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Disentangling sentencing for sexual offences: An analysis of Slovenian court decisions

Złożoność praktyki wymiaru kary za przestępstwa seksualne – analiza orzecznictwa sądów słoweńskich

Abstract: Sentencing for sexual offences demands heightened scrutiny due to the moral gravity, public sensitivity and enduring social consequences of these offences. This study examines sentencing practices in Slovenia through an analysis of court decisions from 2016 to 2021. Focussing on four offences – rape, sexual violence, sexual abuse of a defenceless person and child sexual assault – we identified a notable gap between the breadth of statutory sentencing ranges and the narrow portion of those ranges used in practice. Courts frequently imposed suspended sentences or custodial terms close to the statutory minimum and rarely used the upper limits, even in cases involving significant harm. Judicial reasoning was frequently minimal or inconsistent, with courts variably assessing aggravating and mitigating factors and occasionally even relying on controversial rationales. Our findings suggest systemic inconsistencies in sentencing for sexual offences in Slovenia and point to a broader tension between a traditionally restrained penal culture and the need for sentences that differentiate meaningfully between levels of harm and culpability in violations of sexual autonomy.

Keywords: sexual offences, sentencing, penal policy, punishment, judicial reasoning, Slovenia

Abstrakt: Wymiar kary za przestępstwa seksualne wymaga szczególnie wnikliwej analizy ze względu na ich ciężar moralny, wrażliwość tematu oraz długotrwałe konsekwencje społeczne. Niniejsze badanie analizuje praktykę orzeczniczą w Słowenii na podstawie wyroków sądowych z lat 2016–2021. Koncentrując się na czterech typach czynów zabronionych – zgwałceniu, przemocy seksualnej, wykorzystaniu seksualnym osoby nieporadnej oraz seksualnym wykorzystaniu dziecka – zidentyfikowaliśmy wyraźną rozbieżność między szerokim katalogiem ustawowych zagrożeń karnych a wąskim zakresem ich faktycznego stosowania w praktyce. Sądy często orzekały kary z warunkowym

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zawieszeniem ich wykonania lub kary pozbawienia wolności zbliżone do ustawowego minimum. Z kolei górne granice ustawowego zagrożenia karą były wykorzystywane rzadko, nawet w sprawach obejmujących poważną krzywdę. Uzasadnienia sędziowskie były często lakoniczne lub niespójne. Sądy w różny sposób oceniały okoliczności obciążające i łagodzące, a niekiedy odwoływały się nawet do kontrowersyjnych argumentów. Wyniki badania wskazują systemowe niespójności w orzekaniu kar za przestępstwa seksualne w Słowenii oraz szersze napięcie między tradycyjnie powściągliwą kulturą penalną a potrzebą wymierzania kar w sposób wyraźnie różnicujący stopień wyrządzonej krzywdy i winy w przypadkach naruszenia autonomii seksualnej.

Słowa kluczowe: przestępstwa seksualne, wymiar kary, polityka karna, kara, uzasadnienie sędziowskie, Słowenia

Introduction

Public rhetoric around sexual offences is often characterised by strong calls for harsher sentencing, framed as a necessary response to the violation of one of society's most proclaimed fundamental values: the right to sexual autonomy. In political and media narratives, sexual violence offences are portrayed as among the most serious crimes, and demands for higher sentences are frequent and forceful. Despite this heightened attention, however, we know surprisingly little about how courts actually sentence sexual offences in practice, particularly in Central and Eastern Europe. Empirical research on sentencing patterns in these jurisdictions remains scarce, and public expectations often rest on assumptions rather than verified knowledge.

This gap between public portrayal and judicial practice is not unique to Slovenia, on which our paper is based. In jurisdictions such as the United Kingdom and Australia, courts have been criticised for imposing non-custodial or short custodial sentences for serious sexual offences, including rape – sentences widely viewed as too mild, given the gravity of the crimes (Warner 2002). Surveys consistently show that the public perceives sentencing for sexual offences as too lenient, and concerns persist about inconsistency both within and across jurisdictions. Although statutory frameworks often prescribe severe maximum penalties, the actual sentences imposed tend to be much lower, and life imprisonment remains rare – even in aggravated cases. Reforms introducing mandatory minimum sentences, particularly for offences against children, have sought to address these issues, but critics argue that sentencing outcomes still fall short of public expectations and fail to fully capture the harms involved.

Moreover, public expectations are not, and should not be, a direct criterion for sentencing. Survey research repeatedly shows that laypeople's views on punishment are often based on simplified or incomplete case information and tend to be more severe at the abstract level than when respondents are presented with concrete cases (Roberts et al. 2003; Keijser, Koppen, Elffers 2007; Kääriäinen 2019). At the same time, criminal law is designed, at least in part, to reflect core societal values

about the relative seriousness of different harms. When there is a persistent and unexplained gap between how the law classifies sexual offences and how they are sentenced in practice, this can undermine the perceived legitimacy of the system and fuel pressure for reactive legislative change (Roberts, Plesničar 2015).

In this paper, we approach sentencing for sexual offences from the perspective of internal proportionality and consistency. What concerns us is not the pursuit of harsher penalties as such, but whether sentences meaningfully reflect differences in the gravity of offending and align with the serious harm recognised in the statutory framework. A sentencing system in which markedly different intrusions into sexual autonomy result in similar outcomes or in which sexual offences are sentenced more leniently than other offences of comparable statutory seriousness raises questions about equality, coherence and the communicative function of criminal law. From this vantage point, the narrow and uneven use of the existing sentencing ranges is not simply a matter of severity, but of principled and transparent judicial reasoning (Roberts, Plesničar 2015).

This broader international debate underscores two persistent tensions that this paper engages with: firstly, the tendency of sentencing practice to make narrow and uneven use of the available statutory ranges, and secondly, the gap between public perceptions and judicial decision-making in cases involving sexual offences. To this, we add a third concern: how sentencing reasons are constructed and how judicial narratives can either reinforce or challenge problematic stereotypes.

Against this background, it is striking that sentencing decisions, especially in sensitive cases such as sexual violence, remain among the most difficult and consequential judicial tasks. Sentencing demands important and far-reaching choices that profoundly affect not only the defendant, but also victims and sometimes the general public (Albonetti 1991; Keijser, Koppen 2007; Lundberg 2015). While sentencing practices in common-law systems have been extensively studied, much less is known about European contexts, and even less about Central and Eastern Europe (Drápal, Plesničar 2025).

Where empirical research has been conducted, findings suggest a more complex and sometimes troubling reality (Amirault, Beauregard 2014). Studies have highlighted that in addition to expected and intended circumstances considered at sentencing, sentencing for sexual offences may be shaped by persistent "rape myths": stereotypical narratives that shift responsibility from perpetrators to victims and subtly undermine the seriousness of sexual violence (Lees 1996: xii–xiii; Zydervelt et al. 2016a; Gray, Horvath 2018: 16). Critically, criminal justice professionals are not immune to these biases (Smith, Skinner 2017), and such influences may find their way into sentencing reasoning. These interpretive tensions raise difficult questions – not only about the appropriateness of sentences, but also about the symbolic function of punishment and the discomfort that judges may experience when sentencing these cases.

In Slovenia, initial research has revealed a significant mismatch between the severity suggested by statutory sentencing ranges and the actual sentences imposed

for sexual offences. Existing studies found that courts make limited use of the upper halves of statutory ranges, with a substantial proportion of suspended sentences even for offences classified as among the most serious in the Criminal Code, such as rape (Plesničar, Jankovič 2022; Plesničar, Jankovič, Briški 2022). While courts typically cite appropriate aggravating and mitigating factors, some judgments refer to unusual or problematic circumstances, raising concerns about the consistency and fairness of sentencing practices. Moreover, stereotypical narratives have been known to infiltrate judgments (Briški 2021).

In this paper, we aim to explore what truly happens at sentencing for sexual offences in Slovenia. By combining a concise quantitative analysis with an in-depth qualitative review of court judgments from 2016 to 2021, we seek to provide a fuller picture of judicial practice beyond assumptions and public rhetoric. While a moderate penal culture is generally considered a strength of Slovenia's justice system, emphasising proportionality and restraint, it may pose distinct challenges in the context of sexual offences, where the gravity of harm and societal expectations push in a different direction. Our findings reveal not only that sentencing is often confined to a narrow segment of the available range, but also that courts struggle to explain their decisions in ways that reflect the structure of statutory ranges, the seriousness of the harms described or the interpretive commitments expressed elsewhere in their reasoning. In the discussion, we consider how to understand this reality – not only by examining the formal reasoning provided by courts and the structure of statutory frameworks, but by interrogating the deeper interpretive and institutional dynamics that shape sentencing logic in cases of sexual violence.

In the remainder of the paper, we proceed as follows. In Section 2, we review the relevant literature on sentencing for sexual offences, focussing on statutory reforms, empirical patterns and the interpretive frameworks that courts use in practice. Section 3 outlines our methodological approach, including the structure of the dataset and the rationale for combining quantitative and qualitative analysis. Section 4 presents the results of our empirical study, detailing the sentencing patterns and judicial reasoning for four categories of sexual offences. In Section 5, we discuss our findings in relation to broader debates about sentencing consistency, judicial reasoning and the influence of stereotypes and extra-legal narratives. Finally, in Section 6, we conclude by reflecting on the broader implications of our findings for sentencing policy, judicial discretion and the place of sexual autonomy within criminal justice.

1. Literature review

A consistent trend in the literature is increasing punitiveness in responses to sexual offences, particularly evident in the United States during the decades be-

fore and after the turn of the century. Sexual offences became a central focus of criminal justice reform, with the intensification of punitive measures often being driven by moral panic or advocacy linked to victim protection movements (Ackerman, Sacks, Greenberg 2012; Hsieh, Hamilton, Zgoba 2018; Rydberg, Cassidy, Socia 2018). This shift was manifested through both the expansion of statutory sentencing ranges – especially for offences involving children – and additional post-sentence restrictions, including residency limits, sex offender registration and medical interventions (i.e. chemical castration) (Reyes 2003; Ackerman, Sacks, Greenberg 2012).

