

# The Particularities in Proving Child Sexual Abuse

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Sexual violence against children is a problem of society and of individuals. In spite of modern society's growing sensitivity to child sexual abuse, children are still often victims of such criminal offenses. Stereotypes and myths concerning sexual abuse of children that tend to alleviate offenders' responsibility while placing the blame on the victim still play an important role as well as obstruct adequate evidence detection and collection. This article is based on research on child sexual abuse in Slovenia. The data were collected by reviewing police, prosecution and court records for the year 2003, and focus group interviews conducted with prosecutors and criminal investigators of child sexual abuse. The study limitations were mainly the lack of data in some police, prosecution and court records and the absence of judges in the focus group interview.

In criminal proceedings, it is important to determine the credibility of the victim's testimony because in most cases material evidence is not present. The reasons for a lack of evidence lie primarily in the fact that such offenses are not reported immediately after the abuse and that a great majority of them occur within closed domestic settings, which additionally obstruct evidence detection and collection. However, the research indicated that the solid expertise and expert witness testimony in court did prove to bear important impacts on the trial outcome, especially in cases where no other evidence is available and when it is necessary to determine whether the child was sexually abused or not. Also important is the persistence of judges, as they have the responsibility to examine the various opinions of experts, victims, defendants, and others, and to provide a high quality service even in cases that last for a number of years.

**Keywords:** child sexual abuse, evidence, evidence collection, evidence detection, proving, criminal investigation

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## 1 Introduction

Criminality in Europe and the rest of the world is expanding, changing (Maver & Dobovšek, 2011), and becoming increasingly more sophisticated and varied (Meško, Sotlar, & Winterdyk, 2011). By ratifying first the Convention on the rights of the child (1989) and then the European convention on the exercise of children's rights (1996), and by signing the Council of Europe convention on the protection of children against sexual exploitation and sexual abuse (2007), Slovenia has joined the ranks of countries where children are awarded special protection against sexual offenses. The provisions of the Convention on the rights of the child (1989), define that children have the right to be protected from violence, exploitation, and abuse, otherwise present in all societies. Even though there has been more public recognition of these so-

cial problems, children all over the world are still victims of various forms of violence. They can be physically and mentally mistreated, neglected or sexually abused. Abuses most often happen in places familiar to the child and are usually committed by people he or she knows and trusts. This fact is especially important for understanding child sexual abuse in Slovenia, where this issue is still a taboo, even though public awareness is rising. Adults, who harbour their own sexual prejudices, often do not educate their children appropriately about sexuality and their right to not be sexually violated and exploited, thus children seek information from other sources. No doubt, ignorant children are easier to subdue and manipulate. Offenders have an easy job of influencing and abusing them because they exploit the fact that children are naive, obedient, easy to subordinate, and that they are also curious about their own developing bodies and sexuality. Many adults still believe in certain stereotypes and myths that mitigate the burden of guilt for offenders, and shift at least some of the blame onto their victims. These attitudes can interfere especially with the detection of child sexual abuse cases as many people, due to ignorance and fear, deny the abuse and are not able to recognize the signs which could indicate that a child was sexually abused. In Slovenia, however, over the last period some major child sexual abuse cases (for example Slovenian

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Friztl<sup>3</sup>) were detected, which indicate that the Slovenian society has become more sensitive about recognizing the child sexual abuse, which has an important impact on the investigation, and prosecution of such cases.

## 2 Gathering evidence in child sexual abuse cases<sup>4</sup>

Gathering evidence is a process of securing (searching for and collecting) all evidence that is the basis for ascertaining the culpability of suspects in criminal proceedings (Šugman Stubbs & Gorkič, 2011). Law enforcement agencies uncover facts and evidence of a criminal offense through criminal investigation activities. However, in the investigation of child sexual abuse they are confronted with the problem of detecting such cases as well as obtaining material evidence. The reasons for these problems lie mainly in the late reporting of these crimes and also in the fact that the abuse mostly happens in a domestic environment where there are no witnesses.

Once the police detect the sexual abuse of a child, in the first phase of a criminal investigation investigators must gather as much information about the criminal offense as possible. The speed of investigation is crucial in dealing with child sexual abuse (Bašič, 1993). It is imperative to act immediately (to examine the crime scene, make house searches, etc.) and focus all efforts into gathering any available evidence. Brvar (2006) writes that the results of investigations conducted by the police between 2000 and 2002 (Jager, 2006) showed that the most common investigative task was collecting data and information from individuals. Photo line-ups were done in 24% of the unresolved, and in three resolved cases. Furthermore, a crime scene investigation was done in 6.1% of the unresolved and in 6.4% of the resolved cases, while a search of the suspect's home and other premises ordered by the court was conducted in five resolved cases.

The course of investigation is different depending on whether the suspect is known or unknown. If the suspect has not yet been identified, the victim (if he or she survives) is the main source of information. The victim's story provides information and clues relating to the crime scene and offender,

to the timeline of the criminal act, vehicles used, etc., all of which are important in order to collect and secure possible material evidence. In this stage, investigators use canvassing<sup>5</sup> to gather important information (which might lead to the suspect) from nearby residents, workers, employees, bus drivers, and others. Canvassing is primarily used if the criminal offense was a one-time occurrence. The amount of evidence, especially evidence from the victim's body, is usually greater if the offender is known to the victimised child.

### 2.1 Material evidence

Material evidence can support the victim's statement and help to get the suspect's confession of guilt. Material evidence is important in criminal proceedings, because it significantly influences the court's decision in a criminal case (Lyman, 2002).

When crime investigators work on a case of child sexual abuse, they have to look at and process three separate »crime scenes«: the actual place where the criminal assault supposedly happened, the victim's body and clothing (Carney, 2010), and the offender and his clothing. Mart (2010) emphasized that in investigating child sexual abuse it is crucial to make a thorough search for DNA evidence, microfibers, objects possibly used in the criminal act or to intimidate the victim, and other traces relevant to the case (Bašič, 1993).

