



Child Rights in Serbia – Improving Outcomes for Children in the Serbian Justice System (CRIS)

**Final report
on the monitoring of court practice on the position of juvenile
victims of crime before the courts in the Republic of Serbia in
2020**

Belgrade, 2022

Assignment: Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020 within the project Child Rights in Serbia – Improving Outcomes for Children in the Serbian Justice System (CRIS), funded by the European Union and UNICEF in Serbia

Contracting Authority: ASTRA - Anti-trafficking action

Contractor: Institute of Criminological and Sociological Research (Institute).

Assignment Team Leader: Milica Kolaković-Bojović, PhD, Senior Research Fellow

Author of the Report: Milica Kolaković-Bojović, PhD, Senior Research Fellow

Research Team members: Olga Tešović, PhD, judge and the President of the Basic Court Požega and Ivana Milovanović, judge, Higher Court, Niš

Disclaimer: The contents of this publication are the sole responsibility of the authors. The European Commission does not accept responsibility for the use or authenticity of the information contained in this publication.



Contents

| | |
|--|----|
| Summary | 4 |
| Introduction | 6 |
| Methodology, sampling, data collection and analysis..... | 7 |
| 1. Methodological approach | 7 |
| 2. Sample..... | 8 |
| 3. Challenges | 8 |
| Findings | 9 |
| 1. Crime structure | 9 |
| 2. Perpetrators of crimes committed to the detriment of a child | 10 |
| 3. Injured party | 13 |
| 4. The position of the injured party at the main trial | 15 |
| 5. Compensation claim..... | 19 |
| 6. Court decisions..... | 21 |
| 7. The right to legal remedy..... | 22 |
| List of Recommendation | 23 |
| Annex I: Questionnaire for the purpose of collecting data on case law..... | 24 |



Summary

This court practice monitoring covered 58 cases proceeded by 85% of higher and 76% of the total number of basic courts, where the decisions became final in 2020 against 64 defendants for crimes committed against 70 juveniles. The monitoring focused on the following crimes: Rape- Art. 178, Paras 3 and 4; Sexual Intercourse with a Helpless Person Art. 179, Paras 2 and 3; Sexual Intercourse with a Child- Art. 180; Sexual Intercourse through Abuse of Position- Art. 181; Pimping and Procuring- Art. 183; Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography- Art. 185 Paras 2 and 3; Coercion into Marriage in Art. 187a; Cohabiting with a Minor in Art. 190; Neglecting and Abusing a Minor in Art. 193, Para 2; Trafficking in human beings Art. 388 and Trafficking of minors for the purpose of false adoption Art. 389 of the Criminal Code (CC).

Monitoring established that over 50% of proceedings were conducted for the criminal offense of Cohabiting with a Minor (Art. 190 CC), followed by Neglecting and Abusing a Minor (Art. 193, Para 2 of CC) with 25% share, Sexual Intercourse with a Child (Art. 180) with 8% share, Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography (Art. 185 Paras 2 and 3) with 7% share and rape under Art. 178, paras 3. and 4. with 4.9% share. All other crimes included in the analysis did not appear or were represented sporadically in the sample.

The procedure was most often conducted against one defendant (91%) and the perpetrators were most often (82%) men, aged 35-60 and non-recidivists (86%). The previous connection between the perpetrator and the injured party did not exist only in 9% of cases. In 49% of cases, the perpetrator was the emotional partner of the injured party, and in 33% the parent. Detention was ordered for 17% of the defendants and mainly lasted until the start of the execution of the prison sentence.

Female minors are injured in 90% of cases, most often aged 6-14 (29%) or 15 (24%), equally with residence in urban and rural areas. A half of injured minors were supported by a lawyer, mostly posted by the decision of a court (84%).

As in 27.6% of cases a plea agreement was concluded, and in 20.7% a hearing for imposing a criminal sanction was held, the main trial was held in 52% of cases, and the injured party was present in 70% of cases. In 50% of cases, he/she was accompanied by a legal representative, and in 71.5% of cases with the support of family members, and in 47% of cases the injured party had professional support at the main trial (in 70% of cases with the support of psychologists and in 10% of cases support of a social worker from the Social Care Centre). In only one case, the injured party had the support / escort of the victim support service. In only three cases he/she was granted the status of a particularly sensitive witness. The main hearings were mostly (80%) public, and the court accepted all requests for exclusion of the public made by the public prosecutor. All public hearings were held without the presence of the media, and in only one case did the court find that media representatives tried to attend the hearing but were not allowed to do so because the main trial was not public. The injured party was not always questioned, and the predominant reason for that is the fact that in a large number of cases the defendant admitted to committing a crime, so the court ruled that only evidence relevant to sentencing be presented at the trial, without the defendant being questioned. In a small number of cases, these were injured persons who could not be examined due to age (4 persons) or mental condition (2 persons). 34% of juvenile victims were examined more than once. What is



particularly worrying is that the victims of the most serious sexual violence have been questioned three or four times. In two cases, the examination was performed using video link. No objections to the manner of examination were recorded.

Only 17% of the injured parties pointed out the property claim, which was determined in 17% of cases and awarded in only one case, while all other injured parties were referred to litigation.

Convictions have been handed down in almost all cases. Regarding the imposed sanctions, a suspended sentence of 75% dominates, followed by imprisonment with 16%, and then in a negligible share a fine (in one case as the main and secondary punishment), community service- imposed only to one perpetrator. In terms of the security measures, a ban on approaching and communicating with the injured party predominates, while in one case a security measure of mandatory psychiatric treatment was imposed. An appeal was filed against 13.8% of the verdicts, and the first-instance verdict was upheld almost without exception.



Introduction

The general objective of the CRIS project (hereinafter: the Project) is to improve the position of children involved in the RS judicial system through the systematic application of procedures and regulations that protect the rights of the child and proven support in proceedings. This may include the promotion of the right to be heard, the right to information, the right to privacy, the right to non-discrimination and the principle of the best interests of the child, in line with the recommendations of the EU Agency for Fundamental Rights (FRA).

The purpose of the assignment is to collect and analyse data from court files to determine how the child-friendly justice (CFJ) principles are implemented during the judicial procedures and develop the final Court Practice Monitoring Report (Report).

ASTRA – Anti Trafficking Action is, together with the International Rescue Committee and the Child Rights Centre and with the support of the European Union, implementing a two-year long project aimed at improving outcomes for children in contact with the law (CiCL) in the Republic of Serbia (RS) through systematic application of the rights of the child and evidence-based supports in legal proceedings. The proposed action will engage all relevant stakeholders (judicial professionals and those working in child protection system) and identify key areas in need of improvement in relation to Child Friendly Justice; build capacity of relevant professionals to support improved respect for children’s rights; and expand children’s understanding of their judicial rights. The direct beneficiaries of the project will be professionals involved with children in public proceedings, law students, children and carers. The project will aim to improve outcomes for children’s victims or witnesses (VW) of trafficking in human beings (THB), unaccompanied children, and children not recognized as VW (children as perpetrators of criminal acts, albeit in the context of coercion). This report, as part of the Justice for Children project, was funded by UNICEF and the EU.

In order to determine the current degree of the rights` protection of child victims and witnesses in criminal proceedings and propose steps to be taken to improve outcomes for children in the national justice system, it is necessary to carry out monitoring of court practice in as many cases as possible. However, taking into consideration the epidemiological situation, caused by Covid-19 pandemic, and the government’s decree, issued on 6 November 2020, that put in place restrictions on gathering in public places (both indoors and outdoors) and limited number of people in any closed settings, a new approach had to be developed to carry out monitoring of court practice in cases involving child victims and conduct the planned analysis of gathered data for the final Report.



Methodology, sampling, data collection and analysis

1. Methodological approach

Given the circumstances mentioned in the introduction, the modifications of the approach included several key issues:

- Instead of monitoring the trial, which would imply the presence of the trials themselves, we started monitoring court practice, i.e. court decisions.
- Consequently, this implied the need to limit monitoring in terms of the time period in which the analysed decisions were made, since it was not possible to monitor the ongoing trials. In that sense, the decision was made that the subject of analysis should be the court jurisprudence in cases where final decision was rendered in 2020. The focus of the analysis will be placed on the position of children victims of selected criminal offences pertaining to the category of sexual offences, including those with elements of sexual violence:
 - Rape in Article 178, Paras 3 and 4,
 - Sexual Intercourse with a Helpless Person in Article 179, Paras 2 and 3,
 - Sexual Intercourse with a Child in Article 180,
 - Sexual Intercourse through Abuse of Position in Article 181,
 - Pimping and Procuring in Article 183,
 - Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography in Article 185 Paras 2 and 3,
 - Coercion into Marriage in Article 187a,
 - Cohabiting with a Minor in Article 190,
 - Neglecting and Abusing a Minor in Article 193, Para 2,
 - Trafficking in human beings Article 388 and
 - Trafficking of minors for the purpose of false adoption Article 389

Conducting this analysis implied the need to collect and analyse the minutes of the main trials, as a verdict, bearing in mind that the epidemiological measures did not allow direct access to all case files.