In parallel to increasing statutory severity, studies have highlighted a persistent gap between formal sentencing frameworks and sentencing outcomes. Despite the existence of formal sentencing frameworks designed to ensure consistency, actual sentencing outcomes for sexual offences are highly variable and influenced by the local context, gender and case-specific factors. This disconnect between sentencing frameworks and outcomes raises concerns about consistency, transparency and equality before the law (Levesque 2000; Amirault, Beauregard 2014; Butrus 2018; Rydberg, Cassidy, Socia 2018; Thompson et al. 2020).

Slovenian research has likewise highlighted a substantial gap between statutory sentencing ranges and the sentences actually imposed. Quantitative analysis of data from the Statistical Office of the Republic of Slovenia indicates that a large proportion of sexual offence cases result in suspended sentences, with overall sanctions that are considerably lighter than might be expected given the seriousness of the offences. This may partly reflect Slovenia's generally moderate sentencing culture, but the findings also suggest that sexual offences are sanctioned more leniently, even compared to other serious crimes such as robbery or grievous bodily harm. However, a full explanation of this disparity requires a closer examination of judicial reasoning – something beyond the scope of a quantitative study (Plesničar, Jankovič, Briški 2022). While these studies identify patterns of leniency and disparity, they do not explore in detail how judges reason about these cases. This paper builds on these findings by analysing the qualitative dimensions of sentencing decisions for sexual offences in Slovenia.

A related but distinct concern is the disconnect between public expectations and judicial decisions. Public opinion research consistently finds that members of the public favour significantly harsher penalties for sexual offences than courts typically impose, particularly in cases involving child victims or male perpetrators (King 2019; Socia, Rydberg, Dum 2019). These punitive attitudes are strongly shaped by misconceptions about the nature and prevalence of sexual offences and do not always align with the complexities of judicial reasoning or evidence-based sentencing practices (King 2019). High levels of public support have been recorded for severe sanctions, including long custodial sentences, strict post-release supervision and even measures such as public sex offender registries and residency restrictions (Comartin, Kernsmith, Kernsmith 2009). Demographic factors such as lower levels of education and income and being the parent of a young child

are also associated with support for more severe penalties (Comartin, Kernsmith, Kernsmith 2009). While courts have, in some cases, responded to this pressure by increasing the severity of sentences, they generally remain more moderate than public opinion would suggest and rarely apply the most extreme sanctions allowed by law (Cochran et al. 2020).

Reforms such as mandatory minimum sentences have sometimes been introduced in response to perceived leniency. Legislative reforms in countries such as Canada, the United States, South Africa and Australia were often motivated by a desire to block access to more lenient options (such as suspended or conditional sentences) and to reflect public and political pressure for harsher penalties, particularly in cases involving child victims (Baehr 2008; Bradfield 2016; Benedet 2019). These measures have led to immediate increases in sentence lengths, with judges and prosecutors adapting to the new rules (Albonetti 1991; Penney, Lehrer, Galan 2024). However, the resulting sentences often cluster at or near the mandatory minimum, and critics argue that such reforms limit judicial discretion and may produce outcomes that are disproportionately harsh or insufficiently responsive to the specifics of individual cases (Baehr 2008; Benedet 2019; Nir, Liu 2021).

As with other sentencing contexts, sentencing for sexual offences is shaped by a complex mix of legal, social and contextual factors, many of which extend beyond the formal boundaries of sentencing law. Sentencing outcomes in such cases often reflect high levels of judicial discretion, particularly in European systems without sentencing guidelines (Kemp, Varona 2022; Drápal, Plesničar 2025). While judicial decisions are expected to rely primarily on the seriousness of the offence and the offender's culpability, research has shown that a range of extra-legal variables can influence sentencing outcomes, often leading to inconsistency between judges and courts in otherwise similar cases (Pina-Sánchez et al. 2019). Factors such as the offender's ethnicity (Damiris et al. 2020), the offender 's gender (Socia, Rydberg, Dum 2019; Beeby et al. 2020; Damiris et al. 2020; Shields, Cochran 2020; Burgstedt et al. 2022) and even characteristics of the court or local community (Thompson et al. 2020) have been shown to shape judicial decision-making in ways that may undermine the principle of equality before the law.

Gender is a particularly significant source of disparity. Female sexual offenders are consistently sentenced more leniently than male sexual offenders, even when the severity of the offence and the characteristics of the victim are comparable (Socia, Rydberg, Dum 2019; Beeby et al. 2020; Damiris et al. 2020; Shields, Cochran 2020; Burgstedt et al. 2022). Judicial reasoning tends to frame female offenders as less culpable, emphasising their vulnerability, background trauma or psychological fragility, while male offenders are more likely to be portrayed as predatory or deviant (Damiris et al. 2020; Burgstedt et al. 2022). These disparities are evident across a range of offence types, including child sexual abuse (Socia, Rydberg, Dum 2019; Beeby et al. 2020; Shields, Cochran 2020), where courts sometimes focus more on the abuse of parental trust than on gender per se (Damiris et al. 2020).

Beyond the offender's characteristics, sentencing severity is also shaped by features of the offence and the victim. Sentences tend to be harsher in cases involving violence, child victims or male victims (Amirault, Beauregard 2014; Butrus 2018; Socia, Rydberg, Dum 2019). Offences against children are generally sanctioned more severely, both legislatively and in judicial practice (Amirault, Beauregard 2014). Public opinion is especially punitive in these scenarios (Socia, Rydberg, Dum 2019; Cochran et al. 2020), and judges may respond to this sentiment (consciously or not). Media coverage and broader public concern about sexual violence have also been found to influence judicial behaviour, sometimes leading to harsher penalties independent of changes in crime rates or legislative reforms (Cochran et al. 2020).

One particularly contested issue in sentencing in general, and in cases of sexual offences in particular, is how courts interpret and weigh expressions of remorse or the lack of a guilty plea. While remorse is often accepted as a mitigating factor, scholars warn that its assessment is inherently subjective and can easily be conflated with procedural cooperation (see Tudor et al. 2021; Field, Tata 2023). The absence of remorse or a guilty plea should generally not be treated as aggravating, yet some courts appear to penalise defendants who do not express the expected emotions (Bandes 2016; Proeve, Tanvir 2022; Field, Tata 2023) – raising concerns about fairness and the limits of judicial inference.

Beyond individual-level factors, broader systemic and contextual influences also shape sentencing outcomes. Local court size, jail capacity, political context and the characteristics of the surrounding community (such as religious or cultural homogeneity) have all been linked to variations in sentencing severity (Thompson et al. 2020). Even well-intentioned reforms, such as those aimed at protecting child victims or promoting consistent sentencing, may not fully neutralise these local disparities and may themselves become a new source of inconsistency. Moreover, sexual offence cases often give rise to "reactive legislation" – laws adopted in response to specific, high-profile events, despite broader criminal-law principles that caution against such ad hoc responses (Plesničar 2014; Plesničar, Jankovič 2022).

In addition to these factors, persistent cultural narratives about sexual violence, commonly known as rape myths, continue to influence judicial reasoning in some cases. These myths involve false or stereotypical beliefs about rape, its perpetrators and its victims, often shifting blame away from the offender and minimising the harm they cause (Lees 1996; Gray, Horvath 2018). Despite being empirically discredited, they remain deeply embedded in social attitudes and occasionally surface in judicial discourse (Zydervelt et al. 2016b; Smith, Skinner 2017).

Qualitative studies from the United Kingdom, Norway, Sweden and Slovenia have shown, through the analysis of written court decisions and courtroom observations, that myths and stereotypes about sexual violence can be found in sentencing decisions for sexual offences (Bitsch, Klemetsen 2017; Smith, Skinner 2017; Briški 2021; Wallin et al. 2021; Rinde et al. 2024). In the Slovenian context, a qualitative study examining judicial reasoning found that courts occasionally relied on stereotypical narratives when justifying sentencing decisions (Briški 2021).

In Norway, Bitsch and Klemetsen (2017: 184) identified an apparent sentencing hierarchy based on extra-legal factors, with rape by strangers in public places being punished most severely, and acquaintance or party-related rapes sanctioned more leniently. Other research also shows systematic reductions in sentences when the perpetrator had a prior intimate relationship with the victim, which scholars trace to lingering assumptions about the private nature of such harm (Rumney 1999; Bitsch, Klemetsen 2017). A recent study of Norwegian judgments compared sentencing outcomes in rape cases that included language consistent with rape myths (as defined by the Illinois Rape Myth Acceptance Scale) with cases that did not, and found that the former were associated with more lenient sentences – suggesting that the influence of rape myths remains a real and measurable concern (Rinde et al. 2024). These findings suggest that rape myths are not only socially resilient, but may continue to influence legal outcomes, even in jurisdictions that have undergone substantial legal and cultural reform.

The literature thus highlights several intersecting challenges in sentencing for sexual offences: discrepancies between statutory frameworks and judicial outcomes; divergence between public expectations and legal practice; and the influence of extra-legal and contextual factors, including gender, offender–victim dynamics and persistent cultural narratives such as rape myths. However, much of this research is drawn from Anglo-American or Northern European contexts, and few studies have explored these dynamics in detail within Central and Eastern European jurisdictions. This paper addresses this gap by examining how sentencing for sexual offences unfolds in Slovenia through a combined quantitative and qualitative analysis of court decisions.

2. Methodology

Our study examines sentencing practices in Slovenia for four specific offences: rape, sexual violence, sexual abuse of a defenceless person and sexual abuse of a child. The analysis is based on criminal case files and judgments from 2016 to 2021 obtained from Slovenian district courts.

Full-text judgments from first-instance and many second-instance courts are not publicly available in Slovenia, which necessitated direct requests to the courts. The initial sampling frame was drawn from a list provided by the Supreme State Prosecutor's Office. For each offence and each year, from 2021 to 2016, we aimed to include approximately 100 cases. Where fewer than 100 cases were available for a specific offence in a given year, all available cases were included. In total, 462 cases were requested from all 11 Slovenian district courts, of which 431 were received. These included 70 cases of rape, 82 of sexual violence, 38 of sexual abuse of a defenceless person and 255 of child sexual abuse.

To ensure that each case reflected a single unit of analysis, we disaggregated judgments involving multiple perpetrators or multiple victims. For example, a single judgment involving three co-offenders was treated as three separate cases, and the same approach was taken where multiple victims were involved. This process resulted in a final research sample of 498 cases.

