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CHILD VICTIMS AND JUDICIAL PROTECTION IN SERBIA

Abstract

The aim of this study is to present and analyse findings of the recently conducted monitoring of the court jurisprudence in cases of violence and/or exploitation of children where the final decisions were rendered by Serbian courts in 2020. Beyond it provides for the comprehensive data on the crime structure and characteristics of victims and perpetrators, the study is focused on the judicial protection of child victims through the several aspects, including, but not limited to the right to legal aid, psycho-social support, ICT usage and the tailor-made approach of professionals in avoiding/decreasing secondary victimization. It also comprehensively addresses the access to compensation in criminal proceedings. Additionally, the study includes the analysis of the penal policy in analysed cases, in parallel, through the jurisprudence of the first instance court, but also through the final decisions. Finally, the author provides for a list of recommendations aimed at amendments to the penal legislation, but also to improvement of the court practice in proceedings that involved child victims.

Key words: child exploitation, sexual violence against children, child marriages, secondary victimisation, child abuse

1. INTRODUCTION

The intensity of protection must correspond to the vulnerability of the victim. Based on this assumption, the vulnerability of child victims is at the top of the scale that defines the need to prescribe and apply the high standards of protection and support provided to them. [1] This even more applies to children who suffered from sexual violence and /or other forms of exploitation. Widely recognized in

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[1] I. Stevanović, „Posebne mere zaštite deteta u krivičnom postupku*" Zbornik Instituta za kriminološka i sociološka istraživanja*, 36 (3). 2017, 7-80.

international human rights standards[2] this need is being subject of continuous improvement through the all universal and/or regional human rights instruments dealing with rights of a child, but also with the rights of crime victims.[3]

Seventeen years have passed since the Law on Juvenile Offenders and Criminal Protection of Juveniles (hereinafter: LJOCPJ)[4] was adopted by Serbian authorities.[5] In parallel with the provisions of the Criminal Procedure Code (hereinafter: CPC)[6] this Law has introduced the set of standards aimed at additional protection of child victims in Serbia in criminal procedure. Significantly progressive in the moment of adoption[7], this law has lost pace with the growing problems in reality, but also with the newly developed international standards.[8] This gap has been recognised and reported in detail in all the relevant reports[9] and analysis[10] and partially reflected through the recommendations and measures included in various

[2] I. Stevanović, „Posebne mere zaštite deteta u krivičnom postpuku*" Zbornik Instituta za kriminološka i sociološka istraživanja*, 36 (3). 2017, 7-80.

[3] See more: I. Stevanović, N. Vujić, „Maloletno lice i druge posebno osetljive kategorije žrtava krivičnih dela (međunarodni pravni standardi i krivično procesno zakonodavstvo Srbije)". *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, Misija OEBS-a u Srbiji, Beograd, 2020, 95-109.

[4] Law on Juvenile Offenders and Criminal Protection of Juveniles, "Official Gazette RS" No. 85/2005.

[5] M. Kolaković-Bojović, „Life Imprisonment and Parole in Serbia – (Un)Intentionaly Missed Opportunity" *Journal of Criminology and Criminal Law*, 59(1), 2021, 93-108.

[6] "Official Gazette RS" 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – CC decision and 62/2021 – CC decision)

[7] For more info about the greatest novelties introduced by LJOCP, see: T. Karović, S. Protić, M. Kolaković-Bojović, A. Paraušić, N. Drndarević, *Analiza uticaja primene Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u periodu od 2006. do 2020. godine.* Institut za kriminološka i sociološka istraživanja & Misija OEBS-a u Srbiji, Beograd, 2020. Preuzeto sa https://www.iksi.ac.rs/pdf/ analiza_iksi_osce_2021.pdf

[8] See more: I. Stevanović, N. Vujić, „Maloletno lice i druge posebno osetljive kategorije žrtava krivičnih dela (međunarodni pravni standardi i krivično procesno zakonodavstvo Srbije)". *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, Misija OEBS-a u Srbiji, Beograd, 2020, 95-109; M. Kolaković-Bojović, "Accession negotiations of the Republic of Serbia with the EU within Chapter 23 and the need to amend the criminal procedure legislation", (Ilić, Goran, ed.) *Dominant directions of criminal legislation development and other current issues in the Serbian legal system*, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Kopaonik, 2016, 232-241.

[9] Screening report for Chapter 23, available at: https://www.mpravde.gov.rs/tekst/7073/izvestaj-o-skriningu.php , accessed June 25 2018.

[10] M. Škulić, M. *Normative analysis of the position of the injured party by a criminal offense in the criminal justice system of the Republic of Serbia*, OSCE Mission to the Republic of Serbia, 2015.

national policy documents,[11] but also in those related to the EU accession processes.[12] However, for a clear picture to what extent protection of child victims have been implemented in Serbian criminal proceedings, there is a need to further explore court practice.

Following this idea, within the scope of 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[13] the Institute of Criminological and Sociological Research conducted the monitoring of court jurisprudence in cases of violence and/exploitation of children. This task was aimed at identification of the main issues and challenges associated to the protection of child victims in criminal proceedings, but also focused on providing clear inputs for amendments to relevant legislation and/or improvement of practices.

2. METHODOLOGY AND SAMPLING

2.1. Methodological approach

The subject of the analysis was 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 and other ways of child exploitation and violence against children:

- 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,

[11] See: Center for the Rights of the Child (2020), Summary analysis of the Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023, available at: https://cpd.org.rs/wp-content/uploads/2020/06/Analiza-Strategija-za-prevenciju-i-zastitu-dece-od-nasilja_PDF.pdf, accessed July 15 2020.