Having in mind the need to access as many court decisions as possible, as well as extremely short deadlines for data collection and processing, the Institute for Criminological and Sociological Research (ICSR), in agreement with the ASTRA project team, decided to include the Forum of Judges of Serbia (FORUM) in the data collection process as a partner organization. Through this partnership, a three-member expert team was formed consisting of:

- Milica Kolaković-Bojović, PhD, Senior research associate, project manager and expert in charge of methodology
- Olga Tešović, PhD, judge and president of the Basic Court in Požega, monitor of court practice and



- Ivana Milovanović, judge of the Higher Court in Niš, monitor of court practice

Monitoring of case law was conducted through the following phases:

Phase I: Development of methodological framework and questionnaires - October 2021.

Phase II: Addressing the courts through requests for gathering information of public importance - October 2021.

Phase III: Analysis of documentation received from the courts and filling in the questionnaire - November 2021.

Phase IV: Processing and analysis of data from the questionnaires and drafting of the Report - December 2021.

Phase V: Preparation of the Final Report in Serbian and English- December 2021-January 2022

2. Sample

Although the request for information was submitted in all of 91 basic courts (BC) and higher courts (HC) in the territory of RS, and although the courts have a legal obligation to submit this type of data, not only within the prescribed time but until the conclusion of the data processing procedure, 10 BC, i.e. 15% and 6 HC, i.e. 24% did not respond to the request. Nevertheless, the sample based on the practice of 85% of BC and 76% of HC is more than relevant for drawing conclusions and defining recommendations.

In the mentioned sample, 26 courts, of which 21 BC¹, and 5 HC², which represents 32%, i.e. 20% of their total number, had legally completed proceedings in 2020 for criminal offenses that are the subject of analysis. These 26 BC and HC submitted data on a total of 58 cases to the research team, with BC Kikinda (8 cases), BC Ruma (5 cases), BC Novi Sad (4 cases) and HC Novi Sad (4 cases) leading the way, while other courts submitted up to 3 cases. In the mentioned 58 cases, criminal proceedings were conducted against 64 defendants for criminal acts committed to the detriment of 70 victims.

3. Challenges

In addition to incomplete response of courts and delays in submitting data, the biggest challenge for members of the research team was inadequate and incoherent application of rules on anonymization of decisions submitted for analysis, which was often not implemented in accordance with the Rulebook on replacement and omission (pseudonymization / anonymization) data in court decisions,³ which makes it impossible to fully consider some of the key parameters.

¹ BC Novi Pazar, BC Pančevo, BC Ruma, BC Požarevac, BC Zrenjanin, BC Vranje, BC Šabac BC, Velika Plana, BC Piroć, BC Valjevo, BC Sombor, BC Ivanjica, BC Kikinda, BC Bor, BC Požega, BC Kragujevac, BC Novi Sad, BC Lebane, BC Subotica, Prvi BC Beograd, BC Loznica.

² HC Požarevac, HC Vranje, HC Zaječar, HC Sombor, HC Novi Sad.

³ Rulebook on replacement and omission (pseudonymization / anonymization) of data in court decisions, adopted at the General Session of the Supreme Court of Cassation, at the session held on December 20, 2016

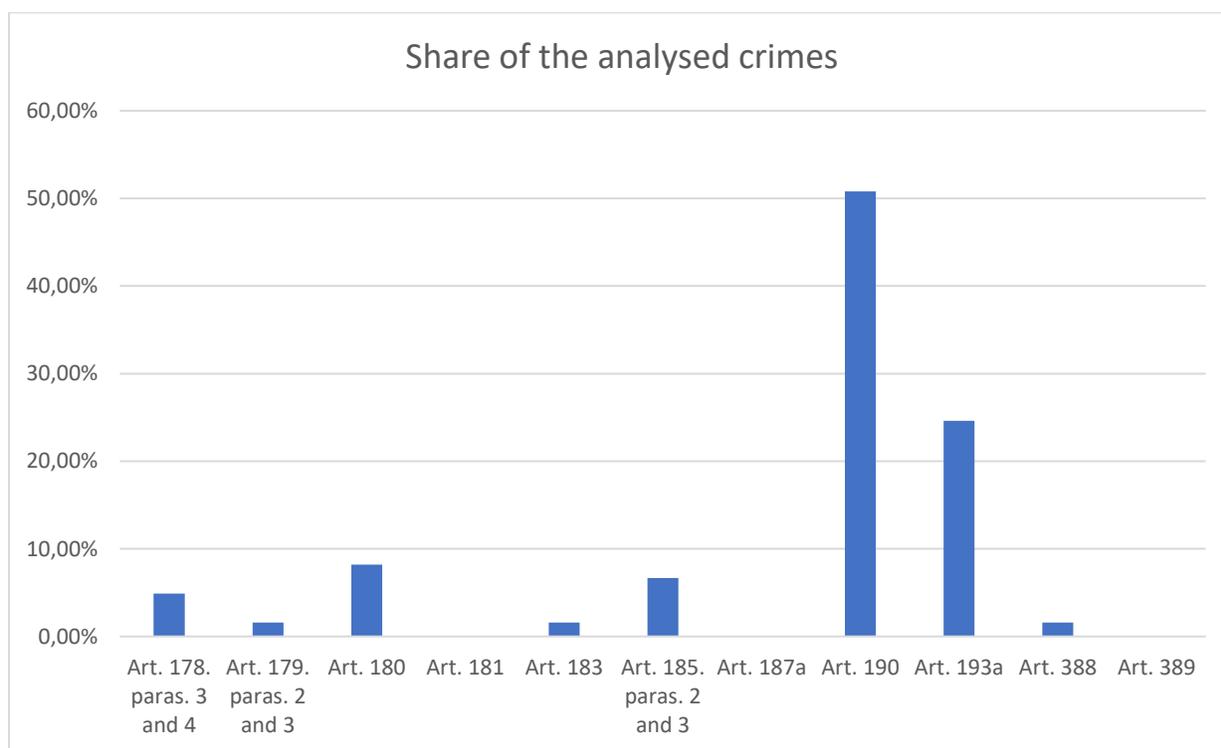


Findings

1. Crime structure

The analysis of cases on which the courts provided information showed that over 50% of proceedings were conducted for the crime of Cohabiting with a Minor under Article 190 of the Criminal Code, followed by the most common crime of Neglecting and abusing of a minor under Article 193 of the Criminal Code, with 25% share, Sexual Intercourse with a child under Article 180 of the Criminal Code with 8% share, and Showing, Procuring and Possessing Pornographic Material and Minor Person Pornography under Art. 185 of the Criminal Code with 7%, while Rape under Article 178, paragraph 3. and 4. of the Criminal Code accounts for 4.9% of all criminal offenses. All other works included in the analysis did not appear or were represented sporadically in the sample.

Chart 1: Crimes committed against minors



It is interesting that, although predominant, the crime under Article 190 of the Criminal Code is unequally represented in the courts, which indicates the need for more detailed research to show whether statistical parameters correspond to the prevalence of this crime in practice or to more proactive approach of police, social care centres' and prosecutors' offices in some cities, while in others this phenomenon is treated as part of a cultural pattern and is not prosecuted.