The relatively low number of cases for some offence categories, particularly rape and sexual abuse of a defenceless person, is primarily due to the few convictions for these offences during the study period. We deliberately chose not to extend the sample further back in time, as older cases would be less reflective of current sentencing practices and might introduce legal or cultural variability that would undermine comparability across cases. It is also important to note that our sample includes only convictions; cases where the defendant was acquitted were not requested or received. While this sampling strategy would limit the scope of large-scale statistical modelling or predictive analysis, it is appropriate for the aims of this study, which relies on simple descriptive statistics and, more centrally, qualitative analysis of sentencing reasoning in established convictions.

The analysis combined both quantitative and qualitative methods. The quantitative component focussed on the characteristics of the offence, defendant and victim, the course of criminal proceedings and the type and length of the sanction that was imposed. The qualitative analysis employed a thematic approach described by Virginia Braun and Victoria Clarke (2019; 2021), involving a systematic process of familiarisation with the data, coding, identifying candidate themes and interpretative analysis. The process was primarily inductive, allowing themes to emerge from the data, but also informed by established sentencing frameworks and existing empirical studies. While certain themes varied among offence types, several core sentencing considerations emerged consistently across the dataset; these formed the focus of our analysis.

Both the quantitative and qualitative analyses were constrained by the structure of some judgments. In cases resolved through a guilty plea, reasoning is often reduced to a reference to Article 285c of the Criminal Procedure Act (ZKP), which permits limited reasoning when the accused pleads guilty. In other cases, where no appeal was lodged and no custodial sentence was imposed, reasoning may be omitted altogether under Article 368 ZKP (see also Drápal et al. 2024). In such instances, no analysis beyond the formal outcome was possible. Nonetheless, the overall sample provides a representative and robust insight into sentencing practices for sexual offences in Slovenia during the study period.

It is important to note that this research covers sentencing decisions taken under the legal regime in force prior to the 2021 amendment to the Slovenian Criminal Code (KZ-1), known as KZ-1H. The amendment introduced a consent-based definition for the sexual offences of rape and sexual violence, replacing the previous requirement of violence or coercion, and aligned Slovenian law more closely with international standards.

The basic form of the offence of rape since the reform (KZ-1: Art. 170) is sexual intercourse or an equivalent sexual act with another person without their consent;

it is punishable by 6 months to 5 years of imprisonment. If the offender uses force or threatens an attack (the former basic form of the offence), it now constitutes a qualified form, punishable by 1 to 10 years of imprisonment. The prescribed penalty for the qualified form is the same as before the reform, when this conduct constituted the basic form of the offence.

The new basic form of the offence of sexual violence (KZ-1: Art. 171) is any other sexual act not covered by rape, committed against another person without their consent; it is punishable by up to five years of imprisonment. If the offender uses force or threatens an attack (the former basic form of the offence), it now constitutes a qualified form, punishable by 6 months to 10 years of imprisonment. The prescribed penalty for the qualified form is the same as before the reform.

At the time this study was conducted, the new provisions had not yet been put into force or applied in practice. The cases analysed in this study thus involve offences committed under the former legal framework, which would now correspond to qualified (aggravated) forms of rape and sexual violence under the reformed code.

The statutory penalty ranges for the sexual offences examined in this study place them among the most serious offences in Slovenian criminal law. The prescribed range for rape (1 to 10 years' imprisonment), for example, is identical to those for manslaughter in sudden passion (KZ-1: Art. 117), particularly grievous bodily injury (KZ-1: Art. 124), bodily injury resulting in death (KZ-1: Art. 123(2)), the aggravated form of kidnapping involving a minor (KZ-1: Art. 134(2)), inciting a minor to suicide (KZ-1: Art. 120(2)) and torture (KZ-1: Art. 135a). Only a limited number of offences carry higher ranges, such as manslaughter (5 to 15 years), hostage-taking resulting in death (KZ-1: Art. 373(2)) or murder (15 to 30 years).

Although these ranges may appear comparatively low when viewed from jurisdictions with more punitive sentencing frameworks, they are fully consistent with Slovenia's historically moderate penal culture and with the structure of the Criminal Code more generally. Understanding this normative context is essential for interpreting our findings. The issue raised in this paper is therefore not the absolute level of statutory penalties, but the extent to which courts make use of the available range within Slovenia's established sentencing tradition.

3. Results

In this section, we present the main findings from our analysis of 498 convictions for sexual offences in Slovenia, combining quantitative insights with thematic qualitative interpretation. The results are structured by offence category – rape, sexual violence, sexual abuse of a defenceless person and child sexual assault – and distinguish between the statutory sentencing frameworks, the sanctions imposed in practice and the reasoning used by the courts.

Before turning to the results, some general clarification of Slovenian sentencing rules is necessary. Under the Slovenian Criminal Code (KZ-1), sentences are prescribed through statutory sentencing ranges. Courts impose a sentence within the limits set for each offence, taking into account the seriousness of the act and the offender's culpability. In doing so, they must consider both mitigating and aggravating circumstances. These are not exhaustively listed in the law, but are provided by way of example: the degree of the offender's guilt, the motives for committing the act, the extent of endangerment or violation of protected legal interests, the circumstances in which the offence was committed, the offender's previous conduct and personal or financial circumstances, the offender's behaviour after the act – particularly whether any damage has been compensated – and other circumstances relating to the offender's personality and the expected impact of the punishment on their future life in society. If the motive for the offence relates to the victim's nationality, race, religion, ethnicity, gender, skin colour, origin, financial status, education, social status, political or other beliefs, disability, sexual orientation or any other personal circumstance, it is considered an aggravating circumstance (KZ-1: Art. 49). In all other cases, both the identification and evaluation of mitigating and aggravating circumstances fall within the judge's discretion. Judges also retain broad discretion to impose a sentence below the statutory range or to replace a custodial sentence with a warning sanction, such as a conditional sentence or judicial admonition (KZ-1: Art. 57; 70).

When presenting quantitative data on mitigating and aggravating circumstances, we report the circumstances exactly as they appear in the written judgments and in the proportions in which they were used for each specific offence type. Most judgments cite a combination of mitigating and aggravating factors, but the frequency and type of circumstances vary considerably across cases and offences. Across the full dataset, courts explicitly mentioned at least one aggravating circumstance in 48% of cases and at least one mitigating circumstance in 49%, while 13% of all convictions included mitigation below the prescribed statutory minimum. These aggregate figures provide context for the more detailed, offence-specific patterns presented in the subsections that follow.

While statistical data allows us to identify broad sentencing patterns, the thematic analysis provides insight into how judges interpret and justify their sentencing decisions. Together, these findings reveal key trends and inconsistencies in sentencing practice, particularly around judicial discretion, the use of mitigating and aggravating factors and the occasional presence of problematic narratives.

3.1. Rape

3.1.1. Statutory sanctions and imposed sanctions

Rape carries some of the most serious statutory penalties of all criminal offences, and it is subject to intense public and political scrutiny. Yet, as the following analy-

sis shows, the sentences imposed in practice often occupy a much narrower and lower segment of the statutory range than the spectrum of harm recognised in the legal framework would suggest. This pattern is not problematic because many cases fall towards the bottom of the range – that is common in Slovenian sentencing more broadly and is generally seen as positive in discussions of punitivism. It is problematic because the upper parts of the range appear effectively unused, even where the facts reflect substantial harm or clearly aggravating circumstances. This under-utilisation of the statutory spectrum, rather than any general expectation of severity, is what warrants closer examination.

For the purposes of this paper, we use the term rape to refer to cases in which the perpetrator forced another person to engage in sexual intercourse or an equivalent sexual act through the use of force or threat of direct violence to life or limb, as defined under the former Article 170/1 of the Criminal Code (KZ-1), now Article 170/3. The prescribed penalty for this offence ranges from 1 to 10 years of imprisonment. Because the statutory minimum is less than 3 years, courts are permitted to impose a conditional sentence instead of actual imprisonment under Articles 57 and 58 of the KZ-1. This legal possibility was used in nearly one third of the cases in our sample: of the 79 rape convictions, 68% resulted in prison sentences, while 32% resulted in conditional sentences. In a smaller number of cases, courts also imposed additional sanctions, such as the deportation of a foreign national (4%), safety measures (1%) and conditional sentences with supervision (1%).

The average prison sentence was 21.7 months (SD = 13.7), ranging from 6 to 60 months. In the case of the shortest sentence – 6 months – the court reduced the penalty below the statutory minimum by applying the general mitigation provision. For conditional sentences, the average sentence was 14.1 months, with an average probation period of 4.4 years.

While conditional sentences, wherein the court imposes a sentence that will not be enforced if the offender does not reoffend during the probationary period, may appear lenient, their use should be viewed in light of the broader Slovenian sentencing context. Conditional sentences are commonly imposed in Slovenia, especially for first-time offenders and in cases where imprisonment is considered unnecessary for future crime prevention. With the exception of the most serious crimes, the conditional sentence remains a standard and widely accepted judicial response (Plesničar, Tripkovic 2024). Nevertheless, its significant use in cases of rape raises important questions about proportionality and the perceived seriousness of such acts in judicial practice, as further discussed below.

Only two safety measures were imposed in the rape cases analysed for this study: one involving a restraining order and prohibition of contact with the victim and another involving the confiscation of objects used in the offence. Because our sample includes only judgments of conviction, it does not cover cases in which the court imposed compulsory psychiatric treatment due to an offender's lack of criminal capacity.

3.1.2. Judicial reasoning of the sentencing decision

When analysing the reasoning used by courts for the sentences in rape cases, three patterns stand out: how courts assess the gravity of the offence, the role of mitigating circumstances and the treatment of aggravating circumstances.

3.1.2.1. Gravity

Courts frequently referred to the gravity of the offence when justifying the sentence, but their approach varied considerably. These references could be broadly grouped into three types of assessment.

Abstract or formulaic: The most common approach involved generic statements about the seriousness of rape as a grave act. In these cases, no specific features of the case were linked to the seriousness of the offence, and the gravity remained a formal observation rather than a substantive factor in sentencing.

