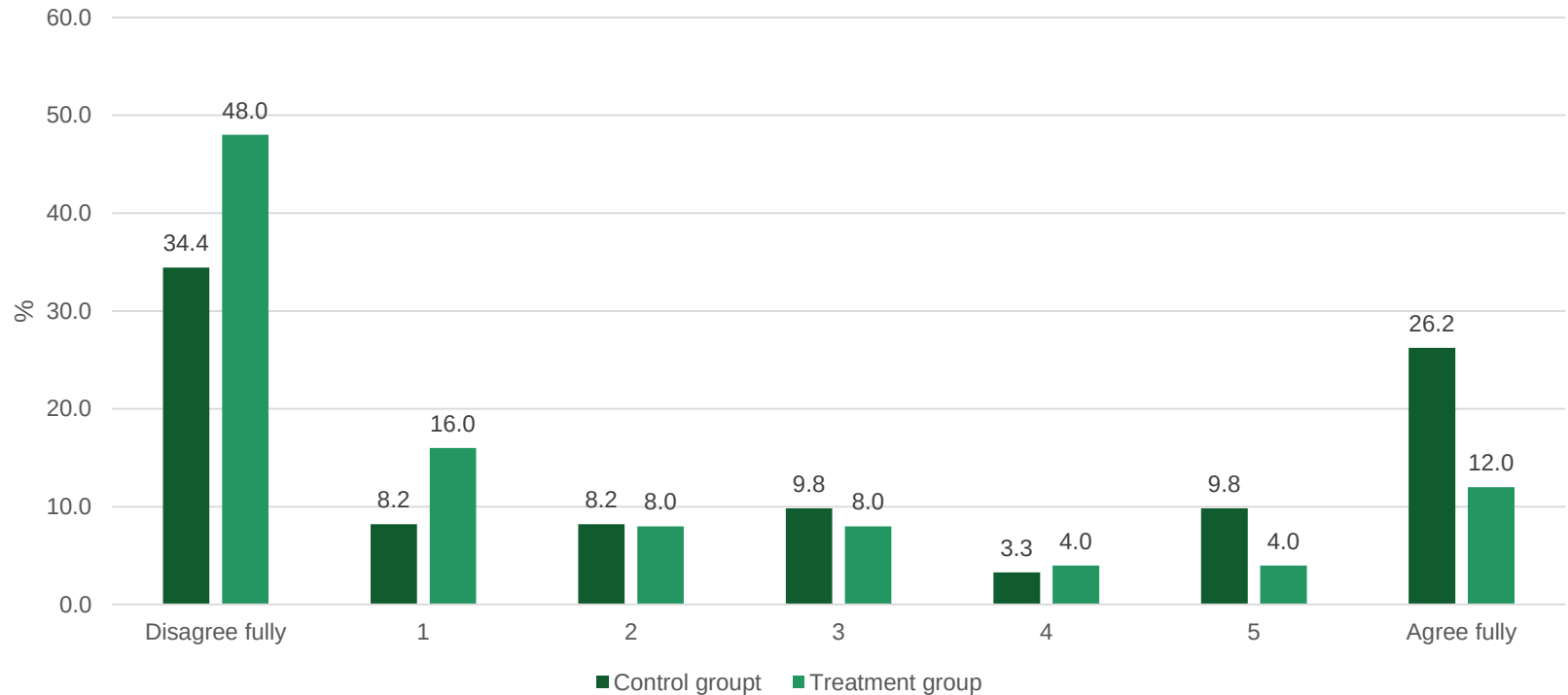
«In your opinion, how severe is the penalty you received?»
(Treatment group n = 25, Control group n = 61, in %)



- Statistically significant difference, persons in the control group (no hearing) experience penalty more severe

Survey questions to the convicts

**«During the proceedings, I was treated like a criminal»
(Treatment group n = 25, Control group n = 61, in %)**



- Statistically significant difference, persons in the control group (no hearing) felt more strongly that they were being treated like a criminal

Conclusion

- Survey data show significant differences between the control and experimental group:
 - Perspective of convicts better taken into account in experimental group
 - Fair treatment to be considered higher in the experimental group
 - Punishment to be considered less severe in experimental group
 - Less stigmatization effect in the experimental group
- Limitations:
 - Still few cases in the experimental group
 - Participation in survey relatively low (22%), therefore few participants from the experimental group

Thank you for your attention!

For comments and questions feel free to contact us:

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