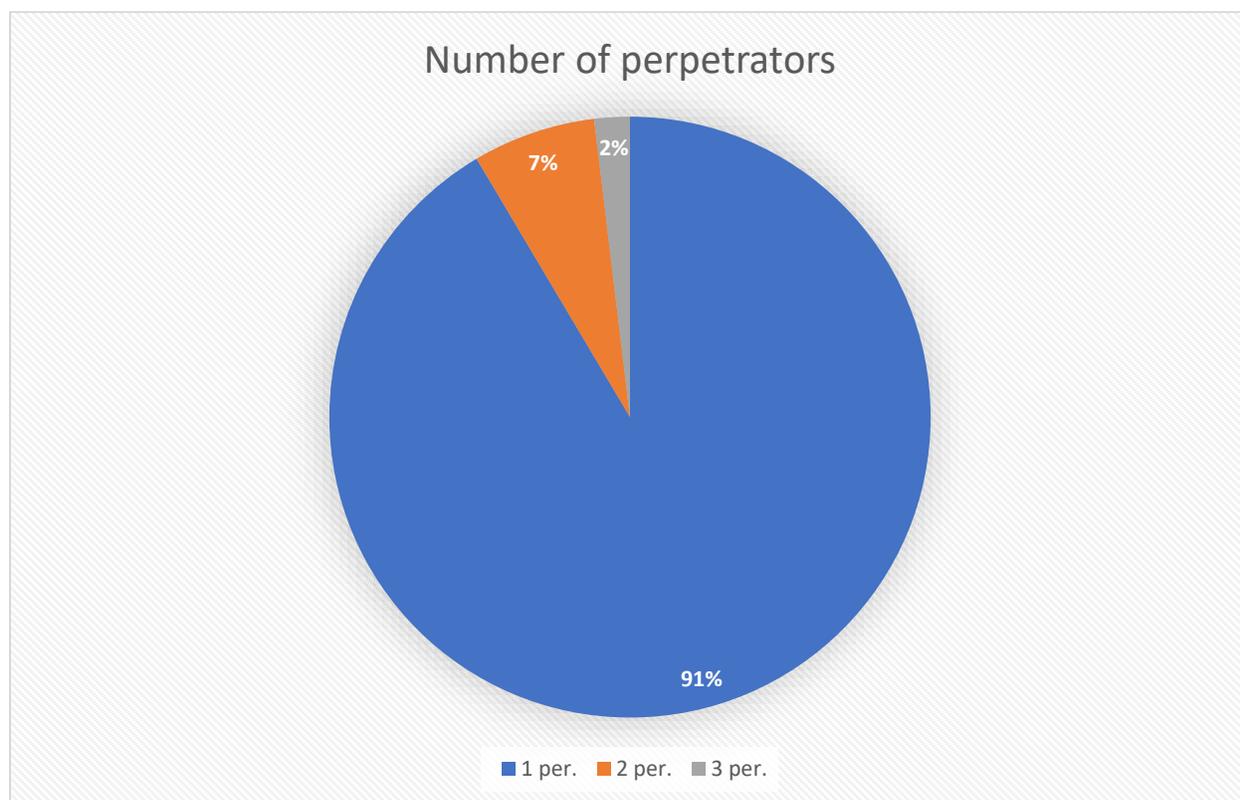


In addition, it is noticeable that in some courts the perpetrators of the crime under Article 190, par. 1 of the CC and the perpetrators of the crime under Article 190, paragraph 2, ie parents or guardians who enabled the establishment of such an extramarital union, were prosecuted in parallel, while in others this was not the case, although it could be concluded from the testimony of the accused and the injured party that there was a basis for that. The same comment applies to the criminal prosecution of parents, i.e. guardians whose neglect of the child led to the establishment of an extramarital union.

2. Perpetrators of crimes committed to the detriment of a child

When it comes to the profile of perpetrators of crimes committed to the detriment of minors, in as many as 91% of cases, proceedings were conducted against one defendant. In 7% of cases the proceedings were against two defendants, while in 2% of cases there were three defendants. It is important to note that cases with two or three defendants, as a rule, were those in which proceedings were conducted for a criminal offense under Article 193, paragraph 2 of the CC.

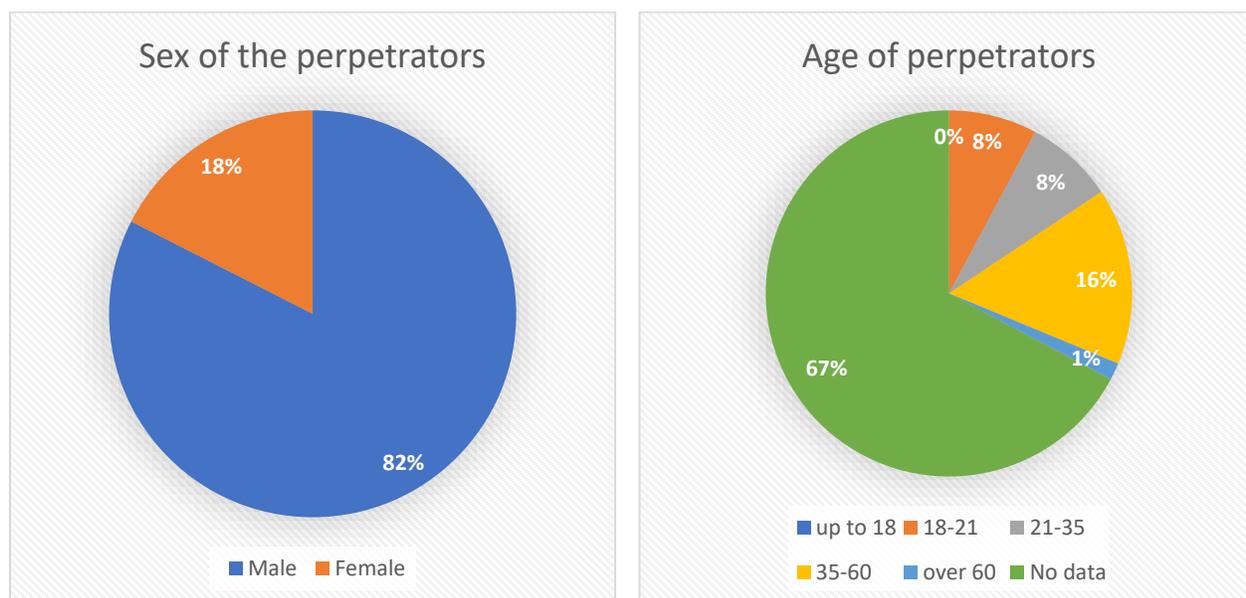
Chart 2: Number of perpetrators of crimes committed against the child



When it comes to the **sex and age of the perpetrators**, although the perpetrators are, as expected, predominantly male (82%), the representation of women as perpetrators in as many as 18% exceeds the average female representation among perpetrators of crimes in RS (about 10% of the total number of convicted persons).

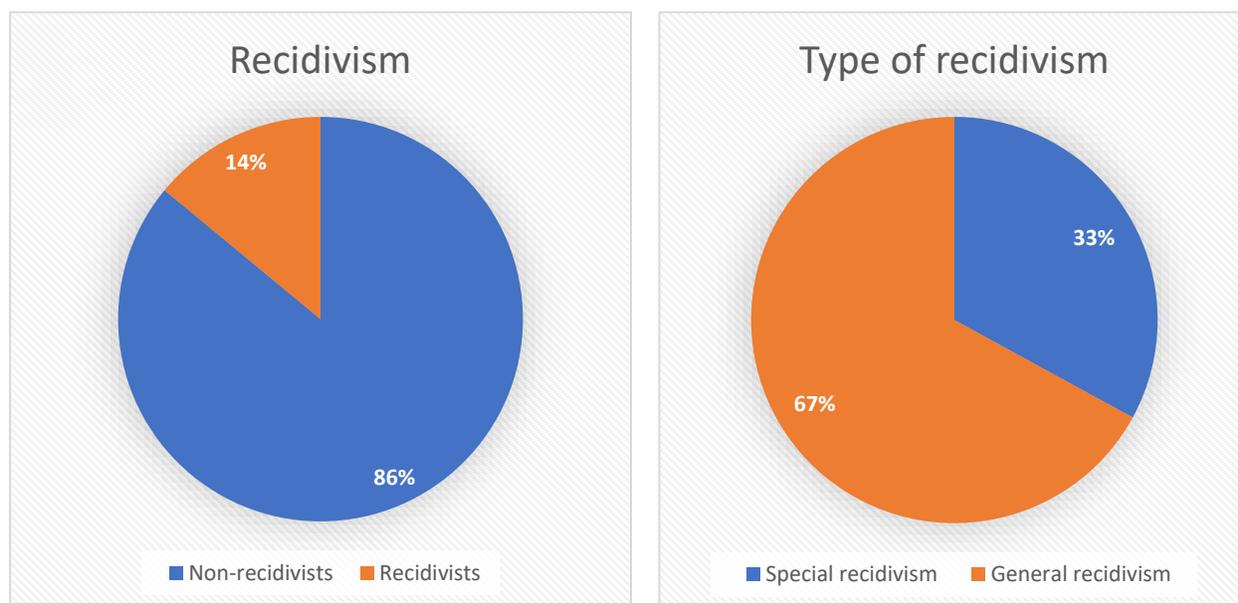


Chart 3: Sex and age of the perpetrators



Regarding the age of the perpetrators, the research team faced a significant obstacle in the form of the previously mentioned inconsistent application of the rules on anonymization of decisions, so that for as many as 67% of defendants it was not possible to obtain information on the age of the defendant. 16% of the perpetrators were middle-aged, ie aged 35-60, while 8% were the population of younger adults and defendants aged 21-35.

Chart 4: Recidivism of perpetrators



When it comes to previous convictions, 14% were recidivists, while 86% of defendants committed a crime for the first time. The subject of the analysis was also the type of recidivism, for those

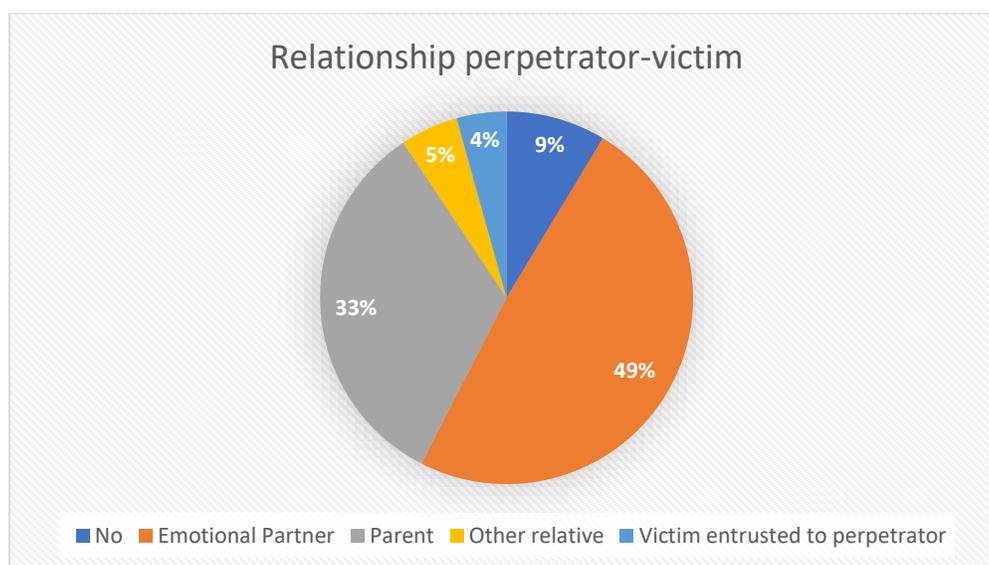
perpetrators who committed the criminal offense covered by the analysis as returnees, so in 33.3% it was a special recidivism, and in 67.7% of cases it was a general recidivism. It is important to note that all the perpetrators who were involved in the special recidivism were charged with the criminal offense of Abuse and Neglect of a Minor under Article 193 of the Criminal Code.