Referencing statutes: In a number of cases, courts supported their assessment of gravity by referring to the statutory sentencing range. These judgments stated that the prescribed penalty reflected the seriousness with which the legislature regarded the offence, sometimes describing rape as a "most serious violation of the sexual integrity of an individual." Such references suggest that the court viewed the offence in relation to the broader hierarchy of criminal acts and acknowledged that the statutory framework itself was indicative of the harm and seriousness involved. However, even in these cases, courts rarely elaborated on how the statutory range translated into the specific sentence they imposed.

Context-specific: In some cases, courts assessed the gravity of the offence in relation to similar or comparable offences, or based on the degree of threat posed to the value being protected. These judgments often cited particularly severe or aggravated forms of rape, or highlighted specific features of the case that elevated the seriousness of the act, such as extreme violence or the victim's vulnerability. However, it is frequently unclear whether the court is treating gravity as an overarching evaluative category or simply subsuming it within the list of aggravating circumstances. This lack of conceptual distinction makes it difficult to determine how the assessment of gravity functioned within the overall sentencing logic.

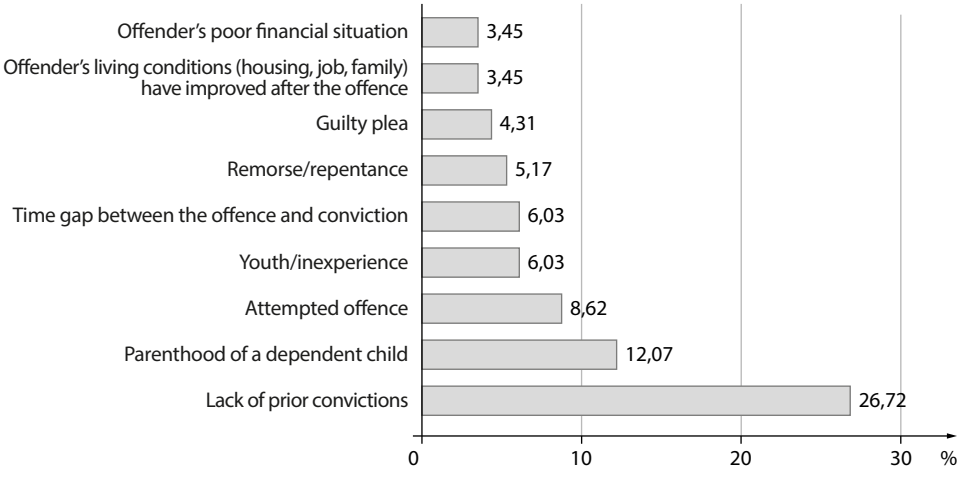
3.1.2.2. Mitigating circumstances

In most cases, courts cited a combination of mitigating and aggravating circumstances, with the mix varying considerably from one judgment to the next. The offender's lack of prior convictions was the most frequently mentioned mitigating circumstance, cited in just over a quarter of the cases. It was typically presented as the principal mitigating circumstance. However, this figure contrasts sharply with the data showing that 65% of all defendants had no previous

criminal record, suggesting that many courts either omitted this consideration or failed to explicitly articulate it in their reasoning. This gap may partly reflect the high number of judgments with limited or no reasoning, in which the influence of such circumstances cannot be discerned. Even when cited, the courts rarely explained how the absence of prior convictions affected the sentence they imposed.

The second most frequently mentioned mitigating circumstance, cited in around 12% of cases, was the offender's role as a parent, typically the father of a dependent child. The reasoning courts provided in these cases varied significantly. In some cases, the fact of parenthood was merely stated without elaboration. In others, courts noted that the offender had a duty to care for or support a minor, implying a social responsibility, but without evaluating the extent to which this duty was actually fulfilled. A smaller group of decisions provided more concrete context, describing the offender as actively caring for his children. These assessments were occasionally supported by statements from the defendant, witnesses or, rarely, external sources such as the social work centre.

Figure 1. Mitigating circumstances for rape



Source: Own elaboration.

Only those mitigating circumstances cited in at least four cases are shown in Figure 1. Among those mentioned more rarely, significantly diminished capacity and a prior long-term intimate relationship with the victim were each cited in three cases. Several others, such as poor health, a dysfunctional family background, less violence or the offender "giving up quickly," were referenced in only two cases each. Other circumstances appeared just once across the dataset: the victim's contribution to the offence, the offender's adverse childhood experiences, forgiveness by the victim, the fact that "the offender has been single for a long

time," the emotional distress of the offender when he realised that the relationship with the victim has ended, post-offence financial support for the victim, lack of further contact with the victim, personal circumstances and the fact that it was "a one-time event."

Some of these rarely cited mitigating circumstances raise normative concerns. In particular, the use of a prior intimate relationship with the victim as a mitigating circumstance is highly problematic. Moreover, while some courts treated it as evidence of reduced culpability, others viewed it as aggravating, emphasising the betrayal of trust involved in such cases. This inconsistency suggests a lack of principled reasoning and may reflect deeper discomfort with offences that blur public and private boundaries.

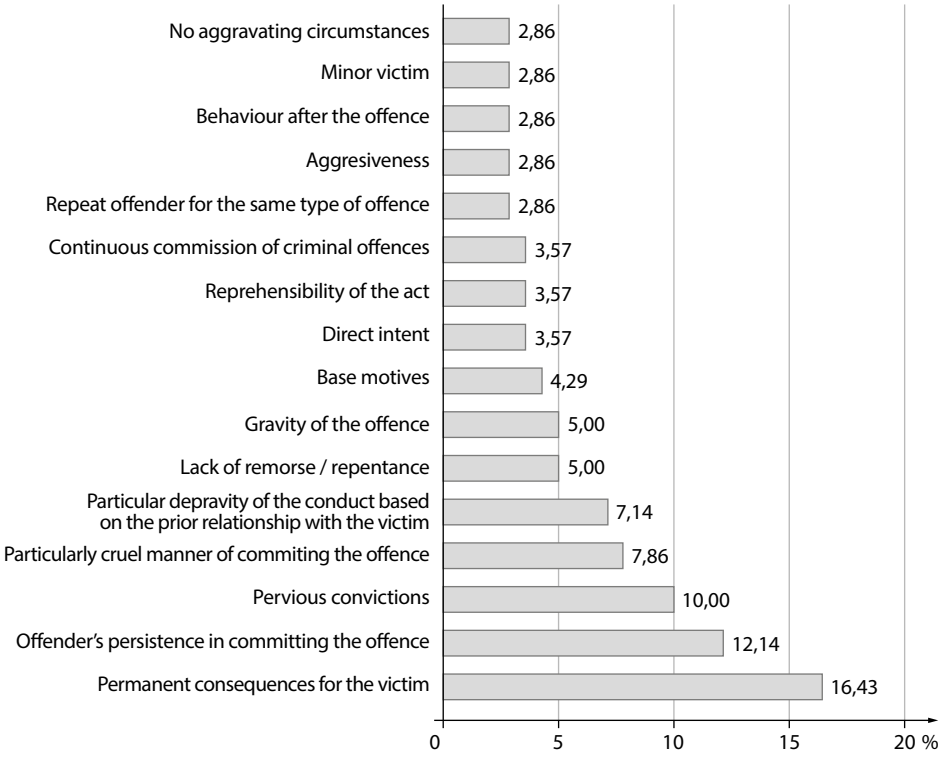
A few judgments also cited the victim's behaviour as a mitigating circumstance, for example, that the victim had "naively agreed to drive alone with the offender," that the offender "was in a relationship with the victim and went to the rented room voluntarily" or that "the victim voluntarily came to his apartment in the morning drunk." On one reading, these remarks may be seen as attempts to frame the case as less serious than other instances of the same offence. However, the way this "lower seriousness" is constructed is problematic: the reduced gravity of the offender's conduct is attributed to the victim's prior behaviour, which is unrelated to the core element of rape, namely sexual acts connected with force or coercion. As Lora Briški (2021) argues, such reasoning treats ordinary, socially accepted behaviour (visiting a friend, consuming alcohol or being alone with a trusted person) as a "contribution" to the offence, effectively shifting part of the responsibility for the harm onto the victim.

While some courts may imply that rape by a stranger is more serious, there is little justification for treating intimate partner rape as less serious. Indeed, one judgment explicitly took the opposite view, stating that the defendant had "grossly abused the victim's feelings when she voluntarily came to his home to have sexual intercourse with him because she was in love with him, while he used her as an object to satisfy his […] sexual fantasies."

3.1.2.3. Aggravating circumstances

The aggravating circumstances cited by courts can be grouped into three broad categories, as illustrated in Figure 2. The first includes circumstances relating to the nature and manner of the offence itself – for example, the persistence of the offender, the degree of violence used or the prolonged or repeated commission of the act. The second group concerns the offender's characteristics, such as prior convictions, being a repeat offender for similar offences or perceived aggressiveness. The third group focusses on the consequences for the victim, including psychological harm and the victim's particular vulnerability.

Figure 2. Aggravating circumstances for rape



Source: Own elaboration.

One circumstance that deserves closer scrutiny is a lack of remorse, which was cited in several judgments as aggravating. In our view, this is inappropriate in the context of the Slovenian legal system. Criminal procedure in Slovenia is designed as a single, integrated process, where the court rules on both guilt and sentencing in the same phase – except in cases where a guilty plea is entered and a separate sentencing hearing follows (Plesničar 2017; cf. Roberts, Petzsche 2025). Until a verdict has been rendered, the defendant is presumed innocent and enjoys the full protection of the privilege against self-incrimination. This includes the right to remain silent and to refrain from expressing remorse or confessing to the offence.

While remorse and a guilty plea may justifiably be considered mitigating circumstances, their absence should be treated as neutral – not aggravating. Using silence or passivity during the trial against the defendant risks undermining procedural fairness and conflating a refusal to admit guilt with a lack of moral awareness or contrition. This practice is particularly problematic in cases where the only evidence of a lack of remorse is the defendant's decision to not speak, rather than any active display of contempt or harm towards the victim.

3.2. Sexual violence

3.2.1. Statutory sanctions and imposed sanctions

In this paper, the term sexual violence refers to cases in which the perpetrator forced another person to engage in a sexual act that is not equivalent to sexual intercourse, using force or the threat of direct violence to life or limb, as defined under the former Article 171/1 of the Criminal Code (KZ-1), now Article 171/3. The prescribed sentence for this offence ranges from 6 months to 10 years of imprisonment (KZ-1: Art. 171/1). Since the minimum falls below 3 years, the court is legally permitted to impose a conditional sentence instead of imprisonment under Articles 57 and 58 of the KZ-1.