[12] Common negotiating position for Chapter 23, available at: http://mpravde.gov.rs/files/Ch23 EU Common Position.pdf, last accessed: September 17 2017; Action plan for Chapter 23, available at: http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023.pdf, accessed June 1 2016.

[13] 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. The Project is implemented by International Rescue Committee, ASTRA and the Child Rights Centre.

- 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.[14]

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- December 2021-January 2022

2.2. 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.

[14] 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.

In the mentioned sample, 26 courts, of which 21 BC[15], and 5 HC[16], 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.

2.3. 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, [17] which makes it impossible to fully consider some of the key parameters.

3. FINDINGS

3.1. 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

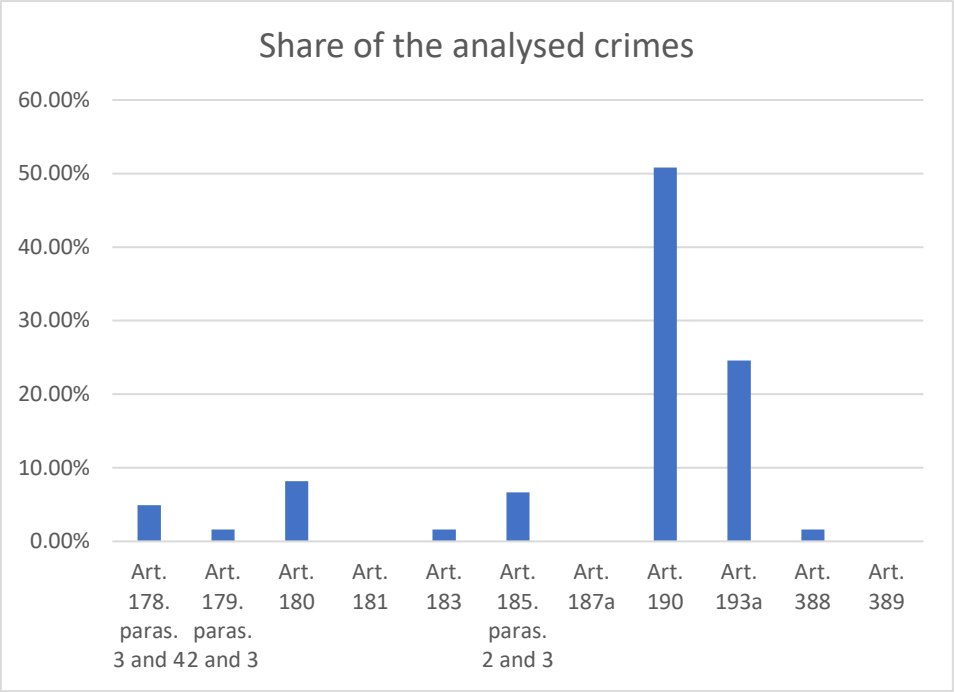
[15] BC Novi Pazar, BC Pančevo, BC Ruma, BC Požarevac, BC Zrenjanin, BC Vranje, BC Šabac BC Velika Plana, BC Pirot, BC Valjevo, BC Sombor, BC Ivanjica, BC Kikinda, BC Bor, BC Požega, BC Kragujevac, BC Novi Sad, BC Lebane, BC Subotica, Prvi BC Beograd, BC Loznica.

[16] HC Požarevac, HC Vranje, HC Zaječar, HC Sombor, HC Novi Sad.

[17] 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

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.

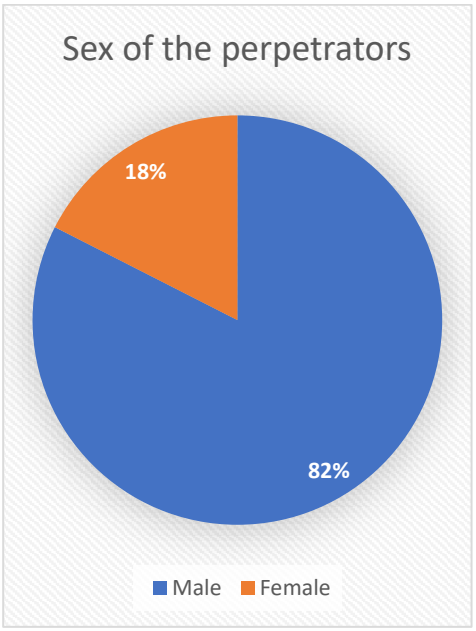
In addition, it is noticeable that in some courts the perpetrators of the crime under Article 190, par. 1 of the CC and the perpetrators of the crime under Article 190, paragraph 2, i.e. parents or guardians who enabled the establishment of such an extramarital union, were prosecuted in parallel, while 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.

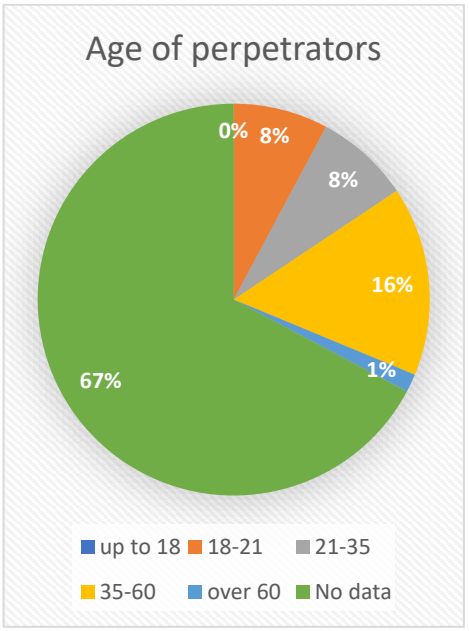
3.2. Perpetrators of crimes committed against children

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.