Regarding the **existence of a relationship between the perpetrator and the injured party**, in 9% of cases this connection did not exist. In 49% of the cases, the perpetrator was the emotional partner of the injured party, and almost without exception it was a criminal offense under Article 190 of the Criminal Code. In 19.3% of cases in which emotional partners were blamed and damaged, a joint child was born from an extramarital union founded with a minor, before or during the procedure itself. In certain cases, a minor with whom an extramarital union was established already had a child born in a previous extramarital union, which speaks in favour of the need for strong preventive action in this area and raising awareness, primarily among girls, but also in the wider community.

In 33% of cases, the perpetrator is a parent, and it is interesting to mention that the share of mothers among parents who commit crimes against their own children is 34.8%, which means that fathers are more likely to commit crimes against their children (or those acts are of such a nature that they are easier and more frequent to report / discover / prove).

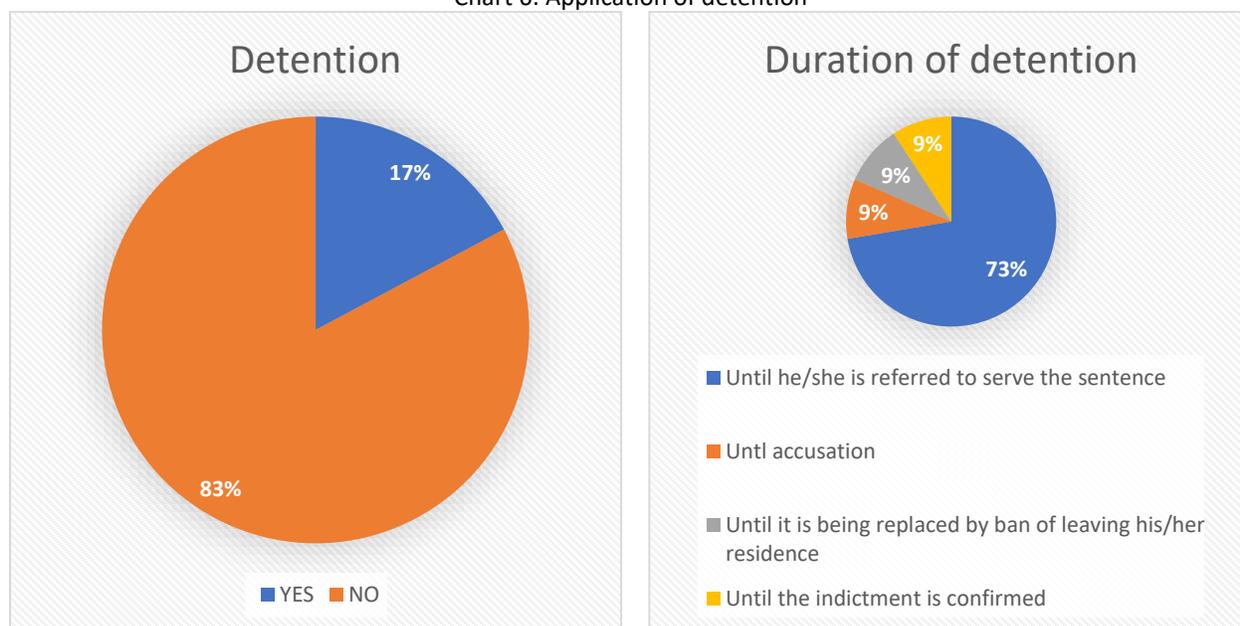
In 5% of cases, the perpetrator was another relative of the injured party, so in the role of exploiter from Article 193, paragraph 2 of the Criminal Code, grandmothers and aunts of the injured parties appeared, and crimes against sexual freedom were committed by brothers, uncles and fathers of minor victims. A special reason for concern is the fact that in several cases, minor victims suffered years of sexual violence by close family members, tried to report the violence by contacting mothers or other family members, after which they were accused of lying and continued to suffer violence. This points to the need to establish effective and easily accessible mechanisms for self-reporting of crimes by children, including digital tools.

Chart 5: Connection between perpetrator and victim



Detention was imposed to 17% of perpetrators, which corresponds to the percentage of serious crimes. Regarding the duration of detention, it was determined in all cases at the earliest stage of the procedure, and in 73% of cases it lasted until the convict was sent to serve a prison sentence.

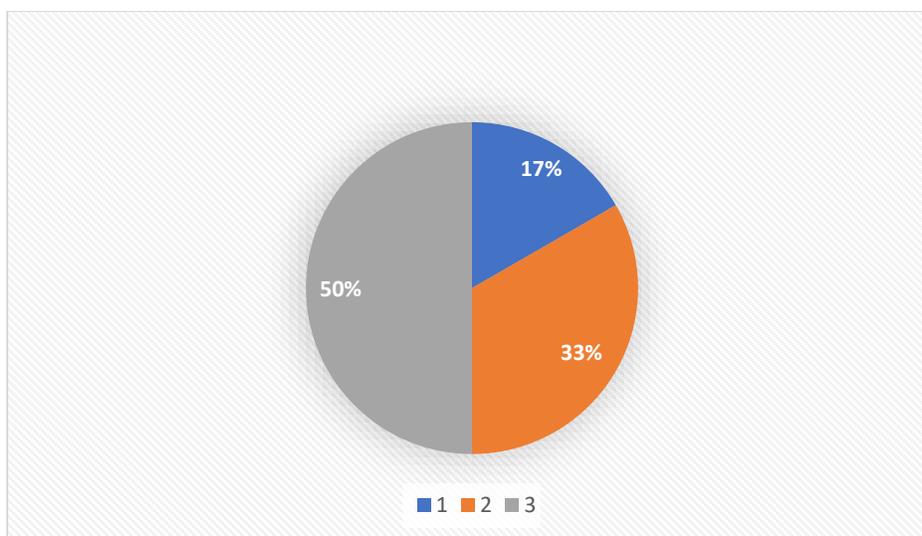
Chart 6: Application of detention



3. Injured party

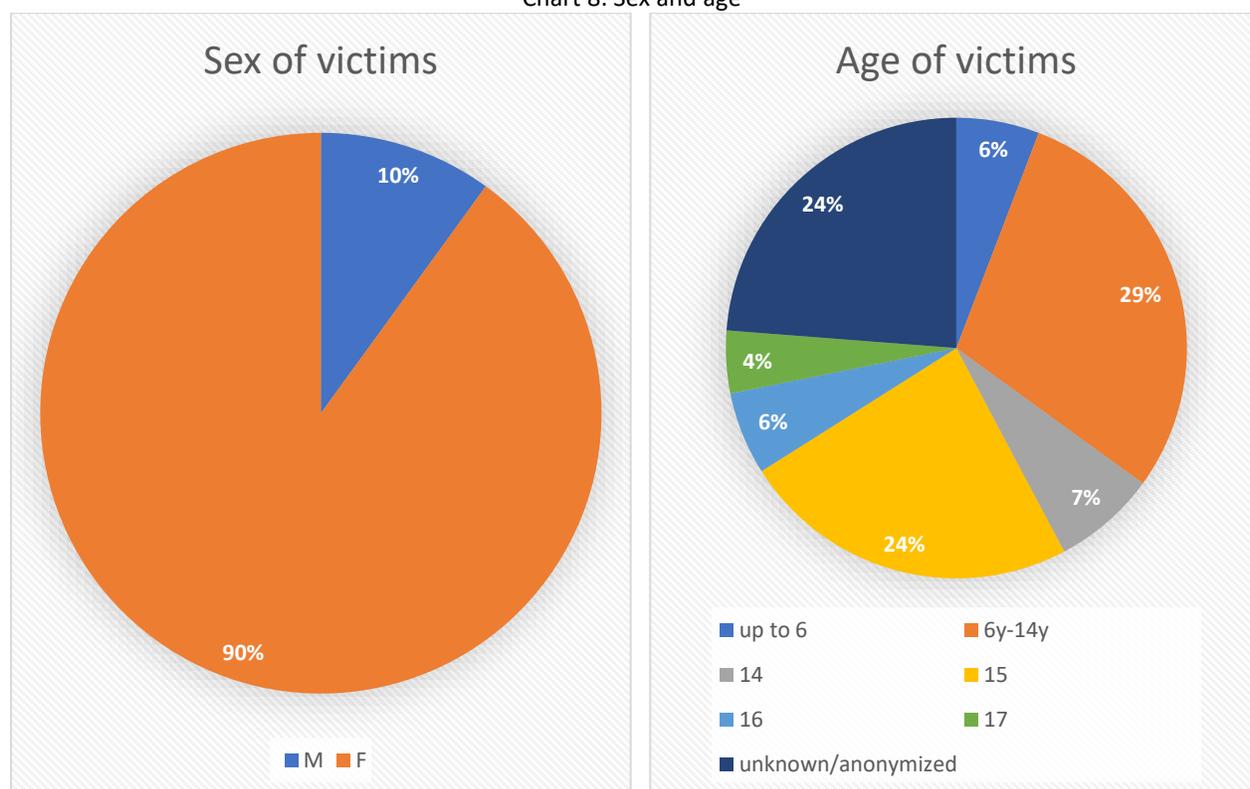
In the 58 analyzed cases, criminal offenses were committed to the detriment of 70 juvenile victims. In 84% of cases, there was just one victim, in 11% two, and in 5% of cases there were three juvenile victims.