Of the 85 convictions for sexual violence in our sample, 58% resulted in prison sentences, 34% in conditional sentences and 8% in conditional sentences with supervision. Safety measures were imposed in two cases (2%). Among those sentenced to imprisonment, the average term was 13.8 months (SD = 10.7), with a minimum of 4 months and a maximum of 48 months. In the case involving a 4-month prison term, the court reduced the sentence below the statutory minimum by applying the general mitigation provision. For conditional sentences, the average term was 10.2 months, with an average probation period of 3.2 years.

Again, the use of conditional sentences in cases of sexual violence may seem lenient given the nature of the offence, but it is consistent with broader sentencing practices in Slovenia, where such sanctions are commonly imposed in a wide range of cases, particularly for first-time offenders.

In the two cases where safety measures were applied, the courts ordered the confiscation of objects used in the commission of the offence. As in the rape cases, the sample includes only judgments of conviction, and thus excludes cases in which the defendant was acquitted or found to lack criminal capacity and subjected to compulsory psychiatric treatment.

3.2.2. Judicial reasoning of the sentencing decision

When we analysed the reasoning of the sentencing decisions, we were particularly interested in the references the courts made to the gravity of the offence and the mitigating and aggravating factors mentioned as having influenced the sanction.

As in the rape cases, courts referred to the gravity of the offence in various ways. In some judgments, they simply reiterated the seriousness already defined by the legislature, citing the statutory sentencing range or describing the act as a serious breach of sexual autonomy. Others noted specific features of the case – such as repeated abuse or degrading conduct – but these references were often brief and not clearly connected to the sentence that was handed down. In several instances, the gravity of the offence was not treated as a distinct evaluative step,

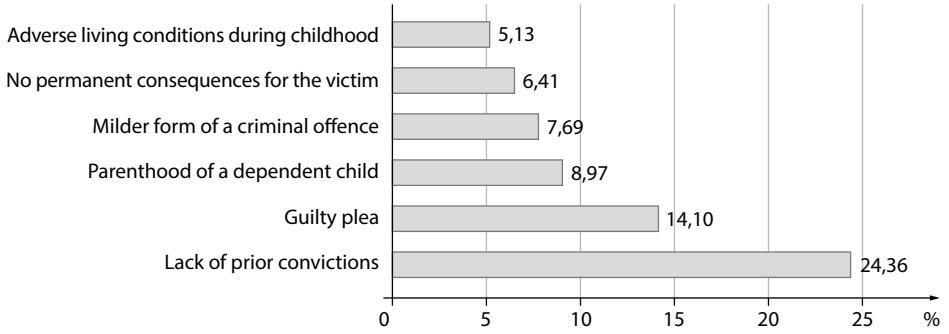
but was part of a list of aggravating circumstances, making it difficult to determine its independent influence on sentencing.

3.2.2.1. Mitigating circumstances

As with rape cases, the most commonly cited mitigating circumstance was the offender's lack of previous convictions, mentioned in nearly a quarter of all cases. This is broadly consistent with the general sentencing practice in Slovenia, where first-time offenders are often treated more leniently. Another frequently referenced mitigating circumstance was the offender's confession, cited in approximately 13% of the cases. In some of these judgments, the confession was framed as a sign of remorse or cooperation with the authorities, although courts seldom explained how it affected the severity of the sentence.

Only mitigating circumstances cited in at least four cases are displayed in Figure 3. Among those appearing less frequently, courts referred to the offender's stable social circumstances (e.g. housing, employment and family) or significantly diminished capacity, the time elapsed between offence and conviction, expressions of remorse and – in three cases –forgiveness from the victim. Other rare circumstances included attempted rather than completed offences, a low risk of reoffending and personal health or psychological factors. These were generally mentioned without detailed justification and seemed to serve as additive rather than decisive elements in sentencing.

Figure 3. Mitigating circumstances for sexual violence



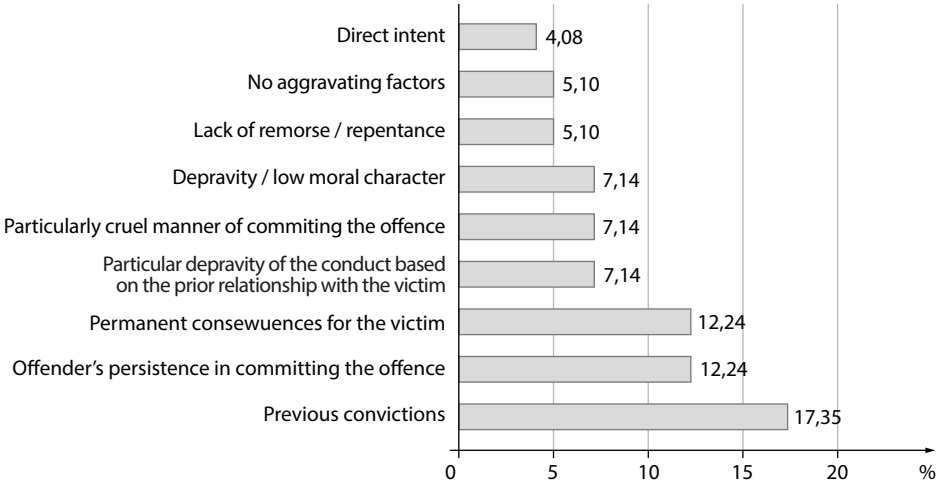
Source: Own elaboration.

Interestingly, in a handful of cases, courts also clarified what they did not consider a mitigating circumstance. For example, one judgment stated that although the offender "was a young person, what he did cannot be attributed to youthful recklessness, and therefore this circumstance was not considered mitigating." Such explicit exclusions suggest that judges sometimes consciously reflect on the limits of mitigation, even if these reflections are relatively rare.

3.2.2.2. Aggravating circumstances

Aggravating circumstances were more clearly articulated in judgments involving sexual violence than in some of the other offence types. As shown in Figure 4, the most common aggravating circumstance was the offender's criminal history, especially prior convictions for similar offences. In addition, courts often highlighted the nature and persistence of the conduct, referring to acts that were prolonged, repeated or particularly degrading. Some judgments described the offences as "systematic" or "prolonged assaults," emphasising the psychological toll on the victim and the abuse of power or control exercised by the offender. For instance, one court stated that the violence "was not a one-time act, but a continuous and systematic violation of the victim's sexual and general integrity."

Figure 4. Aggravating circumstances for sexual violence



Source: Own elaboration.

Other aggravating circumstances, though cited less frequently, included the offender's aggressiveness, the calculated or humiliating nature of the act and situational factors such as committing the offence during a probationary period or while under the influence of alcohol. A small number of courts also referenced a high degree of culpability, premeditation or the offender's base motives, such as a desire to dominate or humiliate.

As with rape cases, some of the aggravating circumstances overlapped conceptually with assessments of gravity, blurring the line between general seriousness of the offence and case-specific aggravation. However, courts appeared somewhat more explicit in sexual violence cases about what they found particularly reprehensible, especially when the offence involved sustained coercion or psychological harm.

3.3. Sexual abuse of a defenceless person

3.3.1. Statutory sanctions and imposed sanctions

Cases classified in this study as sexual abuse of a defenceless person involve situations where the offender exploited the victim's diminished capacity to resist – whether due to mental illness, a temporary mental disorder, severe intellectual disability, physical weakness or another condition that impaired their resistance. This offence is defined under Article 172 of the Slovenian Criminal Code (KZ-1) and carries a prescribed sentence of 1 to 8 years of imprisonment. Given that the minimum sentence is less than 3 years, courts are legally permitted to impose a conditional sentence under Articles 57 and 58 of the KZ-1.

Of the 40 convictions for sexual abuse of a defenceless person, 62% resulted in conditional sentences and 38% in custodial prison sentences. Safety measures were imposed in a small number of cases (3%). Among those sentenced to imprisonment, the average sentence was 19.4 months (SD = 9.6), with a minimum of 10 months and a maximum of 42 months. In the case involving a 10-month sentence, the court reduced the penalty below the statutory minimum of 1 year by applying the general mitigation provision. For conditional sentences, the average prison term was 15.8 months, with an average probation period of 5.4 years.

As with other sexual offence categories examined in this study, conditional sentences were used in a majority of cases. While this might appear inconsistent with the vulnerability of the victim population in this offence category, it aligns with broader sentencing patterns in Slovenia, where conditional sentences remain common, even in cases involving serious offences.

In the two cases where safety measures were imposed, courts ordered the confiscation of objects. As with the previous offence types, the sample includes only judgments of conviction and does not cover cases where the defendant was acquitted or found to lack criminal capacity and was subjected to compulsory psychiatric treatment.

3.3.2. Judicial reasoning of the sentencing decision

As with the other offence types, courts offered varying reasoning when explaining the sentencing decisions in cases of sexual abuse of a defenceless person. We focussed particularly on how judges articulated the gravity of the offence and how they identified and weighed mitigating and aggravating circumstances.

3.3.2.1. Gravity

References to the gravity of the offence followed familiar patterns observed in the rape and sexual violence cases. In some judgments, the court simply reiterated the

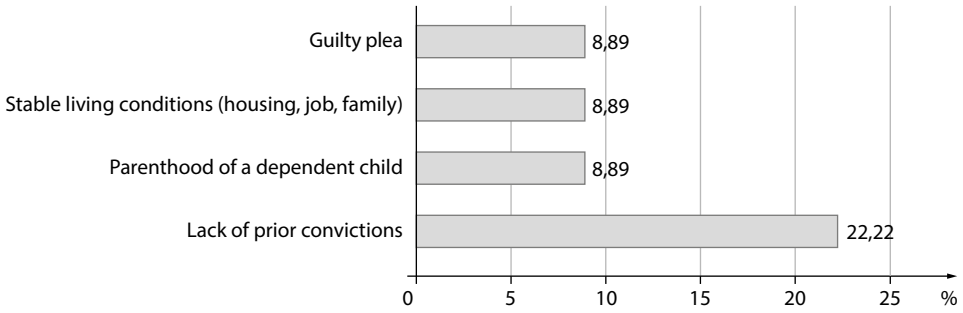
serious nature of the offence as established by the legislature, citing the statutory penalty range or characterising the conduct as inherently reprehensible. In other instances, gravity was framed in relation to the specific circumstances of the case or part of the list of aggravating considerations, making it difficult to distinguish its independent role in sentencing.