Regarding 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).

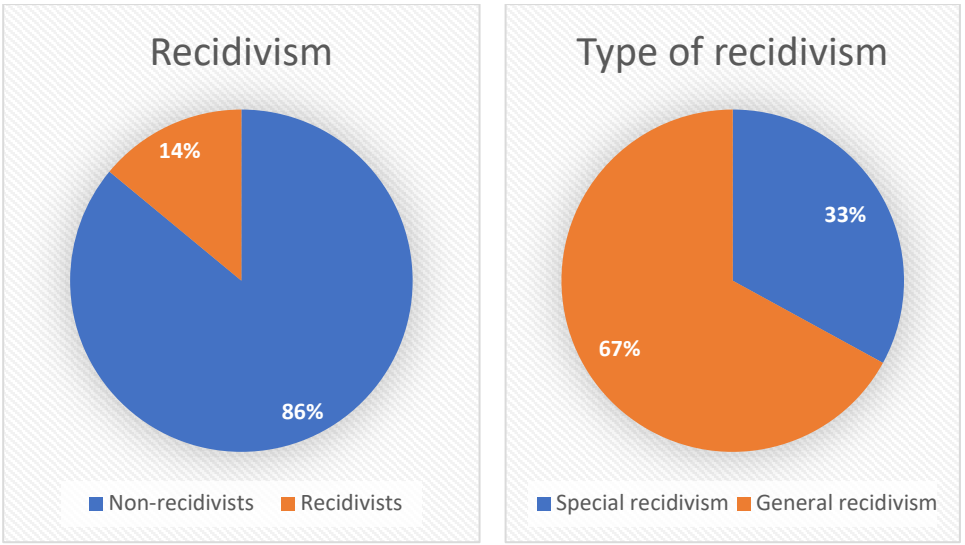
Chart 2: Sex and age of the perpetrators





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 3: Recidivism of perpetrators



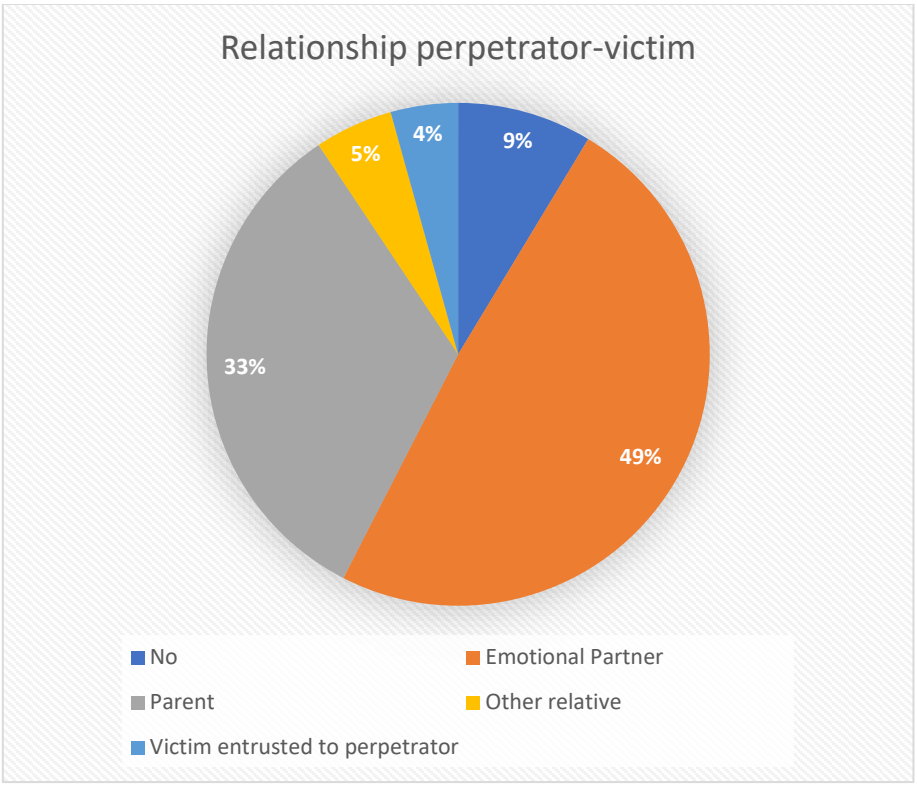
When it comes to previous convictions, 14% were recidivists, while 86% of defendants committed a crime for the first time. The subject of the analysis was also the type of recidivism, for those perpetrators who committed the criminal offense covered by the analysis as returnees, so in 33.3% it was a 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).