Chart 7: Number of victims (injured)



Regarding the **gender and age of the victims**, the application of the rules on anonymization brought less difficulties than when it comes to defendants, so it was possible to accurately determine that 90% of the victims were female. At the same time, the most represented age category of victims were children (6-14) with 29% share, followed by 15-year-olds with 24%. The share of victims for whom age data were anonymized was also 24%. Age groups up to 6 years, 14 years and 16 years of age are equally represented by 6-7%, while 17-year-olds are 4%.

Chart 8: Sex and age

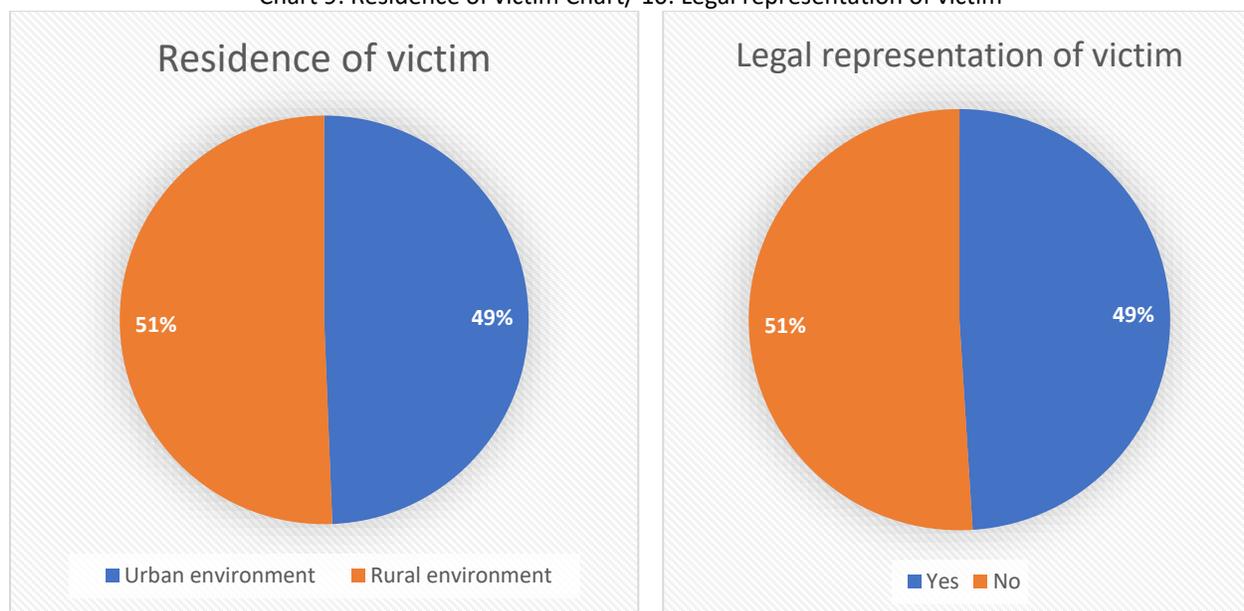


The analysis of data on the residence of the injured party showed that there is almost no difference in the prevalence of crime against minors in urban and rural areas, since 51% of crimes were committed against minors whose residence is in rural areas and 49% in urban areas.

There was a similar uniformity regarding the availability of legal aid to the minor victim, since an equal number of minor victims had a proxy in the procedure.

Within the total number of juvenile victims who had a proxy, 16% of them were represented by an elected attorney, while 84% of them were represented by a proxy appointed ex officio.

Chart 9: Residence of victim Chart/ 10: Legal representation of victim

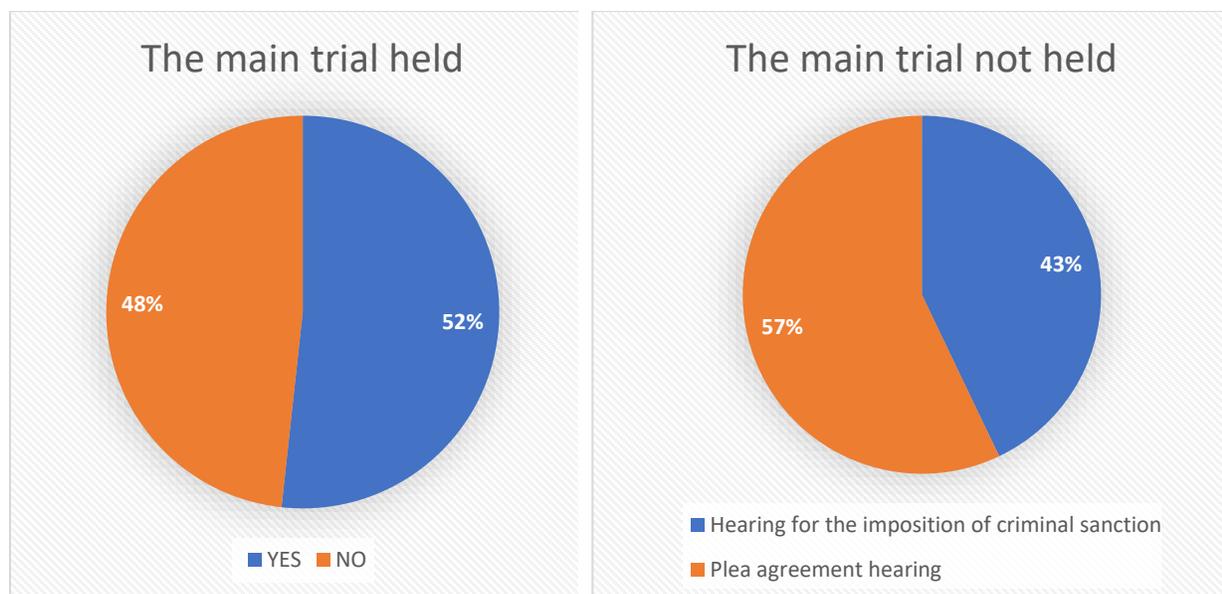


4. The position of the injured party at the main trial

Having in mind the previously mentioned structure of criminal offenses represented in the observed sample, it is important to note that in a large number of cases (48%) the main trial was not held. In cases in which the main trial was not held, a hearing for the imposition of a criminal sanction or a hearing under a plea agreement was held.

Chart 11: The main trial





When it comes to the **presence of the injured party** at the main trial, in 70% of cases the injured party was present.

When it comes to the **presence of a legal representative**, they attended the main trial in 50% of cases, most often the parents of the minor victim and representatives of the Social Care Centres, while in one case the data on the legal representative were anonymized.

In 71.5% of cases at the main trial, the injured party had **the support of family members**, mostly parents, with equal representation of mothers and fathers as support. In only two cases, the victim's mother and brother had to be removed from the courtroom as they were to be examined as witnesses.

In only three cases was the injured party granted **the status of a particularly sensitive witness**, of which in two cases by a decision of the public prosecutor. In these cases, the status was granted to victims of trafficking (1 injured party) and intercourse with a child (two injured parties).

In 47% of cases, the injured party had **professional support at the main trial**, in 70% of cases it was the support of psychologists and in 10% of cases the support of a social worker from the Social Care Centres (SCC). In only one case, the injured party had the support / escort of the victim support service.

The main hearings were mostly (80%) public, and the court accepted all requests for exclusion of the public made by the public prosecutor. All public hearings were held without the presence of the media, and in only one case did the court find that media representatives tried to attend the hearing but were not allowed to do so because the main trial was not public.