A crime scene investigation is usually conducted only if the criminal offense was reported shortly after it happened because in such a case the likelihood of there being material evidence is greater. However, the crime scene should be processed even after a longer period of time has gone by; the chronological distance does not automatically mean that a forensic investigation will not turn up some useful evidence.

Other important sources of evidence include general medical and gynaecological examinations of the victim, when necessary, due to the nature of the sexual attack (Bašič, 1993). Adams (1995) noted that relevant evidence is collected in less than 30% of medical examinations, but in proving sexual abuse it is important to know that in most cases these medical examinations give normal or nonspecific results because most forms of child sexual abuse leave no traces. Even unusual marks on the skin of a victim's intimate body parts, for example, do not necessarily mean they were caused by sexual abuse (Adams, 1995). Modly (1999) also adds that it is necessary to consider the possibility that the child has been drugged.

<sup>3</sup> The 62-year old man has been abusing his minor daughters for several years. One of them gave birth to his baby (D. K., 2009; M. R., 2012).

<sup>4</sup> The Penal Code of the Republic of Slovenia [Kazenski zakonik Republike Slovenije] (2008) defines child sexual abuse as a sexual assault on a child under the age of fifteen, so, for the purposes of this paper, we only analysed sexual abuse cases involving children younger than fifteen.

<sup>5</sup> Canvassing is the technique of gathering information door-to-door in the area where the offence occurred (Dvoršek, 2003).

If the medical examination is completed within 48 hours after the assault, the possibility that usable evidence will be found is much greater, however, child sexual abuse is often reported very late and this makes gathering evidence more difficult (The Office of the State Prosecutor General of the Republic of Slovenia, 2003). Drobnič (1999) pointed out the following police investigation tasks that should be carried out so that as much evidence as possible is gathered: i) collecting and securing clothing and footwear; ii) examining the lair and collecting traces of materials that could be evidence; iii) collecting fingernail scrapings (if the victim fought back) and other biological traces; iv) taking swabs from the victim's skin, mouth, anal and vaginal cavities; v) collecting pubic hair and taking swabs from the (suspect's) penis.

It is possible to count the following among the material evidence of child sexual abuse: video recordings of the abuse made by the suspect, various written documents (e.g., diaries, notes, letters, etc.), invoices for items purchased by the suspect and received as gifts by the victim, online communication, telephone calls, and objects connecting the suspect to the victim (e.g., personal items belonging to the victim, which are later found in the suspects possession; objects used during the sexual abuse, etc.) (Lyman, 2002).

While conducting house searches, investigators also look for items such as lubricants, sexual toys, and any other objects (belonging to the victim or offender) that could be used in the sexual assault on a minor, keys that do not belong to the suspect, a suspect's letters to the victim, and anything else relevant to the case (Bašič, 1993). It is also sensible to make a search of the victim's home (his or her room), as investigators can come across items the victim has received (as gifts) from the suspect, or additional evidence that sexual abuse really did happen (e.g., a child's diary, e-mail, etc.).

If the victimised child knows the suspect, is related to or is on friendly terms with him, or in some other kind of relationship with him, investigators often find little material evidence of the suspect's guilt. Most of the biological evidence is destroyed by the shower, or is unintentionally or out of embarrassment destroyed by the victim him- or herself. It is also important to consider the pressure felt by victims and other individuals, especially if the suspect is a family member and has been abusing the victim for a longer period of time (The Office of the State Prosecutor General of the Republic of Slovenia, 2003).

## 2.2 Personal evidence

Personal evidence is the evidence gathered by investigators from victims, suspects and anyone else who could know something relevant to the case (Dvoršek, 2003).

By *gathering reports from individuals* who could know something about the abuse (relatives of the victim, neighbours, friends, schoolmates, teachers, social workers, medical doctors, and other caregivers) investigators get information about the course of events/abuse. Individuals with information about the conditions in the victim's home and close surroundings, the offender's (technically called a suspect in the pre-criminal proceedings) attitude towards other people, his habits, the amount of time he spends with children, his hobbies and so forth, can shed light on the basic assumptions about him (Dvoršek, 2003). These informers can also give valuable information about the child's behaviour and verbal expressions at the time when the abuse supposedly happened. All of this information additionally supports a child's statement and illuminates his or her circumstances. Šugman (2000: 212) noted that when material evidence in child sexual abuse cases is insufficient, it is permissible to use indirect evidence, including written documents and other evidence, even though the author of these cannot be interrogated.

*Gathering information from the suspect* usually follows the analysis of the evidence already collected elsewhere. It should be considered that the suspect will, as soon as he begins to fear that his crime will come to light, try to destroy incriminating evidence. Therefore, investigators must proceed in conspiracy (Dvoršek, 2003). It all depends on their interview and interrogation tactics, how much and what kind of information they will get from the suspect. Investigators, of course, have to be familiar with which interrogation methods are acceptable and legal and which questions to ask (Maver et al., 2004). To acquire an admission of guilt in the pre-criminal or criminal proceedings is, after all, one of the goals of the criminal investigation. Investigators can also employ certain measures, early on in the pre-criminal process, to deflect the most typical defence strategies<sup>6</sup> used by suspects (Maver, 2000: 20). In cases with absence of material evidence the use of polygraph may also be relevant when assessing the credibility of suspect's statements<sup>7</sup> (Selič, 2003).