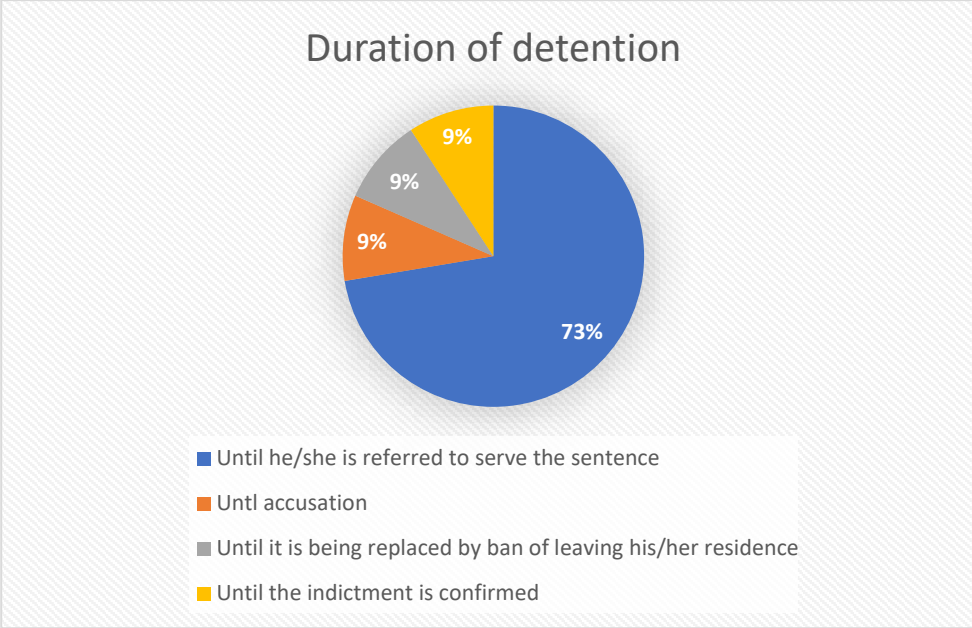
In 5% of cases, the perpetrator was another relative of the injured party, so in the role of exploiter from Article 193, paragraph 2 of the Criminal Code, grandmothers and aunts of the injured parties appeared, and crimes against sexual freedom were committed by brothers, uncles and fathers of minor 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 4: 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.

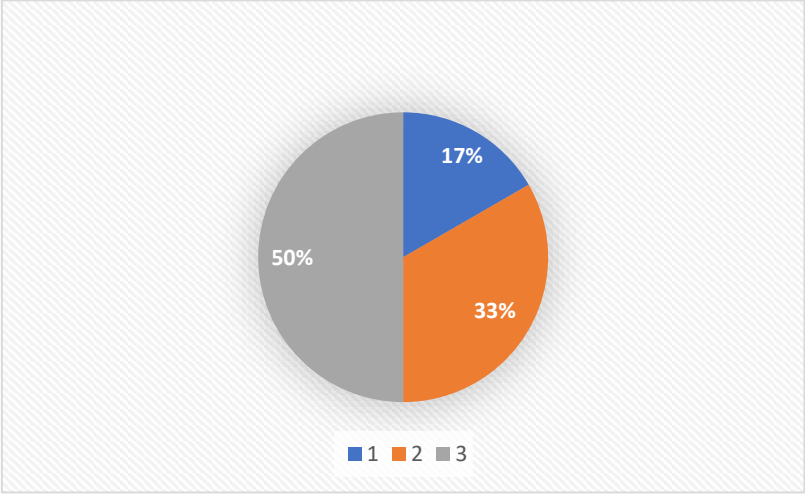
Chart 5: Application of detention



3.3. Injured party

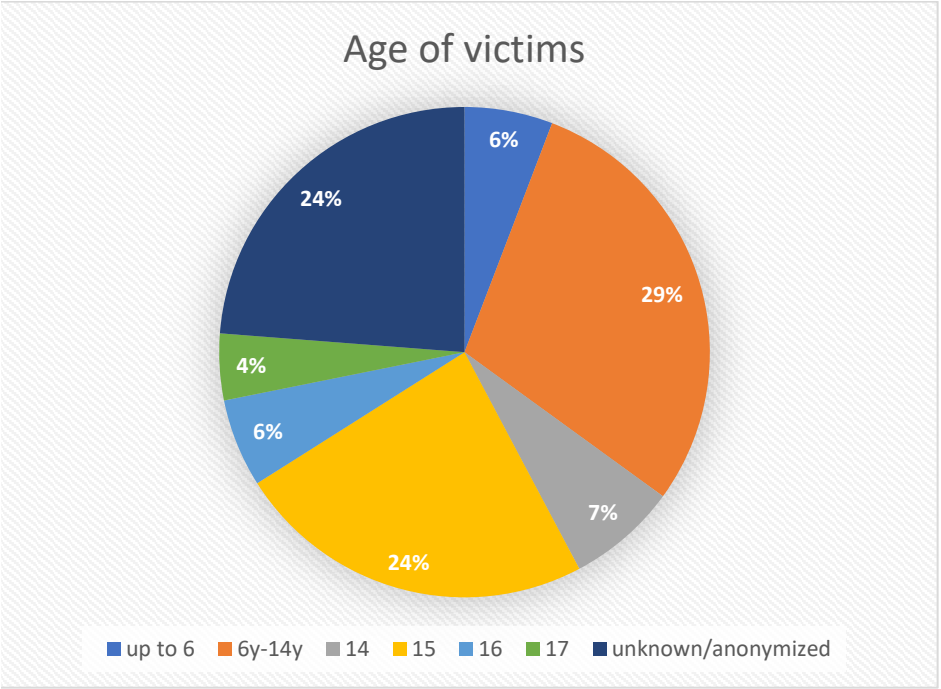
In the 58 analyzed cases, criminal offenses were committed to the detriment of 70 juvenile victims. In 84% of cases, there was just one victim, in 11% two, and in 5% of cases there were three juvenile victims.

Chart 6: 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 7: Age of victims



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.

3.4. 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 (43%) or a hearing under a plea agreement was held (57%).

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

In terms of 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.