3.3.2.2. Mitigating circumstances

The most frequently cited mitigating circumstance, mentioned in over one fifth of all cases, was the absence of prior convictions. However, again, this figure contrasts with the much higher proportion of defendants with no criminal record (75%). This discrepancy may be partially explained by the large number of judgments with minimal or no reasoning, but it also suggests inconsistency in how courts apply or articulate this common mitigating circumstance. In one striking example, a court outright rejected the lack of prior convictions as a mitigating factor.

Other mitigating circumstances were mentioned far less frequently. Three were cited in 9% of cases each: the offender's parenthood (typically fatherhood) of a dependent child, a stable or orderly life situation and a guilty plea. As with the other offence categories, courts varied in how they assessed parenthood. In some judgments, it was noted merely as a fact, while others referred to the duty of care. A few courts went further, evaluating whether the offender had fulfilled this duty. One judgment, however, took a more critical stance: the court explicitly rejected the fact that the offender was expecting a child as a mitigating circumstance, noting that he "committed the offence at a time when he and his partner were expecting a child and he took advantage of the fact that his pregnant partner had left the party before him because she was tired," (whereupon the offender performed sexual acts on the victim without her consent while she was in a state of weakness).

Figure 5. Mitigating circumstances for sexual abuse of a defenceless person



Source: Own elaboration.

Only those mitigating circumstances cited in at least four cases are included in Figure 5. Less frequently mentioned ones were expressions of remorse (three cases), the offender's age, post-offence social stability, diminished capacity, time elapsed since the offence and apologies to the victim or victim's family (each cited twice). Additional rare circumstances included a low risk of reoffending, cooperation with law enforcement, health issues, substance abuse, the victim's contribution to the offence and – uniquely – "involvement in prostitution."

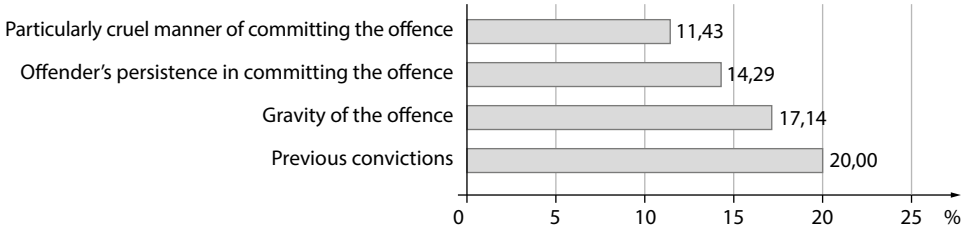
As with the offence of rape, we believe some of these more marginal circumstances raise important normative concerns. Particularly troubling is the use of "the victim's contribution" as mitigation. In one case, for example: "The court also took into account, as a mitigating factor, the conduct of the victim herself, who, as an adult, should have been aware of her responsibility for her own safety, but who, in contrast, became seriously intoxicated and, by her own conduct, exposed herself to the dangers that could arise in such a state." In our view, such reasoning constitutes clear victim-blaming and is inappropriate in judicial decision-making – especially given that the legislation explicitly affords intoxicated victims special protection because of their vulnerability (Briški 2021).

A contrasting and more principled stance was taken in another judgment, in which the court rejected the idea that the victim's vulnerability could justify or mitigate the offence. It emphasised that "a defenceless person is never the one who is to blame for sexual abuse" and that "such acts of the offender deprive the victim of their trust in the opposite sex, as well as the right to a carefree childhood or young adulthood." The same decision reminded the defendant that "the fact that you live with someone as a couple and have children with them does not give you the right to treat them badly, to insult them, to humiliate them, to limit them and to demand that they live up to your standards."

3.3.2.3. Aggravating circumstances

As in the sexual violence cases, the most frequently cited aggravating circumstance was the offender's prior criminal history. This was often considered particularly serious when the prior offences were of a similar nature.

Figure 6. Aggravating circumstances for sexual abuse of a defenceless person



Source: Own elaboration.

Figure 6 displays only those aggravating circumstances which were cited in at least four cases. Less frequently mentioned circumstances included the offender's lack of remorse or repentance, the abusive nature of the act given a prior relationship with the victim (each cited twice), base motives, lasting consequences for the victim, continuous perpetration, a minor victim, a high level of culpability, the fact that the offence occurred in a healthcare institution, the commission of multiple criminal acts and other contextual elements such as premeditation or a calculated attitude. Although each of these was only rarely cited, they reveal the diversity of judicial attention to circumstances that may heighten the severity of this type of offence.

3.4. Child sexual assault

Child sexual assault is criminalised under Article 173 of the Slovenian Criminal Code (KZ-1) and encompasses a range of conduct varying in gravity. The baseline offence (KZ-1: Art. 173/1) criminalises sexual intercourse or other sexual acts with a child under the age of 15. A qualified form (KZ-1: Art. 173/3) applies when the perpetrator abuses a position of trust (such as a parent, teacher or caregiver) to commit the offence. A privileged form (KZ-1: Art. 173/4) refers to less severe forms of sexual interference with a child under 15 that do not involve intercourse or comparable acts.

3.4.1. Statutory sanctions and imposed sanctions

The prescribed penalty for the baseline offence ranges from 3 to 8 years of imprisonment. The qualified form's range increases to 3 to 10 years, while the privileged form carries a lower range of 1 month to 5 years (KZ-1: Art. 173).

3.4.1.1. Baseline offence (Article 173/1)

Among the 135 convictions for the baseline offence, 57% resulted in custodial sentences, while 41% resulted in conditional sentences. A small number of cases involved a fine (3%), a conditional sentence with supervision (2%) or the imposition of safety measures (2%). The average custodial sentence was 26.5 months (SD = 14.2), ranging from 2 to 56 months. Notably, this average falls below the statutory minimum of 3 years, suggesting that courts often reduced sentences based on mitigating circumstances – most frequently, a guilty plea. This reveals a substantial gap between the statutory framework and actual sentencing practice.

3.4.1.2. Qualified form (Article 173/3)

In the 60 cases involving the qualified form of the offence, where the perpetrator held a position of trust, 78% of the defendants were sentenced to imprisonment,

while 20% received a conditional sentence. Safety measures and conditional sentences with supervision were imposed in a small number of cases (2% each). The average custodial sentence was 39.9 months (SD = 21.3), with sentences ranging from 12 to 96 months. Although the average sentence exceeds the statutory minimum, it still tends towards the lower end of the available sentencing range, even in cases involving aggravating circumstances.

3.4.1.3. Privileged form (Article 173/4)

Of the 98 convictions for the privileged form of child sexual assault, 66% resulted in conditional sentences, 26% in custodial sentences and 7% in conditional sentences with supervision. Safety measures were imposed in 4% of cases, and 1% involved the expulsion of a foreign national. Prison sentences imposed by the courts averaged 9.5 months with a standard deviation of 15.93 months. The minimum sentence was 2 months, and the maximum was 84 months.

3.4.2. Judicial reasoning of the sentencing decision

In examining the judicial reasoning behind sentencing for child sexual assault, we focussed on how courts assessed the gravity of the offence and identified the mitigating and aggravating circumstances that had influenced sentencing outcomes. Where relevant, we also highlight distinctions in how certain circumstances were applied to specific forms.

3.4.2.1. Gravity

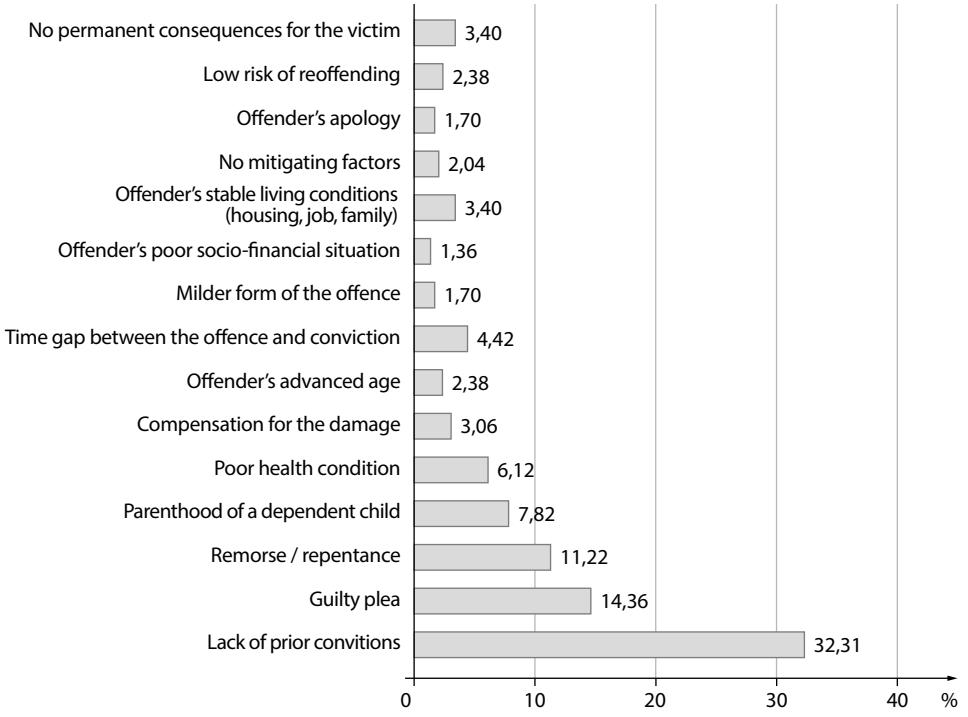
References to the gravity of the offence were present, though uneven across the different forms of child sexual assault. Courts most frequently addressed this explicitly in cases involving the qualified form of the offence (Article 173/3), where gravity was discussed in 43% of judgments and implied in a further 29%. This suggests a heightened recognition of the seriousness of abuse by individuals in positions of trust. In contrast, for the baseline form (Article 173/1), gravity was less commonly mentioned, though occasionally treated as an aggravating circumstance. In cases involving the privileged form (Article 173/4), references to the gravity of the offence were rare. These patterns indicate that courts tend to consider gravity more actively when institutional power or breach of trust is involved.