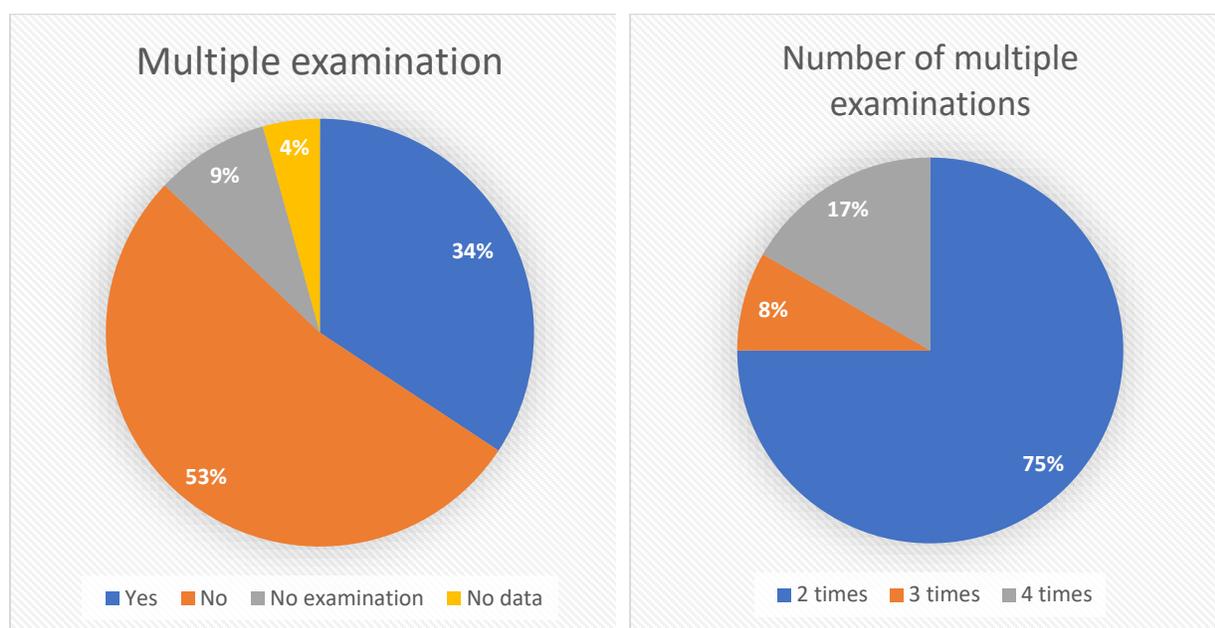
Although present at the main trial in 70% of cases, the injured party was not always questioned, and the predominant reason for that is the fact that in many cases the defendant admitted to committing a



crime, so the court decided to present only evidence relevant for sentencing without the defendant being questioned. This situation is largely captured by the previously described structure of crimes in the analysed sample, where an extramarital union with a minor from Article 190 of the Criminal Code dominates. In addition, the reason for not examining the minor injured party was the court's decision to read the earlier statement, and the representation of this scenario was the same as the representation of the court's decision to examine the injured party. In a small number of cases, these were victims who could not be examined due to age (4 victims) or the mental health condition (2 victims).

As one of the frequent objections when it comes to procedures in which minors are examined in the capacity of the injured party, is multiple examination, special attention is paid to this issue. In that sense, it was noticed that 34% of juvenile victims were examined more than once. Among the multiple respondents, 75% of them were examined twice, 8% three times, while 17% of juvenile victims were examined as many as four times. What is especially worrying is that the victims of the most serious crimes of sexual violence were interrogated most times (three or four times) and that they most often repeated their statements to the police inspector, SCC professionals, public prosecutor and then at the main trial.

Chart 12: Multiple examination of victims

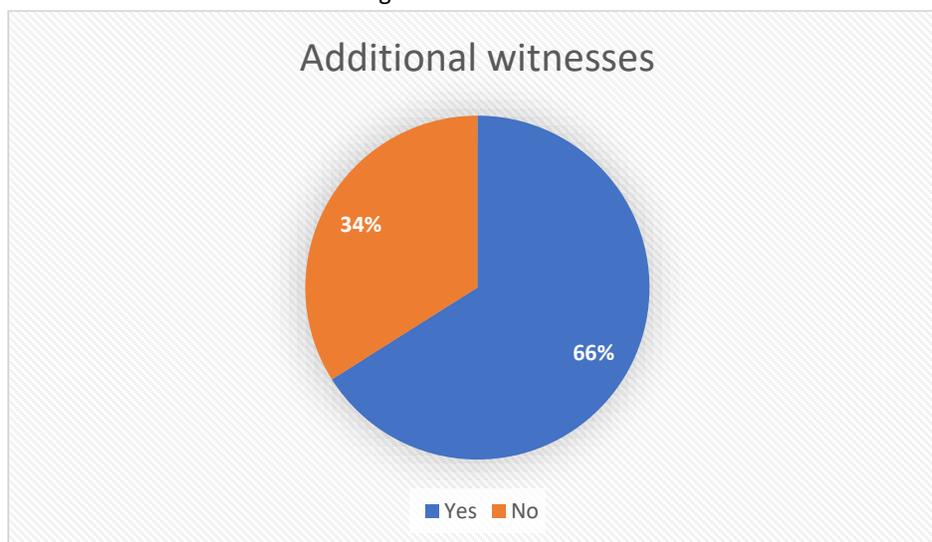


Nevertheless, only 12.5% of the victims **changed their statement** during the re-examination, and it is interesting that in no case were they the above-mentioned victims of serious crimes of sexual violence, but as a rule among victims damaged by the crime from Article 190 of the Criminal Code. This further speaks in favour of the futility and harmfulness of multiple interrogations of juvenile victims.

In 66% of the analysed cases, in addition to the minor victim, additional witnesses were heard at the main trial. Most often, there were SCC experts and the parents of the minor victim, while sporadically,

foster parents, school principals or school psychologists from schools attended by the minor victims and other persons from their immediate environment were also questioned.

Chart 13: Hearing of witnesses in addition to victim



When it comes to meeting and / or confronting a juvenile victim with the defendant during the main trial, in 50% of cases the juvenile victim was examined in the presence of the defendant while confrontation was not applied in any of the analysed cases, which is important considering the number of cases of juvenile victims was granted the status of a particularly sensitive witness.

Although half of the interrogations of the minor victim was attended by an expert (psychologist or social worker of SCC), only 30% of the **interrogations were conducted through those experts**, while in other situations they only attended the interrogation which was performed directly.

The analysed sample did not record the **attorney's remarks** on the manner of asking questions or entering the testimony of the injured party in the minutes, as well as the **judge's interventions** during the interrogation because he considered some questions irrelevant or inappropriate. The same applies to the **judge's warnings to the defendant** and / or his lawyer or the prosecutor's intervention because he considered some issues to be irrelevant or inappropriate. This in itself does not mean that there was no basis or need for such interventions or warnings, but in the impossibility of monitoring the trial, ie through monitoring case law, as its substitute, this cannot be determined with certainty.

Only in two cases **special measures** were taken to protect the injured party, however, this data should be interpreted not only on the basis of absolute numbers, but also in light of the sample structure in terms of crime, as if they were accused in most serious crimes (trafficking in human beings, sexual intercourse with a child, etc.) concluded an plea agreement already in the investigation phase, so in these cases there were no main trials or interrogation of the injured party. In one of the two cases that included special protection measures, the victim of rape under Article 178, paragraph 3 of the CC

expressed a high level of fear and security concerns, as the abuse lasted for several years, and the defendant was a member of the victim's immediate family.

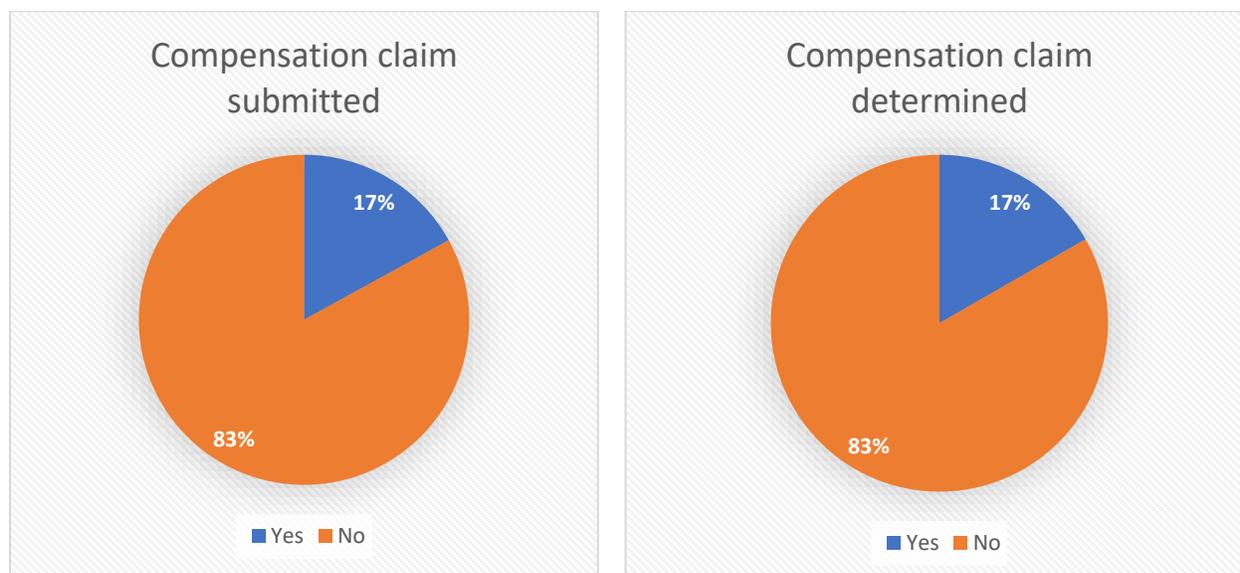
In both cases, the examination was performed using **video link**, both of which passed without technical interference, and one of them was assisted by a technician.