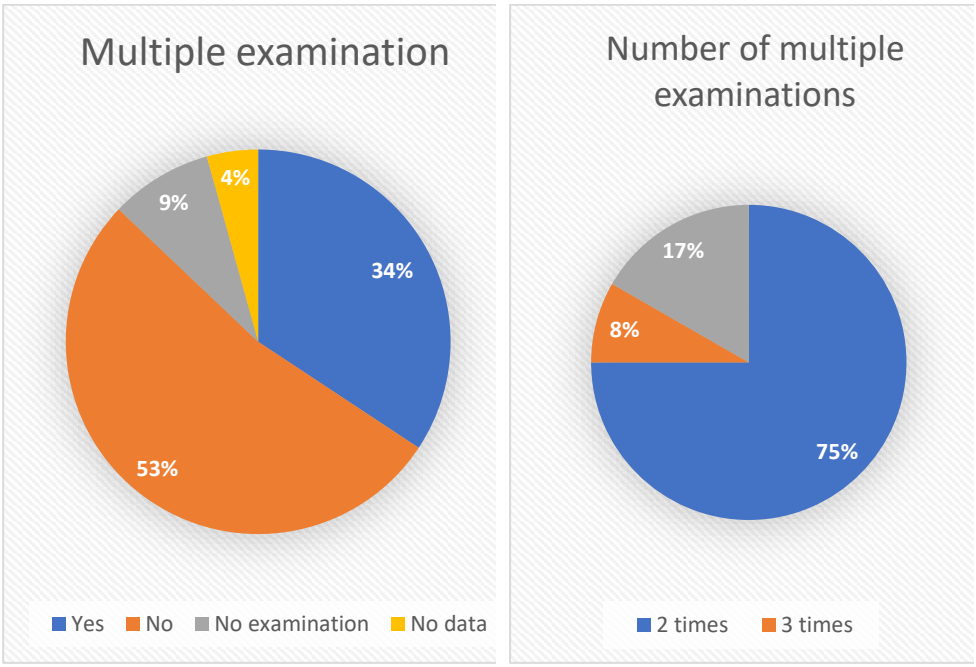
The main hearings were mostly (80%) public, and the court accepted all requests for exclusion of the public made by the public prosecutor. All public hearings were held without the presence of the media, and in only one case did the court find that media representatives tried to attend the hearing but 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 8: Multiple examination of victims

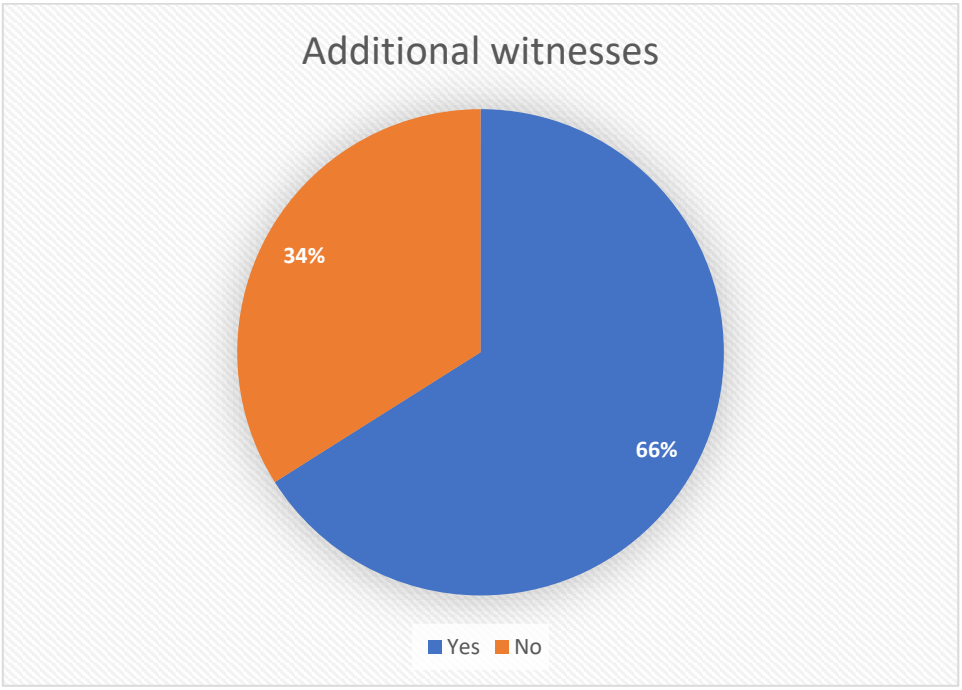


Nevertheless, only 12.5% of the victims changed their statement during the re-examination, and it is interesting that in no case were they the above-mentioned victims of serious crimes of sexual violence, but as a rule among victims damaged by the crime from Article 190 of the Criminal Code. This further 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 9: 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.

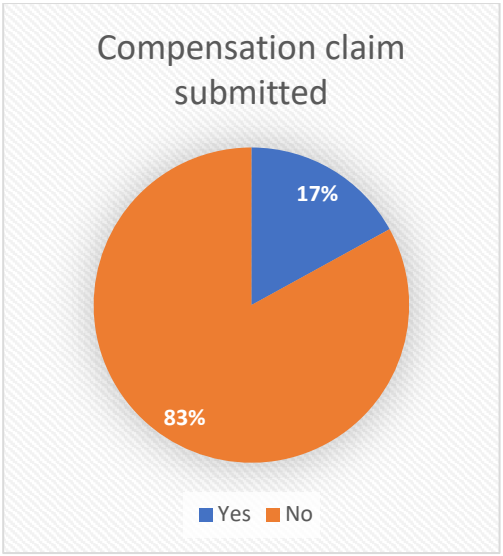
Only in two cases special measures were taken to protect the injured party, however, this data should be interpreted not only on the basis of absolute numbers, but also in light of the sample structure in terms of crime, as if they were accused in most serious crimes (trafficking in human beings, sexual intercourse with a child, etc.) concluded a 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.