In order to *get information from the victim*, investigators must be thoroughly familiar with the relevant legislation and

<sup>6</sup> Maver (2000: 13) listed that some of the defence strategies are: a staunch denial of guilt or declaration of innocence; an accusation that the investigative and/or court proceedings are not fair; an attempt to minimise the consequences of the criminal offense; an appeal on the grounds of mitigating circumstance; a petition to make the criminal qualification milder; an attempt to transfer culpability to the victim or other individuals; an excuse on the grounds of diminished capacity; an effort to stall or delay criminal proceedings; a confession accompanied with the explanation that the offense was committed for »a higher cause«; other atypical defence strategies.

<sup>7</sup> The use of polygraph could also be useful in assessing the witnesses' statements.

must also know a lot about the different forms of child abuse. Furthermore, they must determine the characteristics of the offender, victim, and the environment where the criminal investigation is being conducted. Investigators must understand the relationship between a victim and his or her abuser (who is often someone whom the child knows well), and they must also be educated about the developmental stages of childhood and master techniques of interviewing children. In this, the interrogation room is a significant factor. When the child is in a familiar and pleasant place, he or she will tell more than in a formal and intimidating setting. In Slovenia, there are several child-friendly interrogation rooms (M. R., 2009) with video-cameras to record whatever happens during an interview. The videotape can be used as evidence in court, and can be viewed by expert witnesses, judges, prosecutors, and defence attorneys. Taped interviews protect children from having to undergo repeated interrogations and reliving the bad experience.

The Office of the State Prosecutor General of the Republic of Slovenia (2003) recognises that the personal and emotional trauma suffered by abused children poses a special problem for interviewers. If the trauma is too great, children often cannot or will not tell much, and each interview forces them to relive the abuse; it takes them a step back, creates a block and incapacitates them to speak about the traumatic experience. A child's inability to recount details of his or her abuse can prolong the judicial process, and it also means that the victim's testimony is not among the evidence. Another significant factor is the chronological distance from the criminal offense – family members, the victimised child and the parent who is not responsible for the abuse can decide against testifying in court or can even recant their accusation (The Office of the State Prosecutor General of the Republic of Slovenia, 2011). Garanzini (in Gothard, 1987) found that in 13% to 50% of all, victims recant their accusations or somehow change their first official statement, and the child's deposition is usually the only evidence in most cases of child sexual abuse. All decisions made in regard to the child's wellbeing and to the criminal investigation are, therefore, based on the child's »story« (Lamb, Hershkowitz, Orbach, & Esplin, 2009). The best evidence that child sexual abuse really did occur, is the victim's spontaneous, clear, consistent, and detailed (considering the child's age) statement (Adams in Herman, 2010). Baily and Baily (in Herman, 2010) stressed that children, those who do speak out about the (sexual) abuse they suffered, generally (with a few rare exceptions) speak the truth. The credibility of a child's deposition is evaluated by the court, where expert witnesses play an important role.

### 2.3 The role of expert witnesses

Expert witness testimony is crucial if there is a lack of other evidence (Gothard, 1987). A judicial expert testifies to

the duration of the abuse, its forms, level of violence, and the reasons why the abuse was not detected earlier and the child does not show signs of bodily harm or obvious psychological trauma. He or she also assesses the credibility of the victim's statement and tries to determine whether a child has been sexually abused.

Klettke, Graesser, and Powell (2010) found that the consistency between evidence and an expert witness's testimony has an important effect on the decision of the court regarding the credibility of the victim and the culpability of the suspect. With different words, our research also showed that an expert witness's testimony was less convincing only when the quality and consistency of the material evidence was low. In such a case even the expert's qualifications and references held no significant weight.

## 3 Research

### 3.1 Methodology and data gathering

Qualitative and quantitative research methods used in examining the research question of this study focusing on criminal investigation aspects of child sexual abuse evidence detection and collection provided a more comprehensive insight into the research problem and increased the validity and reliability of the data. The study conducted in 2010 and 2011 in Slovenia was divided into two parts. The first, a review of 70 randomly selected cases from 2003,<sup>8</sup> focused on examining police, prosecution and court records pertaining to all the stages of the procedure, from the detection to the conclusion in a pre-trial or trial procedure, provided a broader insight into this problem and helped identify the key problems and dilemmas in detection, investigation and providing of evidence of child sexual abuse. In the second part, a one focus group interview with prosecutors and criminal investigators of child sexual abuse cases was conducted to gain insight into the practice of investigating and proving child sexual abuse, as well as to learn, through their experience, about the problems they encounter in their work.

To analyse the records, we reviewed relevant literature and compiled a list to help us create a data model in Microsoft SQL Server 2008 which we also used for data storage. To collect data, we designed a user interface in Microsoft Access

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<sup>8</sup> The year 2003 was chosen because it was expected that randomly selected cases from this year would be resolved by a final judgement in year 2010 when we started the research. The permission to view the prosecutorial and judicial records was obtained only for the already archived cases.

and linked it to the data cache. Some analyses and statistical treatments were made in Microsoft SQL Server Management Studio 2008 in the Transact SQL language, used by the SQL Server. The chi-square tests, which show the probability that the association between two categorical variables does exist, and the Cramer's V, which indicates association power between those two variables, were done with SPSS software. In some instances, the results of our study are illustrated by examples; real case files which are numerically labelled so as to protect the anonymity of the individuals involved.

### 3.2 Research limitations

The study limitations were mainly the lack of data in some police, prosecutors' and court records, and the absence of judges in the focus group interview.

## 4 Research results

The study included the review of 70 randomly selected child abuse cases reported in 2003. A total of 196 cases were reported that year, which means, that our selection and review of 70 cases represents 36% of all the cases.

### 4.1 Criminal investigation activities

The most frequent investigative task was gathering information from individuals who knew about the abuse. This was done in 90% ( $n = 70$ ) of the analysed cases. The abused child was interviewed in 59 cases (84%,  $n = 70$ ). House searches and crime scene investigations were less frequent investigative activities.