5. Compensation claim

Numerous analyses conducted in recent years indicate the need for more significant intervention in terms of improving the practice of realizing compensation claims. With this in mind, special attention has been paid to this issue.

The monitoring findings regarding the exercise of the injured party's right to a compensation claim showed that only 17% of the injured parties pointed out the compensation claim. Within those 17% who decided on this step, again only 17% of them determined their property claim.

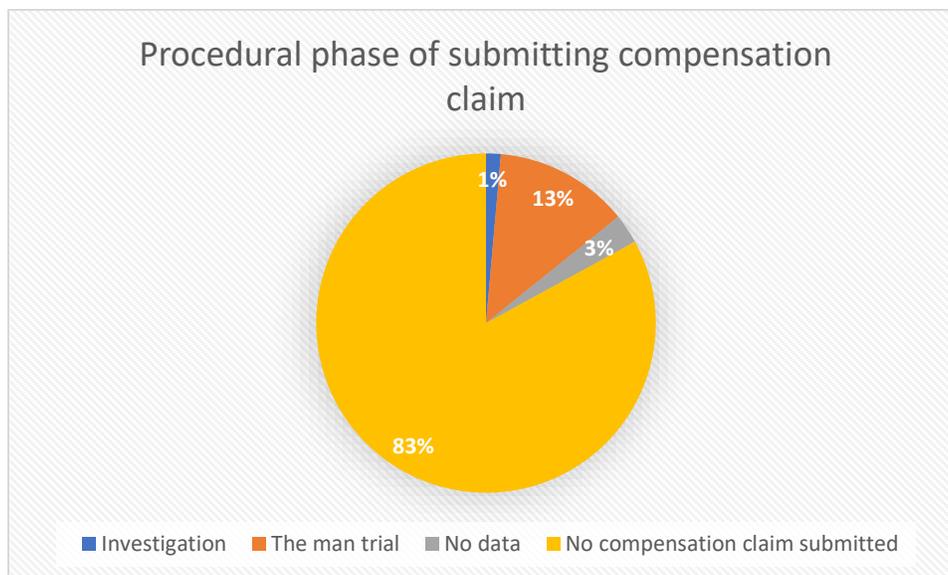
Chart 14: Compensation claim



The few victims who determined the property claim demanded compensation for non-pecuniary (in one case) and non-pecuniary and pecuniary damage (in one case). The amounts ranged from 400 thousand to 1.1 million dinars.

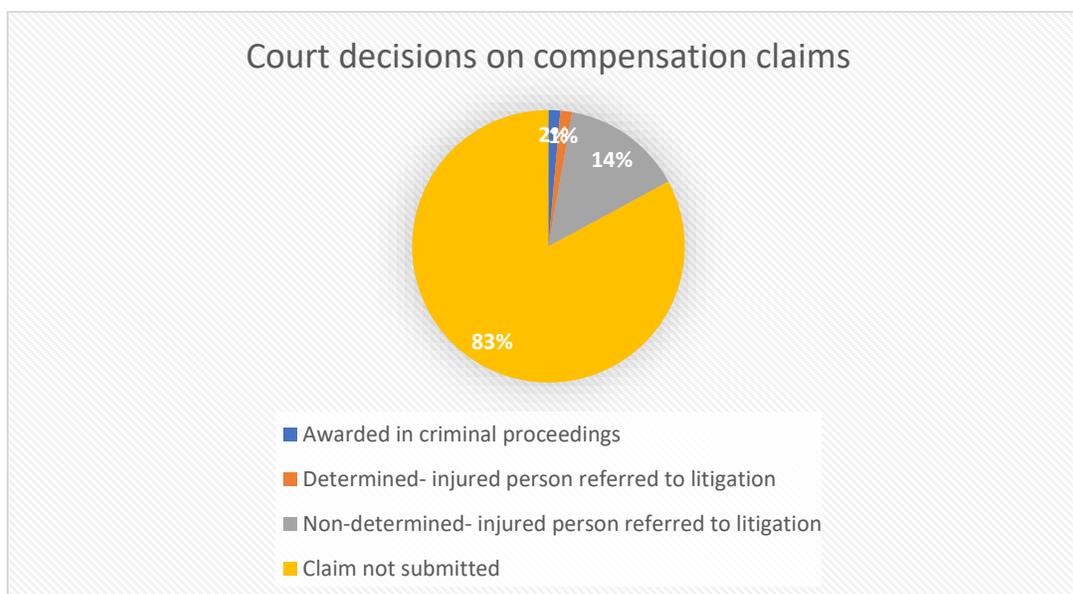
When it comes to the **procedural phase** of emphasizing the property claim, the injured parties who pointed out the claim in general mostly did so only at the main trial.

Chart 15: Procedural phase of submitting compensation claim



Regarding the court's decisions on the property claim, it is devastating that only one of the 70 injured parties was awarded a property claim in criminal proceedings. The key reason for that is certainly the fact that only 17% of them pointed out, and only two determined the request, which does not change the overall picture of the complete ineffectiveness of the mechanism prescribed by Art. 252-260. CPC.

Chart 16: Court decisions on compensation claims



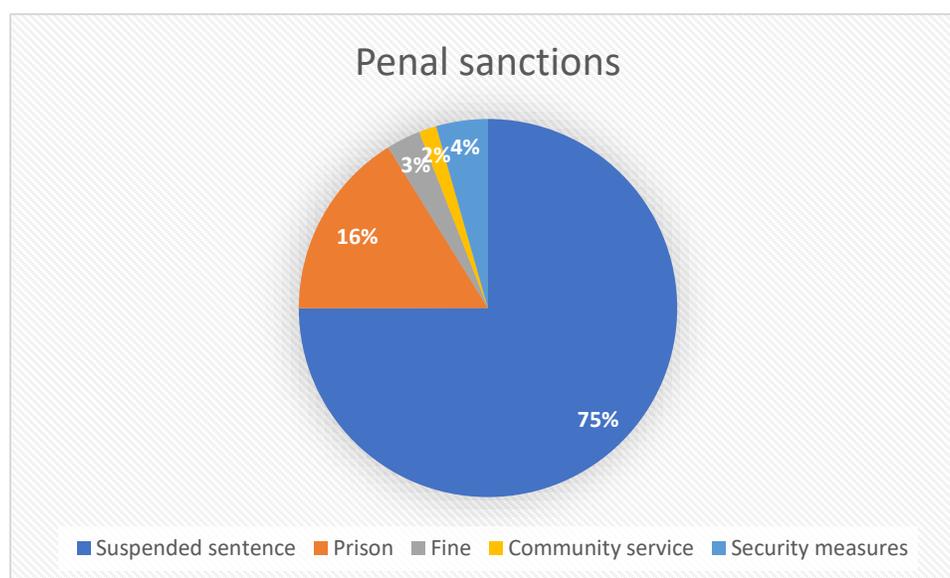
6. Court decisions

With the exception of one procedure which ended with the decision to suspend the criminal procedure due to the withdrawal of the public prosecutor from criminal prosecution, in relation to all other defendants the procedure ended with a conviction, i.e. a decision on imposing a security measure (only in one case).

Regarding the imposed sanctions, a suspended sentence of 75% dominates, followed by imprisonment with 16%, and then in a negligible share a fine (in one case as the main and secondary punishment), community service- imposed only to one perpetrator. In terms of the security measures, a ban on approaching and communicating with the injured party predominates, while in one case a security measure of mandatory psychiatric treatment was imposed. An appeal was filed against 13.8% of the verdicts, and the first-instance verdict was upheld almost without exception.

It is noticeable that a short probation period (mostly 1 year) is set for the criminal offense under Article 190 of the Criminal Code, which is not adequate, especially in the case of establishing an extramarital union with very young girls. For the crime under Article 193, the probation period was usually 2 years. It is also noticeable that for the criminal offense of sexual intercourse with a child (Article 180 of the CC), sentences of 5-7 years were imposed, i.e. closer to the special minimum. The opposite situation was identified for the criminal offense of rape under Article 178 para. 3 and 4. where the sentences imposed are closer to the special maximum.

Chart 17: Structure of the imposed criminal sanctions



7. The right to legal remedy

All decisions against which a legal remedy was allowed contained instructions on the legal remedy (appeal, i.e. objection in the case of a hearing for the imposition of a criminal sanction). In 30% of the analysed cases, the parties waived their right to appeal.

An appeal was filed against 13.8% of the verdicts, with 25% of the appeals filed by the public prosecutor and 75% by the defendant's defence counsel.

In only one case the verdict was changed by the second instance court (in relation to the sentence imposed) so that the sentence was reduced from 8 to 6 years in prison, for the criminal offense of sexual intercourse with a child under Article 180, paragraph 2, for an extended period. In all other cases, the second-instance court upheld the first-instance verdict (with the exception of one second-instance trial for one of the two defendants, which was still ongoing at the time of the analysis).