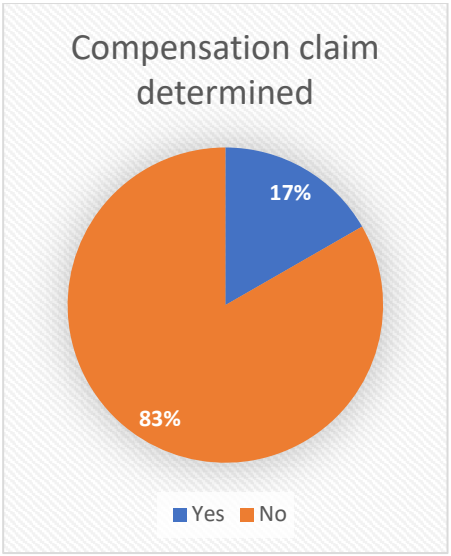
3.5. Compensation claim

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.

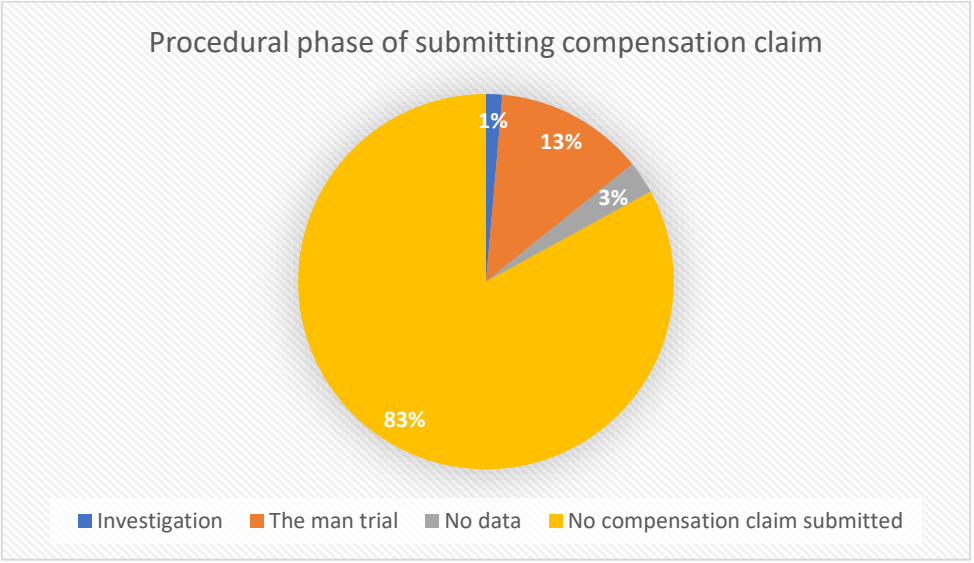
Chart 10: Compensation claim





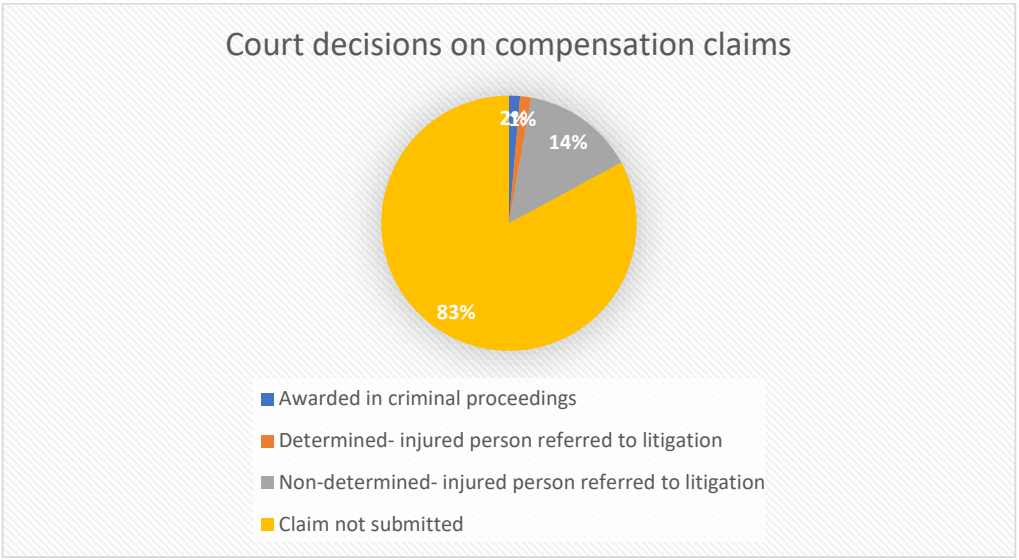
The few victims who determined the property claim demanded compensation for non-pecuniary (in one case) and non-pecuniary and pecuniary damage (in one case). The amounts ranged from 400 thousand to 1.1 million dinars. When it comes to the procedural phase of emphasizing the property claim, the injured parties who pointed out the claim in general mostly did so only at the main trial.