#### 4.1.1 Interviews with children

The victims confirmed suspected child sexual abuse by their own statements in 51 cases or in 73% ( $n = 70$ ) of the analysed cases. In one case, the criminal file contained information that the interview with the child was recorded. In four interviews anatomically correct dolls were used, and in another four cases children drew pictures of genitals. In three out of five cases the child identified his or her attacker from a photograph.

To describe sexual abuse children most often used childish euphemisms for body parts, such as »weenie«, »wee wee«, »pee pee«, etc. In **Case Number 7** a little girl described her father's penis as »fat and short«. In **Case Number 12** a girl told investigators that the offender demanded she show him her »slit« and »pucker«. In **Case Number 16** a girl called her

father's penis »piggy« and said, »... daddy's piggy stank, he put it on my mouth and I threw up.« The offender then told her to, »spit on the piggy«, which the girl did, and then »the piggy spat at her«.

#### 4.1.2 Crime scene investigation

A crime scene investigation was conducted in three cases or in 4% ( $n = 70$ ) of the analysed cases. In **Case Number 2** the police seized, during a house search, a handwritten letter by the offender to the victim. In **Case Number 6** a forensic investigation was carried out on a neglected parking lot where the victim supposedly spat out the offenders semen; investigators also processed the car where the offense took place. The forensic analysis of the collected evidence confirmed that the biological trace found on the parking lot was indeed a mixture of the victim's and offender's bodily fluids, the pubic hair belonged to the offender. In **Case Number 15** the police secured the victim's clothes with traces left by the offender, and cigarette butts found at one of the crime scenes. An analysis of the collected semen, saliva on the cigarette butt, and pubic hair found in the apartment of one of the victims, all confirmed the offender's identity.

#### 4.1.3 House search

House searches were conducted in 13 cases or in 19% ( $n = 70$ ) of the cases. Investigators collected clothing (jackets, pants, underwear and other pieces of clothing belonging to the victim and suspect), objects which were used in the criminal act (e.g., a stick), photographic material, notebooks, diaries, cigarette butts, videotapes, audiotapes, digital video material, bianco postcards with images of child nudity, and pornographic magazines. In **Case Number 36** investigators collected two pairs of underpants with red stains on the inside of the crotch area. The stains proved to be the victim's menstrual blood because she was menstruating while having intercourse with the suspect.

#### 4.1.4 Confession of criminal liability

In the pre-criminal proceedings, 19% (13,  $n = 69$ ) of the accused suspects confessed to committing the criminal offense in question; among these suspects, eight held to their confession through the whole investigative and criminal proceedings, but one of them did not confess until the beginning of the criminal proceedings. In three cases the suspects confessed their guilt in the pre-criminal proceedings, but denied all culpability in the criminal proceedings and in court.

In four out of eight cases where the defendants confessed to committing acts of sexual abuse against children, and never



changed their statements during the whole criminal proceedings, the defendants were minors. Two minor defendants only partially confessed, which means they did confess to committing the act but tried to make light of their offense or did not agree with the victim about the type of abuse that was committed. They tried to convince the court that the abuse only happened a few times, even though the victim reported a significantly higher frequency.

The chi-square test showed us that the resulting p-value (Pearson's chi-square) is 0.424 and the resulting p-value using Fisher's Exact Test is 0.458. Therefore, since these are larger than  $\alpha = 0.05$ , we did not establish a relation between a defendant's confession and the court's ruling (Table 1). This proves that a confession does not influence the outcome of the trial, at least not significantly.

**Table 1:** Confessions and court convictions

The defendant confessed	Convictions				Total		Pearson's hi-square	p-value	Fisher's Exact Test (p-value)
	Yes		No						
	AF**	EF***	AF	EF	AF	EF			
Yes	4*	3.0****	4	5.0	8	8.0	.640	.424	.458
No	22	23.0	40	39.0	62	62.0			
Total	26	26.0	44	44.0	70	70.0			

\* Cases where juvenile offenders confessed to committing sexual abuse and were punished by disciplinary measures reserved for minors.

\*\* Actual frequency

\*\*\* Expected frequency

\*\*\*\* In this case the expected frequency is smaller than 5, and this had to be taken into consideration when we evaluated the credibility of the test and interpreted it. The test is most reliable if all the expected frequencies are above 5. If this condition is not met, columns and rows should be merged, so that we get higher frequencies, which then lower the number of »free« stages (Jesenko, 2001). In our case, however, this is not possible, as we only use a 2x2 matrix table. Therefore, the results of Fisher's Exact Test were calculated.

## 4.2 Material evidence

In the pre-criminal proceedings, material evidence was gathered in 26% of the cases (18, n = 70). The most common were biological traces on clothing and bedding as shown in Table 2. In four of these cases, biological traces were lifted from the victim's clothing and in three of them they were taken from the suspects clothing. The gathered biological evidence was semen and saliva. In **Case Number 6** investigators found a mixture of saliva and semen which the victim spat on the ground.

**Table 2:** The material evidence

Material evidence	n	%
traces on clothing and bedding	9	31.0
biological traces	5	17.2
signs of sexual intercourse	4	13.8
injuries and bruises	2	6.9
objects used in the abusive act <sup>9</sup>	2	6.9
other material evidence <sup>10</sup>	7	24.1
Total	29	100.0

### 4.2.1 Material and personal evidence in convictions

In 50% (n = 26) of the cases which ended with convictions, there was no material evidence. The most frequently found material evidence were: biological traces, physical trauma and marks on the victim's body (vaginal stretching, lesions, and other signs of sexual intercourse). Traces were often found on the victim's clothes. In three cases they were found at the scene of the assault.

<sup>9</sup> Weapon and stick which the suspect used to repeatedly beat the victim.