Such a high percentage of confirmed first-instance verdicts indicates the adequate quality of the actions of first-instance courts in proceedings for criminal offenses committed to the detriment of juvenile victims.



List of Recommendation

| | |
|---|--|
| 1 | Establish sustainable, confidential and easily accessible mechanisms to empower juvenile victims to report (sexual) violence, especially in contexts where the perpetrator is a person close to the victim, including digital reporting tools and effective support and protection procedures. |
| 2 | Improve the proactive approach of the public prosecutor's office and social care centres in combating child marriages (establishing extramarital relationships with minors) including the prosecution of parents and / or guardians who enable the establishment and maintenance of such communities. |
| 3 | Conduct awareness-raising campaigns among professionals, as well as within the wider community, about the negative effects and the need to combat child marriages / extramarital affairs with minors. |
| 4 | Amend Article 153 of the Law on Juvenile Delinquents and Criminal Protection of Juveniles and / or Article 104 of the Criminal Procedure Code to introduce the possibility for a trusted person to attend the hearing of a juvenile victim, in addition to legal counsel, except in cases of when the authority assesses that there is a conflict of interest. |
| 5 | Amend the Part III of the Law on Treatment of Juveniles in Criminal Proceedings, to prescribe the obligation, competencies, conditions and procedure for conducting an individual assessment of the needs of a juvenile victim for protective and support and assistance measures. |
| 6 | More precisely regulate and more widely apply the use of technical means for the transmission of images and sound for the purposes of examining juvenile victims in criminal proceedings, which would reduce the risk of secondary victimization and reduce the number of examinations of victims in proceedings. |
| 7 | Consistently apply the Guidelines for deciding on compensation claims in criminal proceedings and uniform forms which would enable criminal courts to make decisions on compensation claims based on good practice of civil courts on damages claims and improve the effectiveness of property claims as a remedy available to victims in context the rights of the injured party to reparation. |
| 8 | Develop and implement binding instructions issued by the Republic Public Prosecutor, based on the guidelines set out in the Guidelines of the Supreme Court of Cassation, which would improve the implementation of the public prosecutor's legal obligation to collect evidence relevant to the decision on compensation claims under Article 256 of the Criminal Procedure Code. |
| 9 | Conduct trainings for judges, public prosecutors and lawyers who act as proxies for victims, which would improve their awareness and professional capacities for highlighting, deciding and deciding on the property claim of the victim in criminal proceedings. |



Annex I: Questionnaire for the purpose of collecting data on case law

Note: In cases involving more than one defendant and / or more injured parties, it is necessary to answer all questions from the questionnaire for each defendant or injured party by copying a block of table rows in each chapter of the questionnaire as many times as there are defendants or injured parties.

| QUESTIONNAIRE FOR ANALYSIS OF CASE LAW | |
|---|---------------------------------|
| Name, surname and affiliation of the researcher: | |
| 1. TRIAL INFORMATION | |
| Town | |
| Court | |
| The crime (according to indictment) | |
| 2. INFORMATION ABOUT THE DEFENDANT | |
| Were there more defendants in the proceedings? | YES/NO (If YES, specify number) |
| The gender of the defendant | M/F |
| The age of the accused at the time of the commission of the crime | |
| Previous convictions | YES/NO |
| | Multiple recidivism - YES / NO |
| | The same type of crime DA/NE |
| Relationship with the victim | YES/No Type: |
| Number of identified victims in the procedure | |
| Other comments: | |
| 3. INFORMATION ABOUT THE INJURED PERSON(VICTIM) | |
| Sex | M/F |



| | |
|---|---|
| The age of the injured party at the time of the commission of the crime: | |
| Residence | URBAN/RURAL ENVIRONMENT |
| Did the injured party have a proxy? | YES /NO If yes, is the proxy: a) Elected b) Appointed ex officio |
| Presence of legal representative / guardian of the minor injured party (parent, guardian, SCC representative) | YES NO Type / status of representative: |
| Has the victim been granted the status of a particularly sensitive witness? If so, on whose proposal and by whose decision was this status determined? | YES/ NO If so, at whose suggestion? By whose decision? |
| Other comments: | |

4. SUPPORT TO THE VICTIMS

| | |
|---|--|
| Does the injured party have an escort / support from a psychologist, social worker or other professional? | YES /NO If yes, what: |
| Does the injured party have an escort / support from a victim support service? | YES/ NO If so, what type of service is it? a) Service established by the prosecution or the court b) Service of the Centre for the Protection of Victims of Trafficking in Human Beings c) Service established by NGOs |
| Did the injured party have the support / accompaniment of family and / or friends at the main trial? | YES/NO Whose? |
| Other comments: | |

5. INFORMATION PROVIDED TO THE INJURED PARTY

| | |
|--|------------------------------|
| Is the injured party informed about the rights that belong to him in criminal proceedings in accordance with the provisions of the CPC / Law on Juveniles? | YES /NO When: By whom: |
| Other comments: | |



| 6. PUBLICITY OF THE PROCEDURE | |
|--|--|
| Were there any requests that the trial be held in part or in full without the presence of the public? If so, who submitted the request and for what reasons and which parts were not open to the public? | YES/ NO Explanation: |
| Did the media attend the main trial? If not, explain. | YES /NO If so, were they allowed to be present throughout the trial? YES/ NO Explanation: |
| Has the court granted the request for exclusion of the public? If not, for what reasons? | YES/ NO Reasons: |
| Other comments: | |
| 7. SECURITY OF VICTIMS | |
| Have special measures been taken to protect the injured party? If so, which ones? Who made the request? What was the court's decision? | YES /NO At whose request? What measures? |
| Did the injured party express fear or concern for his safety at the trial and - if so, what was the court's reaction? | YES/ NO If YES- court reaction? |
| Has the defendant been remanded in custody? | YES /NO If Yes, at what stage of the procedure: How much time did he spend in detention and at what stage of the procedure was his detention terminated: |
| Other comments: | |
| 8. INVESTIGATION OF THE INJURED PERSON | |
| Has the injured party been previously questioned in the same case - if so, how many times and before which body of procedure? | YES/ NO If YES, how many times? Public prosecutor / court: |
| Has the injured party changed his statement in relation to the previously given statement? | YES/ NO |
| Was the previously given statement of the injured party read instead of re- | YES/ NO |



| | |
|--|--|
| examination? | |
| Was the injured party questioned in the presence of the defendant (s)? | YES/ NO |
| Was there a confrontation between the injured party and the accused / witness? | YES/ NO |
| Was the injured party questioned in the presence of the public and / or the media? | YES/ NO |
| If the injured party has the status of a particularly sensitive witness or is a minor: Is the attorney or legal representative / guardian of the injured party present at the interrogation? | YES / NO If YES, specify which person? |
| Was the examination conducted with the help of a psychologist, social worker or other professional - if so, which person? | YES / NO If YES, specify which person? |
| Was the examination performed using technical means for the transmission of images and sound - if so, where was the injured party (second court room, apartment, SCC) | YES/ NO If YES, where did the injured party stay during the interrogation? YES/ NO |
| Did the technician attend the examination using technical means for image and sound transmission? | YES/ NO |
| Were there any technical disturbances during the interrogation? | YES/ NO |
| Did the injured party's attorney have any objections to the manner of asking questions or entering the injured party's testimony in the minutes? | YES/ NO Comment: |
| Did the judge intervene during the hearing because he considered some issues irrelevant or inappropriate. If so, describe what happened. | Judge intervention: Description: |
| Did the judge enter a warning to the defendant and his lawyer in the record? | YES/ NO |
| Did the prosecutor intervene during the hearing because he considered some issues to be irrelevant or inappropriate. If so, describe what happened. | Judge intervention: Description: |
| Other comments: | |
| 9. COMPENSATION CLAIM | |
| Did the injured party point out the compensation claim? Were there any claims for damages? If so, who submitted the request? For what kind of damage? How much is required? | YES/ NO |



| | |
|--|--|
| At what stage of the procedure was the property claim raised? | |
| What was the compensation claim about? | a) Compensation _____ (claimed amount) b) Return of items c) Cancellation of legal transaction |
| What was the court's decision on the request? | a) Adopted in full b) Partially adopted (explain) |
| Other comments: | |
| 10. THE COURSE OF THE TRIAL | |
| Apart from the injured party, who was examined as a witness? | |
| Other comments: | |
| 11. OUTCOME OF THE PROCEDURE | |
| Type of decision | a) Conviction b) Acquittal c) Dismissing judgment (state grounds) e) Decision on imposing a security measure of mandatory psychiatric treatment and custody in a health institution |
| The act for which the defendant was found guilty | |
| Type of criminal sanction imposed | |
| The amount of the sanction imposed | |
| Did the first instance decision contain an instruction on legal remedy and was the instruction in accordance with the provisions of the CPC? | YES/ NO Comment: |
| Has an appeal been lodged against the first instance verdict and, if so, who filed the appeal? | YES/ NO Complained: |
| What was the decision made on the appeal? (specify the relationship between the sanction imposed by the first and second instance verdicts) | |
| Other comments? | |
| 12. ADDITIONAL REMARKS: | |