Chart 11: 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 12: Court decisions on compensation claims



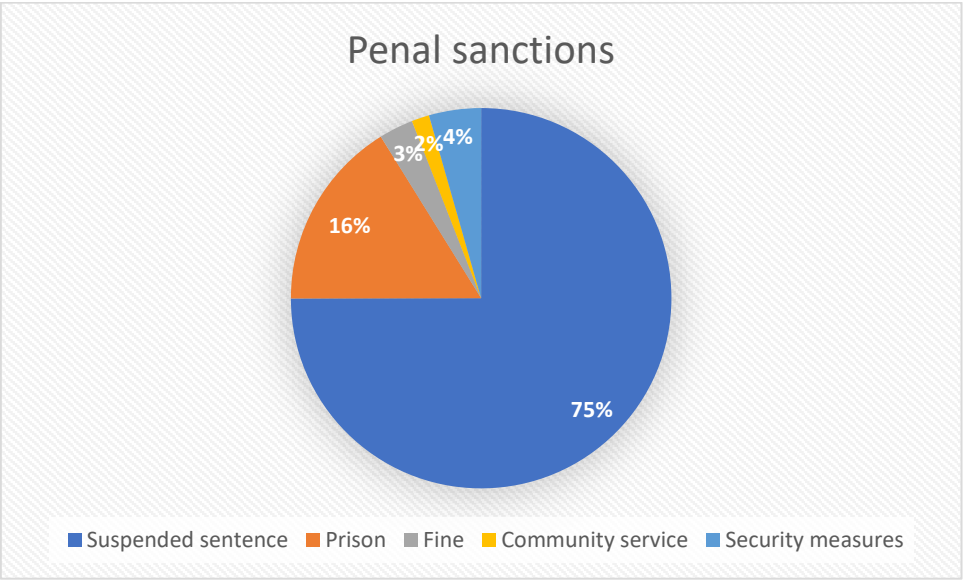
3.6. Court decisions

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 13: Structure of the imposed criminal sanctions



3.7. 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.

CONCLUSIONS

Considering the finding presented above, obviously, there is a need to 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. Once reported a crime, child victims need to be additionally supported and protected through the different mechanisms.

Among others, there is a need to amend Article 153 of the Law on Juvenile Offenders 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. In addition to this, it is necessary to amend the Part III of the same law, 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. [18]

In order to ensure better protection of child victims, to reduce negative effects of a hearing and to prevent secondary victimisation, it is important to regulate more precisely and to widely use ICT means for the purposes of examining juvenile victims in criminal proceedings.[19] Additional benefit of this would be the reduced number of examinations of victims in proceedings.

As previously said, one of the biggest challenges for victims, especially child victims in Serbian criminal proceedings is to access the compensation.[20] Since the

[18] Kolaković-Bojović, M., Turanjanin, V., & Tilovska Kechegi, E. (2018). „Support to victims of crime: EU standards and challenges in Serbia". *Towards a better future: the rule of law, democracy and polycentric development*, Faculty of Law, St. Kliment Ohridski University, Bitola, 2018, 125-135.

[19] See more about the capacities and perspectives of the ICT to protect child victims: I. Stevanović, M. Kolaković-Bojović, „Informacione tehnologije u službi zaštite deteta u krivičnom postupku", *Videolink i druga tehnička sredstva kao načini preduzimanja procesnih radnji u kaznenom postupku,* Misija OEBS u Srbiji, Beograd, 61-77; M. Kolaković-Bojović, A. Batrićević, "Children in Correctional Institutions and The Right to Communicate with Their Families During the Covid-19 Pandemic", Teme- Journal for Social Sciences, XLV/4, 2021, 1115-1130.

[20] M. Kolaković-Bojović, „Žrtva krivičnog dela (Poglavlje 23 - norma i praksa u Republici Srbiji)". U S. Bejatović (Ur.), *Reformski procesi i poglavlje 23 (godinu dana posle)* Srpsko

legal framework is already in place, there is a need to 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.[21] Since the court decision on compensation claim is highly dependent from the quantity and quality of evidence collected in the investigation stage, there is a need to 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.

A comprehensive requirement of the tailor-made approach in the reduction of the secondary victimisation have as a consequence the need to 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. This requires further strengthening the capacities of the Judicial Academy to conduct the training as in terms of the number of available courses, in in a view of the frequency of training. [22] Finally, considering the earlier mentioned, emerging structure of the analysed crimes, with the predominate share of the extramarital union with the minor, it is obvious that there is a need to improve the proactive approach of the public prosecutor's offices 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. This should also include conducting the awareness-raising campaigns among professionals, as well as for the general public, about the negative effects and the need to combat child marriages / extramarital unions with minors.

udruženje za krivičnopravnu teoriju i praksu, Beograd, 2017, 140-150. and M. Kolaković-Bojović, (2018). „Child victims in Serbia-normative framework, reform steps and EU standards" U I. Stevanović (Ur.), *Child Friendly Justice,* Institute of Criminological and Sociological Research. Belgrade, 171-182.

[21] M. Kolaković-Bojović, „Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije", U S. Bejatović (Ur.), *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)* Misija OEBS-a u Republici Srbiji, Beograd, 2020, 41-54.

[22] See more: M. Kolaković-Bojović, „Jačanje kapaciteta pravosudne akademije kao preduslov održivosti kvaliteta obuke za postupanje u krivičnim postupcima prema maloletnicima", U L. Kron (Ur.), *Maloletnici kao izvršioci i žrtve krivičnih dela i prekršaja* (str.) Institut za kriminološka i sociološka istraživanja, Beograd, 2015, 395-404.