<sup>10</sup> Photos of naked children, letters exchanged by the suspect and victim, cigarette butts.

The chi-square test showed us that the p-value (Pearson's chi-square) is less than 0.001 (and p-value using Fisher's Exact Test is 0.001), therefore, we can confirm that there is a relationship between the existence of material evidence and the trial's outcome. The phi quotient is 0.427 (statistically typically at  $p < 0.001$ ), which means that existing material evidence does influence the outcome of the trial. The Cramer's V showed that the association power is 0.427 ( $p < 0.001$ ) (Table 3).

**Table 3:** Material evidence in convictions

Material evidence	Convictions				Total		Pearson's hi-square	Fisher's Exact Test (p-value)	Cramer's V
	Yes		No						
	AF*	EF**	AF	EF	AF	EF			
Yes	13	6.7	5	11.3	18	18.0	12.771***	.001	.427***
No	13	19.3	39	32.7	52	52.0			
Total	26	26.0	44	44.0	70	70.0			

\* Actual frequency

\*\* Expected frequency

\*\*\*  $p < 0,001$

Where there was no material evidence, the conviction was based on the victim's testimony (even if the defendant denied his or her involvement). In these cases it was important: which words the victim used to describe the abuse (e.g., »... something milky came out of his wee wee«), how the victim felt at the time of the deposition, and what the expert witnesses said. Data shows that the victims reported the sexual

abuse in 51 (76%) cases; of these 26 (51%) cases ended with a conviction, which means that in all the cases which ended with a conviction, the victims spoke out about the abuse.

#### 4.2.2 Expert witness testimony in convicted cases

The results of our study show that an expert witness's testimony was heard in 36 cases (51%), of which 20 (29%) ended with a conviction.

The chi-square test showed us that the p-value is less than 0.01 (and p-value using Fisher's Exact Test is 0.001), therefore, we can confirm that there is a relation between the existence of expert witness's testimony and the outcome of the trial. The phi quotient is 0.392 (statistically typically at  $p < 0.01$ ), which means that the expert witness's testimony does influence the outcome of the trial (Table 4).

**Table 4:** Expert witness testimony in convicted cases

Expert witness testimony	Convictions				Total		Pearson's hi-square	Fisher's Exact Test (p-value)	Cramer's V
	Yes		No						
	AF*	EF**	AF	EF	.427***	EF			
Yes	20	13.4	16	22.6	36	36.0	10.763***	.001	.392***
No	6	12.6	28	21.4	34	34.0			
Total	26	26.0	44	44.0	70	70.0			

\* Actual frequency

\*\* Expected frequency

\*\*\*  $p < 0,01$

## 5 Discussion

In the process of prosecuting child sexual abuse cases, it is most important to evaluate the credibility of the victim's testimony. In the focus group interview, it became evident that in most cases there are only two available statements, one made by the victim, the other by the defendant. The credibility of the victim's statement is evaluated during several interviews in which details about the most relevant facts should stay the same. A victim's statement is often supported by personal and indirect evidence that is gathered from individuals who are in a position to know details about the abuse or the child's conduct in the time the abuse presumably happened (Dvoršek, 2003). Šugman (2000) wrote that this type of proof is generally not allowed as the witness is speaking about something not experienced first-hand, but rather only heard about. Indirect evidence is unreliable and can violate the suspect's legal rights, especially the right to face the adverse witness in court. Because in child sexual abuse cases, statements made by indirect witnesses (individuals the child trusted and told about the abuse) in most cases provide the only existing evidence, besides the child's accusation, these can be admissible in court. This fact was also confirmed in the focus group interview, as prosecutors said they always collected statements from anyone who could confirm the victim's story (e.g., a neighbour who saw the child crying when the abuse supposedly happened, a school counsellor who the child confided in). It is vital to the criminal case that these witnesses do not back out, so it is important to educate them about court proceedings and make them aware of the importance of their testimony.

In child sexual abuse cases, material evidence is usually scarce because the incident does not get reported right after it had happened. The Office of the State Prosecutor General of the Republic of Slovenia (2003) confirmed that these cases are indeed reported relatively late. Mart (2010) wrote that the reason for so little material evidence is in the fact that almost all sexual abuse happens in private, so that only the offender and victim know what was done or what goes on. Most forms of child sexual abuse do not have physical consequences, the child does not suffer bodily harm (e.g., during groping, caressing, oral stimulation or exposure to visual sexual material). Even acts like penetration, which could leave physical traces, many times do not have physical consequences (Adams, Harper, Knudson, & Revilla, 1994).

Criminal investigation findings show that the most frequently collected physical evidence is: biological traces, physical signs of abuse, letters from the offender to the victim, and marks on the child's body (e.g., distended entrance into the vagina and other signs of intercourse). Material evidence was found on the victim's and/or suspect's clothing as well as at the crime scene.

A crime scene investigation was carried out in three of the reviewed case or in 4% of the cases, as was also confirmed by Brvar (2006), who found out that a crime scene investigation was done in 6.4% of all cases. On the other hand, house searches were done more frequently. In our sample of cases, it was done in 13 criminal cases. Brvar (2006) mentioned that between 2000 and 2002 house searches were conducted in five cases. Brvar (2006) also wrote that because of the very nature of child sexual abuse investigators do not expect to get much material evidence in the course of a house search and crime scene investigation, so they rarely do so. Our research also showed that house searches and crime scene investigations are relatively rare. However, these should still be processed even after a longer period of time because our research has shown that the outcome of the trial depends on the quality of the presented material evidence ( $p\text{-value} = 0.000$ ), while in the pre-criminal process the crime scene investigation and house searches during which evidence can be collected, proved to be the most significant.