3.4.2.2. Mitigating circumstances

The most frequently cited mitigating circumstance across all forms of child sexual assault was the offender's lack of prior convictions. The second most common was the defendant's guilty plea. These findings are broadly consistent with patterns observed for other sexual offences.

In cases involving the baseline and qualified forms (KZ-1: Art. 173/1; 173/3), courts frequently referred to the offender's parenthood, most often the fatherhood of dependent children, as a mitigating circumstance. As in other offence categories, the way courts handled this varied. In some judgments, parenthood was stated plainly; in others, courts offered more detailed evaluations of the offender's caregiving role. A broader criminological rationale was also evident, with courts considering the potential impact of punishment on the offender's family. One judgment, for instance, noted that the offender "is the father of three minor children to whom he will still have a maintenance obligation, and that he is married to a wife who is a part-time low-income worker and who bears the burden of maintaining the family." The court concluded that a severe sentence could unduly harm the family and adjusted the sanction accordingly.

Figure 7. Mitigating circumstances for sexual assault of a child (baseline, privileged and qualified forms)



Source: Own elaboration.

In some judgments, courts even cited as a mitigating circumstance the fact that the offender was the parent of the child victim. While this may seem counterintuitive, the reasoning appeared to rest on the perceived consequences of sentencing for the child's family environment. Such reasoning suggests that

courts were balancing the harm caused by the offence with a concern for broader family disruption.

Only mitigating circumstances cited in at least four cases are included in Figure 7. Among those cited less frequently, there were some unusual and noteworthy examples. In several baseline form cases (Article 173/1) involving members of the Roma community, courts mentioned the offender's cultural background as a mitigating circumstance. They noted that the community is "subject to a certain and specific culture and rules, especially with regard to relations between men and women, but by no means one that could justify what [the offender] has done." These judgments suggest an attempt to consider the offender's social context, while simultaneously affirming the illegality and unacceptability of the conduct.

As with other offences discussed in this paper, we believe that some of the rarely cited mitigating circumstances are inappropriate and raise normative concerns. One particularly troubling example appeared in a case involving a stepfather who sexually assaulted his stepdaughter. The court considered as mitigating the fact that the victim's mother "did not protect her in the situation and did not react decisively enough, all of which created the circumstances that made it possible for the defendant to commit offences to the detriment of her daughter." While the degree to which this influenced the final sentence is unclear, the implication that the mother's behaviour somehow mitigates the offender's culpability is deeply problematic.

In contrast, several courts took a clear stand against attempts to mitigate responsibility by blaming the victim or her environment. In one baseline offence case, the court rejected the argument that the minor victim's behaviour contributed to the situation. It stated that "the fact that the victim herself at some point reached for a beer […] cannot be considered a mitigating circumstance, since the defendant, as an adult, should have discouraged the child from doing so – not encouraged her, as he did on [that] day, in the expectation of the victim's 'greater willingness'." In another case, the defence claimed that the offender had begun drinking excessively due to the stress of caring for his mentally ill father-in-law, and therefore lacked normal moral restraint. The court dismissed this line of argumentation, noting the defence's claim that the offender was "not normally inclined to such actions" but firmly rejecting any causal link between that stress and the offence.

3.4.2.3. Aggravating circumstances

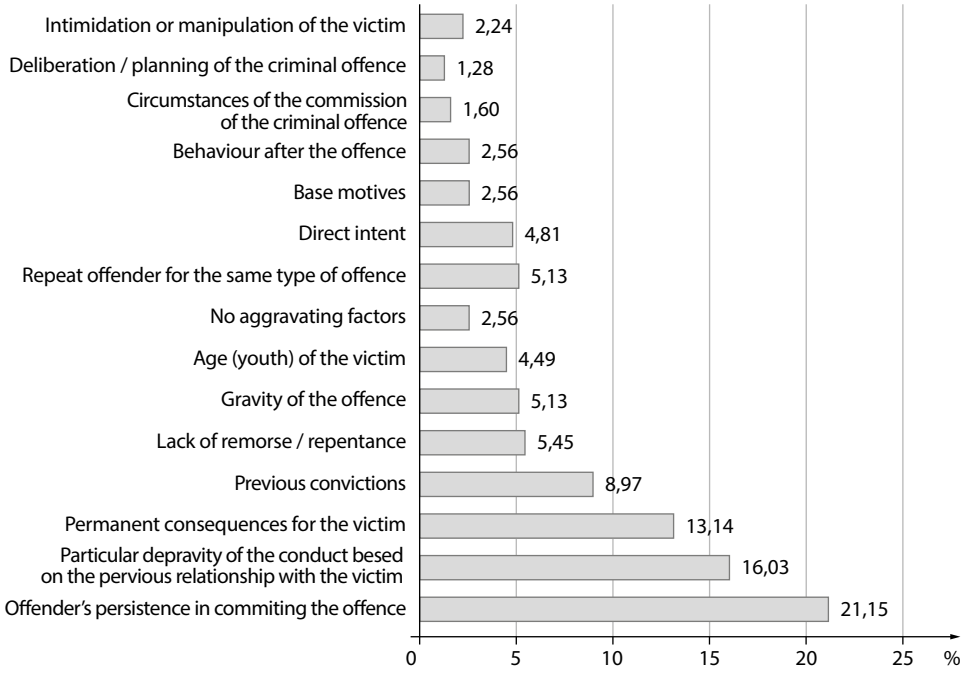
Courts cited a range of aggravating circumstances in sentencing decisions for child sexual assault, many of which appeared consistently across the baseline, qualified and privileged forms of the offence.

In cases involving the baseline and qualified forms (KZ-1: Art. 173/1; 173/3), the most frequently cited aggravating circumstance was the offender's persistence in committing the offence. In several cases, this referred to repeated acts over time or a prolonged pattern of abuse. Courts also often referred to the reprehensibility

of the offender's conduct, particularly in cases involving a breach of trust or a particularly degrading method of committing the offence. Lasting consequences for the victim, including psychological harm or disruption to the victim's development, were also commonly cited and framed as central to sentencing decisions.

In the cases regarding the privileged form (KZ-1: Art. 173/4), the most frequently cited aggravating factor was the offender's criminal history, especially recidivism for similar sexual offences. This was followed closely by references to persistence and the same concerns about the act's gravity and harmful consequences. Although the privileged form of the offence carries a lower statutory range, courts appeared to treat repeated conduct or substantial harm to the victim as reasons for imposing custodial sentences in these cases as well.

Figure 8. Aggravating circumstances for sexual assault of a child (baseline, privileged and qualified forms)



Source: Own elaboration.

Only those aggravating circumstances that were cited in at least four cases are included in Figure 8. Among those mentioned less frequently were a lack of remorse, base motives, high culpability and an institutional or professional setting of the offence (such as a healthcare institution). Other aggravating factors that appeared in one or two cases included long-term emotional manipulation, the offender's calculated or predatory behaviour, the conduct occurring during a probationary period and the victim's especially vulnerable age or state. As with

the sentencing for rape and sexual abuse of defenceless persons, some courts cited a lack of remorse as an aggravating circumstance. As explained above, in our view, this is problematic within the Slovenian legal context.

4. Discussion

This section brings together the empirical findings presented above and considers their broader significance for understanding sentencing practices for sexual offences in Slovenia. Drawing on both qualitative and quantitative analysis, we identified several recurring patterns: a persistent gap between statutory sentencing frameworks and judicial practice; minimal or inconsistent reasoning in sentencing decisions; contradictory treatment of similar circumstances across cases; and the continued, though limited, presence of problematic narratives about sexual violence. Together, these findings point to deeper structural tensions in how sexual offences are judged and sanctioned.

4.1. The sentencing gap: Normative expectations versus judicial practice

One of the more striking findings of our study is the substantial gap between statutory sentencing frameworks and the sentences imposed in practice. Despite the severity of statutory ranges, especially for offences such as rape or child sexual assault, sentences are frequently concentrated near the lower end of the range, both in terms of length and custodial nature. This finding is consistent with previous research in Slovenia (Plesničar, Jankovič, Briški 2022; Plesničar, Jankovič 2022) and resonates with international concerns about the perceived leniency of sentencing for sexual offences (Amirault, Beauregard 2014; Rydberg, Cassidy, Socia 2018; Thompson et al. 2020).

A particularly notable feature of Slovenian practice is the frequent use of conditional sentences for offences formally classified among the most serious in the Criminal Code. In our sample, suspended sentences were imposed in 32% of rape cases, and even more commonly in other offence types: 66% of sexual violence cases, 63% of cases of sexual abuse of a defenceless person and 74% of privileged child sexual assault cases; suspended sentences were also imposed in 42% of baseline and 22% of qualified child sexual assault cases. In several categories, then, the conditional sentence was not only common, but the predominant sanction.

Even when custodial sentences were imposed, they typically fell toward the lower end of the statutory range. With the exception of the privileged form of child sexual assault, the upper half or upper third of the statutory sentencing range was rarely used. Several judgments even imposed prison terms below the statutory minimum by applying general mitigation provisions without clearly distinguishing

between ordinary and special mitigation. This suggests a reluctance to use the full statutory spectrum, even when the facts of the case include elements that would ordinarily be regarded as aggravating.

These findings are broadly consistent with previous Slovenian research comparing sentencing across offence categories. Studies show that sexual offences attract proportionally more conditional sentences than other offences with similar or identical statutory frameworks, such as robbery or grievous bodily harm (Plesničar, Jankovič 2022; Plesničar, Jankovič, Briški 2022). More general sentencing analysis indicates that when penalty ranges are low, Slovenian courts tend to use the whole range; when ranges are high, sentencing gravitates towards the minimum. What appears distinctive in the context of sexual offences is not only this general tendency toward lower-range sentencing, but the almost complete absence of sentences in the upper parts of the range, even in cases involving grievous harm. For other serious offences with comparable statutory gravity, for example robbery, courts appear more willing to use higher segments of the sentencing range when the facts justify it (Plesničar et al. 2023). Comparative findings from other jurisdictions further confirm that Slovenian practice is unusually compressed towards the bottom of the range (Drápal forthcoming).