LITERATURE

- Centre for the Rights of the Child (2020), Summary analysis of the Strategy for Prevention and Protection of Children from Violence for the period 2020 to 2023, available at: https://cpd.org.rs/wp-content/uploads/2020/06/Analiza-Strategija-za-prevenciju-i-zastitu-dece-od-nasilja_PDF.pdf, accessed July 15 2020.
- Common negotiating position for Chapter 23, available at: http://mpravde.gov.rs/files/Ch23 EU Common Position.pdf, last accessed: September 17 2017.
- I. Stevanović, M. Kolaković-Bojović, „Informacione tehnologije u službi zaštite deteta u krivičnom postupku“, *Videolink i druga tehnička sredstva kao načini preduzimanja procesnih radnji u kaznenom postupku,* Misija OEBS u Srbiji, Beograd, 61-77.
- I. Stevanović, „Posebne mere zaštite deteta u krivičnom postupku*“ Zbornik Instituta za kriminološka i sociološka istraživanja*, 36 (3). 2017, 77-93.
- I. Stevanović, N. Vujić, „Maloletno lice i druge posebno osetljive kategorije žrtava krivičnih dela (međunarodni pravni standardi i krivično procesno zakonodavstvo Srbije)”. *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, Misija OEBS-a u Srbiji, Beograd, 2020, 95-109.
- M. Kolaković-Bojović, „Žrtva krivičnog dela (Poglavlje 23 - norma i praksa u Republici Srbiji)“. U S. Bejatović (Ur.), *Reformski procesi i poglavlje 23 (godinu dana posle)* Srpsko udruženje za krivičnopravnu teoriju i praksu, Beograd, 2017, 140-150.
- M. Kolaković-Bojović, A. Batrićević, “Children in Correctional Institutions and The Right to Communicate with Their Families During the Covid-19 Pandemic”, Teme- Journal for Social Sciences, XLV/4, 2021, 1115-1130.
- M. Kolaković-Bojović, “Accession negotiations of the Republic of Serbia with the EU within Chapter 23 and the need to amend the criminal procedure legislation”, (Ilić, Goran, ed.) *Dominant directions of criminal legislation development and other current issues in the Serbian legal system*, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Kopaonik, 2016, 232-241.
- M. Kolaković-Bojović, „Information and Communications Technology as a Tool to Substitute In-Person Visits in The Serbian Prison System During the Covid-19 Restrictive Measures“. *Journal of Liberty and International Affairs*, *7/2021*, 21-35. https://doi.org/10.47305/JLIA2137121kb

- M. Kolaković-Bojović, „Jačanje kapaciteta Pravosudne akademije kao preduslov održivosti kvaliteta obuke za postupanje u krivičnim postupcima prema maloletnicima" U L. Kron (Ur.), *Maloletnici kao izvršioci i žrtve krivičnih dela i prekršaja* (str.) Institut za kriminološka i sociološka istraživanja, Beograd, 2015, 395-404.
- M. Kolaković-Bojović, (2018). „Child victims in Serbia-normative framework, reform steps and EU standards" U I. Stevanović (Ur.), *Child Friendly Justice,* Institute of Criminological and Sociological Research. Belgrade, 171-182.
- M. Kolaković-Bojović, „Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije", U S. Bejatović (Ur.), *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)* Misija OEBS-a u Republici Srbiji, Beograd, 2020, 41-54.
- M. Kolaković-Bojović, „Life Imprisonment and Parole in Serbia – (Un)Intentionaly Missed Opportunity" *Journal of Criminology and Criminal Law*, 59(1), 2021, 93-108.
- M. Kolaković-Bojović, V. Turanjanin, & E. Tilovska Kechegi, Support to victims of crime: EU standards and challenges in Serbia. *Towards a better future: the rule of law, democracy and polycentric development*, Faculty of Law, St. Kliment Ohridski University, Bitola, 2018, 125-135.
- Screening report for Chapter 23, available at: https://www.mpravde.gov.rs/tekst/7073/izvestaj-o-skriningu.php , accessed June 25 2018.
- M. Škulić, M. *Normative analysis of the position of the injured party by a criminal offense in the criminal justice system of the Republic of Serbia*, OSCE Mission to the Republic of Serbia, 2015.
- T. Karović, S. Protić, M. Kolaković-Bojović, A. Paraušić, N. Drndarević, *Analiza uticaja primene Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u periodu od 2006. do 2020. godine.* Institut za kriminološka i sociološka istraživanja & Misija OEBS-a u Srbiji, Beograd, 2020. Preuzeto sa https://www.iksi.ac.rs/pdf/ analiza_iksi_osce_2021.pdf
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СУДСКА ЗАШТИТА ДЕЦЕ ЖРТАВА У РЕПУБЛИЦИ СРБИЈИ

Резиме

Циљ ове студије је да представи и анализира налазе недавно спроведеног мониторинга судске праксе у случајевима насиља и/или експлоатације деце у којима су правоснажне одлуке донели судови у Србији током 2020. године. Осим што пружа свеобухватне податке о структури кривичних дела и карактеристикама жртава и учинилаца, студија је фокусирана на судску заштиту деце жртава кроз неколико аспеката, укључујући, али не ограничавајући се на право на правну помоћ, психо-социјалну подршку, коришћење ИКТ-а и прилагођеног приступа професионалаца у избегавању/смањењу секундарне виктимизације. Рад се такође детаљно бави приступом деце жртава обештећењу у кривичном поступку. Додатно, студија обухвата анализу казнене политике у анализираним предметима, упоредо, кроз судску праксу првостепеног суда, али и кроз правоснажне одлуке. На крају, аутор даје листу препорука које имају за циљ измене кривичног законодавства, али и унапређење судске праксе у поступцима који укључују децу жртве.

Кључне речи: експлоатација деце, сексуално насиље над децом, дечији бракови, секундарна виктимизација, злостављање деце.