Brvar (2006) noted that the most frequently carried out criminal investigation task was collecting information from individuals who could tell more about the victim and/or suspect. Our conclusions are the same; gathering reports from individuals who could know something about the abuse was done in 90% of all cases. Much more rarely suspect identification was done by a photo »line-up«; in our statistical sample, this happened in five cases, of which four were investigated (this is 6% of the cases), and in one case (1% of all cases) a criminal indictment was issued against an unknown offender. Brvar (2006) found out that suspect identification was carried out in 24% of the unresolved and in three resolved cases.

Our research showed that in cases when there was no material evidence, the court's verdict depended on the child's testimony, even if the defendant denied his involvement, because the defendant's admission does not have much influence on the outcome of the trial ( $p\text{-value} = 0.424$ ). The court also took into account what words the child used in his or her testimony, to describe the abuse (e.g., »... something like milk came out of his wee wee«), as well as his or her description of the suspect's penis. Also important were the victim's emotional state at the time of his or her deposition or testimony, and the expert witness's findings of signs of abuse on the victim's body, which could be taken as proof of the criminal act.

It is important that interviews with the victimised child are conducted professionally and that the child's age be taken into consideration when he or she is questioned. It is important how the victim is questioned. To get the most accurate information from the child, the examiner must control the course of the interview because his or her use of language



and the complexity of his or her speech greatly influence the child's narrative (Umek, 2009). If anatomically correct dolls are used during the interview, they should be used appropriately; many examiners bring them out only if the child needs some incentive to talk. The importance of these interviews with victimised children was also emphasized during our focus group interview. The participants stressed how especially important it is in proving a defendant's guilt that the victim's statement about the most significant facts stays the same no matter how many times he or she is questioned about them. We also learned that expert witness opinions are also very important. Our study indeed showed that testimonies given by expert witnesses do influence the outcome of the trial ( $p$ -value = 0.001). The focus group interview participants said that it was also important how confidently the expert witness presented his or her opinion in court. An expert witness's testimony is crucial in cases where there is no other evidence (Gothard, 1987). They must provide the information on the duration of abuse and its forms, as well as their findings on the child's credibility and the consequences of sexual abuse. Their report is most important in the court's evaluation of the credibility of the child's testimony where it also must be established whether the child told the truth or the accusation was false.

In Slovenia, not like abroad (e.g., in the USA), we do not have data about false accusations, as it is often very difficult to say whether the false accusation was made intentionally. Ceci and Bruck (1995) wrote that the majority of false accusations are made on the basis of unfounded suspicions, but there are a few cases where the false accusation was made intentionally. From the focus group interview we learned that the younger the children are the more likely it is they are telling the truth, and even if they are speaking about something that did not really happen, their statement cannot be labelled as an outright lie because in such cases children are usually just saying what they heard said by someone else or are repeating what they were told to say – it is easy to influence young children. Therefore experts, when evaluating the credibility of a child's deposition, must consider the possibility that adults have manipulated the child and taught him or her what to say to the examiner. Bruck, Ceci, and Hembrooke (2001) caution about this and emphasize how important it is to determine whether the child spoke out because he or she was under pressure to do so or because the abuse really took place. If it becomes evident that the child's accusation of sexual abuse was false, it should be determined what prompted it. What was the child's motive to lie? Perhaps fear of being reprimanded by his or her parents for coming home late, or perhaps the child is trying to conceal sexual abuse that happened at home by accusing a stranger.

In proving child sexual abuse, investigators and prosecutors face some other problems, for instance: the fact that a vic-

tim sometimes withdraws his or her cooperation in the middle of the criminal proceedings and declines to say anything more; and the fact that a witness, who, during the investigation proceedings, told what he or she saw and knew, but retracted his or her deposition in court. The participants in our focus group interview explained that the victim can withdraw out of fear of the accused party, or because the victim wants the (often lengthy) proceedings to end, or because the accused person is the only provider in the family. When a witness withdraws during the criminal proceeding, the key factor is at which stage the witness gave his or her deposition. If the witness's statement was acquired during the pre-criminal proceedings, but the witness later (during the criminal investigation) stated he or she has forgotten everything, then his or her deposition cannot be used in court unless specifically allowed by the judge. It is also important whether the witness had signed his or her official statement; a signed deposition has more »weight«. If the witness repeats his or her statement during the criminal investigation, but later retracts or denies it, his or her first statement stands, but it is officially noted that the witness changed his or her statement in the course of the criminal proceedings. Participants of the focus group interview also said that in the process of proving child sexual abuse the judge's tenacity is very important, because he or she must thoroughly study testimonies given by different judicial experts, the victim, the accused individual, and other involved parties, and must do a good job even if the trial takes years to conclude.

As we see, proving child sexual abuse is quite difficult and complex. During our focus group interview, it was emphasized that the prosecutor cannot issue a criminal indictment (even though he or she firmly believes that the sexual abuse had happened), when there is no evidence, except the victim's and suspect's statements, and if the expert witness is not able to clearly define the consequences suffered by the child because of the alleged abuse. These are the main difficulties in proving child sexual abuse. The participants in our focus group interview pointed to yet another obstacle, the lack of training. Their criticism was predominantly focused at judges who are not sufficiently trained to deal with violence against children and therefore find it hard to understand a victim's state of mind and the relationship between the victim and the accused individual. In the future, it would be beneficial if more joint training sessions for criminal investigators, prosecutors, and judges were organized and carried out in small groups where they could analyse specific cases and learn from one another. Among other topics (e.g., gaining the knowledge on child sexual abuse characteristics) the training should also aim at transforming clues into indirect evidence.

Investigating and proving child sexual abuse is an especially challenging area of work due to the nature of abuse and the fact

that victims are children (sometimes even babies). Cooley and Turvey (2007) stated that investigators should recognize the potential bias in the investigation and the impact of their expectations about the work of forensic experts. Their work should therefore be carried out as objectively as possible and they should be able to recognize situations in which they are directing the investigation only in one direction due to the atrocities suffered by the victim. Pavšič Mrevlje (2011a) detected that investigators in such crimes are exposed to traumatic events and/or its consequences,<sup>11</sup> where key strategies to deal with stressful situations are at most importance as well as the potential impact of post-traumatic symptomatology in (mental) functioning of investigators, which are not so obstructive that they would affect the quality of their work (Pavšič Mrevlje, 2011b).

## References

- Adams, J. A. (1995). The role of the medical evaluation in suspected child sexual abuse. In T. Ney (Ed.), *True and false allegations of child sexual abuse: Assessment and case management* (pp. 231–241). New York: Brunner/Mazel.
- Adams, J. A., Harper, K., Knudson, S., & Revilla, J. (1994). Examination findings in legally confirmed child sexual abuse: It's normal to be normal. *Pediatrics*, 94(3), 310–317.
- Bašič, K. (1993). Spolni napadi na otroke. *Revija policija*, 13(1), 36–51.
- Bruck, M., Ceci, S. J., & Hembrooke, H. (2001). Reliability and credibility of young children's reports: From research to policy and practice. In R. Bull (Ed.), *Children and the law - the essential readings* (pp. 126–171). Oxford: Blackwell.
- Brvar, B. (2006). Povzetki ugotovitev o rabi posameznih kriminalističnih opravil in intenzivnosti preiskovanja po posameznih kaznivih dejanjih. In M. Jager (Ed.), *Analiza učinkovitosti policijskega preiskovanja kaznivih dejanj z upoštevanjem razvoja kriminalistične stroke ter dokaznih standardov kazenskega postopka* (pp. 119–353). Ljubljana: Inštitut za kriminologijo pri Pravni fakulteti v Ljubljani.
- Carney, T. (2010). *Spolno nasilje: strateški in operativni postopki kriminalistične preiskave in samovarovanje potencialnih žrtev*. Ljubljana: Amaliotti & Amaliotti.
- Ceci, S. J., & Bruck, M. (1995). *Jeopardy in the courtroom: A scientific analysis of children's testimony*. Washington: American Psychological Association.
- Convention on the rights of the child*. (1989). Retrieved from <http://www.varuh-rs.si/inde.php?id=105>
- Cooley, C. M., & Turvey, B. T. (2007). Observer effects and examiner bias: Psychological influences on the forensic examiner. In W. J. Chisum, & B. E. Turvey (Eds.), *Crime reconstruction* (pp. 51–83). Amsterdam: Elsevier.
- Council of Europe convention on the protection of children against sexual exploitation and sexual abuse*. (2007). Retrieved from <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=8&DF=&CL=ENG>
- D. K. (2009). „Ptujski Fritzl“ padel v nezavest? *24ur.com*. Retrieved from <http://24ur.com/novice/crna-kronika/ptujski-fritzl-se-neuspesno-izogiba-sojenju.html>
- Drobnič, K. (1999). Identifikacija oseb in sledi s preiskavo DNK v povezavi z zavarovanjem biološke sledi pri kaznivem dejanju zoper spolno nedotakljivost. *Revija za kriminalistiko in kriminologijo*, 50(4), 307–317.
- Dvoršek, A. (2003). *Kriminalistična metodika*. Ljubljana: Visoka policijsko-varnostna šola.
- European convention on the exercise of children's rights*. (1996). Retrieved from [http://www.svetevrope.si/sl/dokumenti\\_in\\_publikacije/konvencije/160/index.html](http://www.svetevrope.si/sl/dokumenti_in_publikacije/konvencije/160/index.html)
- Gothard, S. (1987). The admissibility of evidence in child sexual abuse cases. *Child Welfare League of America*, 66(1), 13–24.
- Herman, S. (2010). The role of corroborative evidence in child sexual abuse evaluations. *Journal of Investigative Psychology and Offender Profiling*, 7(3), 189–212.
- Jager, M. (2006). *Analiza učinkovitosti policijskega preiskovanja kaznivih dejanj z upoštevanjem razvoja kriminalistične stroke ter dokaznih standardov kazenskega postopka*. Ljubljana: Inštitut za kriminologijo pri Pravni fakulteti v Ljubljani.
- Jesenko, J. (2001). *Statistika v organizaciji in managementu*. Kranj: Moderna organizacija.
- Klettke, B., Graesser, A. C., & Powell, M. B. (2010). Expert testimony in child sexual abuse cases: The effect of evidence, coherence and credentials on juror decision making. *Applied Cognitive Psychology*, 24(4), 481–494.
- Lamb, M. E., Hershkowitz, I., Orbach, Y., & Esplin, P. W. (2009). *Tell me what happened: Structured investigative interviews of child victims and witnesses*. West Sussex: Wiley – Blackwell.
- Lyman, M. D. (2002). *Criminal investigation: The art and the science*. New Jersey: Prentice Hall.
- M. R. (2009). Tudi v Ljubljani prijazna soba za zaslišanje otrok. *24ur.com*. Retrieved from <http://24ur.com/novice/slovenija/tudi-v-ljubljani-prijazna-soba-za-zaslisanje-otrok.html>
- M. R. (2012). Za ptujskega Fritzla enotna kazen 20 let zapora zaradi spolnih napadov in posilstva. *24ur.com*. Retrieved from <http://24ur.com/novice/crna-kronika/ptujski-fritzl-dobil-se-let-zapora-na-drugi-dve-hckeri.html>
- Mart, E. G. (2010). Common errors in the assessment of allegations of child sexual abuse. *The Journal of Psychiatry*, 38(3), 325–343.
- Maver, D. (2000). Tipične obrambne strategije in strategije preiskovanja. *Revija za kriminalistiko in kriminologijo*, 51(1), 12–23.
- Maver, D. et al. (2004). *Kriminalistika: uvod, taktika, tehnika*. Ljubljana: Uradni list Republike Slovenije.
- Maver, D., & Dobovšek, B. (2011). Foreword. In D. Maver, B. Dobovšek, & D. Frangež (Eds.), *Criminalistics/criminal investigation in Europe: State of the art and challenges for the future* (pp. 9–11). Ljubljana: Faculty of Criminal Justice and Security University of Maribor.
- Meško, G., Sotlar, A., & Winterdyk, J. (2011). Introduction. In G. Meško, A. Sotlar, & J. Winterdyk (Eds.), *Policing in Central and Eastern Europe: Social control of unconventional deviance* (pp. 7–10). Ljubljana: Fakulteta za varnostne vede.
- Modly, D. (1999). *Krivična djela protiv dostojanstva osebe i morala na štetu djece i maloljetnika: uloga stvarnih dokaza*. Sarajevo: Fakultet kriminalističkih nauka.
- The Office of the State Prosecutor General of the Republic of Slovenia. (2003). *Skupno poročilo o delu državnih tožilstev za leto 2002*. Ljubljana: Vrhovno državno tožilstvo.

<sup>11</sup> Such indirect exposure to trauma may elicit psychological responses, which are very similar to posttraumatic stress disorder, called secondary trauma (Pavšič Mrevlje, 2011a).

31. The Office of the State Prosecutor General of the Republic of Slovenia. (2011). *Skupno poročilo o delu državnih tožilstev za leto 2010*. Ljubljana: Vrhovno državno tožilstvo.
32. Pavšič Mrevlje, T. (2011a). Kriminalistični tehniki: potratvamska simptomatika in strategije spoprijemanja s stresnimi situacijami. In T. Pavšič Mrevlje (Ed.), *Slovenski dnevi varstvoslovja: zbornik prispevkov*. Retrieved from [http://www.fvv.uni-mb.si/dv2011/zbornik/socialno\\_psiholoski\\_vidiki\\_policijskega\\_dela/pavsic-mrevlje.pdf](http://www.fvv.uni-mb.si/dv2011/zbornik/socialno_psiholoski_vidiki_policijskega_dela/pavsic-mrevlje.pdf)
33. Pavšič Mrevlje, T. (2011b). Traumatic symptomatology and coping strategies in police work: insights from research concerning the way forward. In G. Meško, A. Sotlar, & J. Winterdyk (Eds.), *Policing in Central and Eastern Europe: Social control of unconventional deviance* (pp. 401–415). Ljubljana: Faculty of Criminal Justice and Security.
34. The Penal Code of the Republic of Slovenia [Kazenski zakonik Republike Slovenije]. (2008). *Uradni list RS*, (55/08).
35. Selič, P. (2003). Uporaba poligrafske metode pri obravnavi storilcev kaznivih dejanj zoper spolno nedotakljivost. *Revija za kriminalistiko in kriminologijo*, 54(2), 125–136.
36. Šugman, K. G. (2000). Otrok žrtev – otrok priča v kazenskem postopku. *Revija za kriminalistiko in kriminologijo*, 51(3), 207–215.
37. Šugman Stubbs, K., & Gorkič, P. (2011). *Dokazovanje v kazenskem postopku*. Ljubljana: GV Založba.
38. Umek, P. (2009). Kako dobre priče so zlorabljeni otroci ali kako dobri spraševalci so preiskovalci. *Revija za kriminalistiko in kriminologijo*, 60(1), 16–24.

## Posebnosti dokazovanja spolnih zlorab otrok

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Spolno nasilje nad otroki je problem družbe in posameznikov. Kljub vse večji občutljivosti sodobne družbe pri zaznavi tovrstnih kaznivih dejanj so otroci še vedno pogosto žrtve teh kaznivih dejanj. Pri tem imajo pomembno vlogo stereotipi in miti, ki zmanjšujejo odgovornost osumljenca ter krivdo pripisujejo otrokom, hkrati pa ovirajo odkrivanje, preiskovanje in dokazovanje spolnih zlorab otrok. Prispevek temelji na raziskavi o spolnih zlorabah otrok v Sloveniji. Podatke smo pridobili s pregledom policijskih, tožilskih in sodnih spisov iz leta 2003 ter z usmerjenimi skupinskimi intervjuji tožilcev in kriminalističnih preiskovalcev spolnih zlorab otrok. Omejitve raziskave so bile predvsem pomanjkanje podatkov v nekaterih policijskih, tožilskih in sodnih spisih ter neudeležba sodnikov pri usmerjenem skupinskem intervjuju.

V kazenskem postopku je najpomembnejše ugotoviti verodostojnost žrtvine izpovedi, saj v večini primerov ni materialnih dokazov. Razlogi za pomanjkanje materialnih dokazov so predvsem v tem, da tovrstna dejanja niso prijavljena takoj po storitvi, prav tako se večina spolnih zlorab zgodi v zaprtih prostorih v domačem okolju, kar še dodatno otežuje iskanje in zbiranje dokazov. Ugotovitve kažejo, da imata izvedensko mnenje in suverenost pričanja izvedenca na sodišču pomemben vpliv na rezultat sojenja. Še posebej v primerih, pri katerih ni drugih dokazov in ko je treba ugotoviti, ali je otrok bil spolno zlorabljen ali ne. Pomembna je tudi vztrajnost sodnikov, ki morajo dobro preučiti različna mnenja izvedencev, žrtve, obdolženca in drugih ter svoje delo kakovostno opravljati tudi v primerih, ki trajajo več let.

**Ključne besede:** spolne zlorabe otrok, dokazi, zbiranje dokazov, dokazovanje, kriminalistično preiskovanje

**UDK:** 343.98:343.5