The gap between statutory gravity and imposed sentences becomes even clearer when considering the nature of the underlying conduct. Some cases in our sample involved limited physical coercion or less intrusive conduct, for which lower-range sentences are unsurprising. However, the dataset also contains cases involving substantial force, repeated assaults, exploitation of highly vulnerable victims or other clearly aggravating features. These more serious cases were often sentenced in the same narrow band near the statutory minimum or resulted in conditional sanctions. This indicates that the overall concentration of sentences at the lower end cannot be explained solely by the "mildness" of the underlying conduct. Rather, it reflects a structural tendency to under-utilise the statutory framework even where the facts might justify a more graduated or differentiated response.

Part of this leniency can likely be attributed to procedural dynamics. Guilty pleas are treated as a strong mitigating factor in Slovenia, and a large number of cases ended with a guilty plea, especially those involving child victims (Plesničar, Lipovac 2026 forthcoming). While this practice is rooted in principles of procedural efficiency and reduced victim trauma, its sentencing effects are substantial (Tata, Gormley 2012; Yan, Bushway 2018; Roberts, Pina-Sánchez 2021). Slovenian law provides broad discretion on the weight of a guilty plea and limited guidance on how it should interact with the severity of an offence (Roberts, Plesničar 2015), resulting in highly variable reduced sentences.

Another contributing factor may be Slovenia's generally moderate penal culture. As noted in earlier studies (Flander, Meško 2016; Plesničar, Tripkovic 2024; Drápal, Plesničar 2025), Slovenian courts rarely impose sentences near the statutory maximum, even in cases involving serious harm. This tendency towards restraint may also shape sentencing for sexual offences. Moderation in sentencing

is not inherently problematic. Indeed, Slovenia's penal restraint is often cited as a strength of its criminal justice system. The challenge arises where moderation becomes indistinguishable from a lack of differentiation, particularly in offences characterised by significant, long-term violations of sexual autonomy.

What our findings reveal, therefore, is not mere restraint, but a pattern of compressed and inconsistently differentiated sentencing for sexual offences. When compared to other serious crimes such as robbery or homicide, where courts more readily use higher portions of the sentencing range (Plesničar et al. 2023; Plesničar, Jankovič, Briški 2022), the near absence of upper-range sentencing in sexual offence cases becomes striking. While lenient sanctions may be understandable for minor property crimes or first-time offenders, sexual offences present qualitatively different concerns due to their moral gravity, the vulnerability of victims and the enduring nature of the harm. The fact that sentencing rarely even enters the upper half of the available range, and that sentences are often suspended, suggests a disconnect between statutory definitions, judicial practice and broader understandings of sexual harm. At the same time, legislative responses that raise statutory maxima without addressing the underlying sentencing culture risk inflating symbolic expectations without altering practical outcomes.

While the tendency towards lower-range sentencing is significant on its own, it is compounded by the limited and sometimes inconsistent reasoning used to justify these outcomes. The following section examines the qualitative patterns in judicial reasoning, including the treatment of aggravating and mitigating factors and the occasional reliance on problematic or stereotypical narratives.

4.2. Reasoning deficits: Missing, minimal or unjustified explanations

A central finding of this study concerns not just the leniency of sentencing outcomes, but the lack or weakness of judicial reasoning that accompanies them. In many judgments courts provided no written justification at all, or relied on formulaic and minimal explanations. While this is procedurally permitted in Slovenia under the Criminal Procedure Act when the sentence is non-custodial and not appealed (ZKP: Art. 368), the widespread absence of reasoning nonetheless raises important concerns about transparency, accountability and the symbolic function of sentencing (Roberts, Plesničar 2015).

Even when reasoning was present, it often lacked depth (cf. Drápal et al. 2024). Courts frequently cited the gravity of the offence in abstract or formulaic terms, without linking this assessment to the specific characteristics of the case or to the sentence being imposed. More importantly, a stark inconsistency emerged when we combined the quantitative findings on sentencing levels with the qualitative analysis of judicial language. Courts often described the offence in severe moral and legal terms, yet imposed sanctions that fell well below what such descriptions might imply. In cases of rape, for example, judgments stated that the offence con-

stitutes "the most serious violation of the sexual integrity of an individual" or that it is "one of the most serious violations of an individual's intimate sphere." One court even described rape as "an extremely reprehensible, negative and immoral act of extreme social danger. The gravity and intensity of the social danger make it one of the more serious offences, as already foreseen by the legislature with the determined sentencing range." In that same case, however, the court imposed a custodial sentence of only one year per rape, well below the mid-point of the statutory range.

These examples are not isolated. Across all offence categories, we found numerous instances where the severity of judicial language did not align with the actual sentence. This dissonance suggests that expressions of condemnation and gravity may function more as performative statements than as genuine determinants of punishment (cf. Tata 2020). As such, they risk undermining the communicative function of sentencing, which is meant to convey to the public and to the parties involved why a particular punishment was imposed (Duff 2003; 2009).

Further compounding this issue is the courts' failure to clearly distinguish between regular mitigating circumstances and "special mitigation" – the legal mechanism allowing sentences below the statutory minimum. In several cases where the sentence fell below the prescribed minimum, courts did not explain whether this was due to special mitigation, nor did they identify the threshold of exceptional circumstances that would justify such a reduction. The absence of this distinction introduces legal ambiguity and contributes to inconsistency across cases, especially when similarly situated offenders receive different sentences with no clear justification.

These reasoning gaps are especially troubling given the high social and legal stakes associated with sexual offences. In a system where sentencing practice already diverges significantly from statutory intent, the absence of transparent, reasoned explanations risks undermining the legitimacy of the process itself. When courts claim to treat offences as gravely serious but impose short, conditional or below-minimum sentences, this sends contradictory messages – not only to the parties in the case, but to society at large.

In sum, the inconsistency between the stated reasoning and the actual sanctions, combined with the frequent lack of reasoning altogether, calls into question whether sentencing in these cases is being applied in a principled and accountable manner. It also reinforces the need for more structured reasoning practices, especially when courts significantly depart from (very broad) statutory expectations, to ensure that sentencing decisions are not only legally sound, but also publicly credible.

Beyond these general deficiencies in sentencing rationale, our analysis also reveals considerable variation in how courts interpret and apply specific mitigating and aggravating circumstances. These inconsistencies have important implications for both fairness and transparency.

4.3. Uneven weights: Inconsistent use of mitigation and aggravation

Another troubling finding of this study is the inconsistent and contradictory use of mitigating and aggravating circumstances across cases. Courts not only varied in whether they took particular circumstances into account but, more strikingly, often treated the same circumstance differently – sometimes as mitigating, sometimes aggravating and sometimes not at all. This variation extended beyond the expected individualisation of sentencing and, in our view, raises deeper concerns about coherence, fairness and equality before the law.

4.3.1. Same circumstance, opposite effect

A key example is the existence of a prior intimate relationship between the offender and the victim. In several rape cases, the courts explicitly cited the prior relationship as a mitigating circumstance. In other judgments, this effect was only indirectly observable – through lenient sentences or the absence of aggravating commentary. In contrast, other courts treated the same circumstance as aggravating, emphasising the betrayal of trust and the particular harm caused by violating the sexual autonomy of someone close to the offender. These opposing interpretations highlight not only the absence of a shared interpretive framework for intimate partner sexual violence, but also fundamentally different normative assumptions about the nature of sexual harm. Similar contradictions have been observed in other jurisdictions (Bitsch, Klemetsen 2017; Wallin et al. 2021).

Moreover, this inconsistency is not merely semantic: it has structural effects on how offences are legally constructed and sentenced. Slovenian courts frequently treat multiple sexual acts committed over time against the same intimate partner as a single unified offence, even when those acts span weeks, months or years. While this approach may be procedurally efficient, its impact is significant: courts often impose sentences comparable to those for a single incident, rather than reflecting the cumulative gravity of repeated assaults. The statutory sentencing range provides ample room to adjust for this, but our findings show that courts do not use that option. In effect, offenders who commit repeated sexual assaults against a partner may be punished more leniently than those who commit a single act against a stranger. This creates a distorted sentencing hierarchy, implicitly treating harm within intimate relationships as less serious or less punishable – despite ample evidence that such assaults can be equally, if not more, traumatic.

Another circumstance treated inconsistently is the offender's lack of prior convictions. Although 65%–75% of the offenders in our sample had no prior criminal record, courts recognised this as a mitigating circumstance in only a minority of judgments. In some cases, this was used as justification for special mitigation, enabling the imposition of sentences below the statutory minimum. In other cases, however, it was dismissed entirely. One court, for instance, explicitly

stated: "The court did not take this [lack of previous convictions] as a mitigating circumstance, as all persons are expected to lead an immaculate life and refrain from committing crimes."

Such divergent assessments of the same circumstance are problematic not only on a case-by-case basis, but also from a systemic and rule-of-law perspective. It leads to unjustified differences in the treatment of offenders in otherwise similar circumstances, raising concerns about equality before the law (cf. Drápal, Plesničar 2025). Moreover, this inconsistency points to an unresolved normative question at the heart of sentencing theory: Should the absence of prior offences be treated as a neutral baseline, since it is expected of all citizens? Or should it be acknowledged as a positive marker of character, deserving of leniency because the individual complied with legal and social norms until this offence? Without clear jurisprudential guidance or consensus on this point, courts continue to apply conflicting standards, which undermines the coherence and credibility of sentencing practice.

A third example is the offender's role as a parent, typically a father of dependent children. Some courts cited this as a mitigating circumstance with little or no elaboration. Others noted the offender's duty to support their family, but did not assess whether that duty was being fulfilled. A few others cited specific evidence that the offender was actively caring for their children – sometimes in contrast to a previously unsettled living situation, sometimes also stating the source for this assessment, such as statements from the perpetrator, witnesses or – in one case – a social work centre. The degree of factual inquiry and normative weight placed on this circumstance thus varied considerably.

The time elapsed between an offence and the sentencing was also treated inconsistently. In some cases, courts considered long delays between the offence and conviction (without further offending) as evidence of reduced risk or social reintegration, and thus mitigation. In others, this circumstance was not mentioned at all, or its relevance was dismissed.

4.3.2. Aggravating/mitigating: Unstable categories

Even where courts used more conventional sentencing logic, the categories of aggravation and mitigation remained unstable. A prime example is the way courts assessed the consequences of the offence for the victim, one of the most frequently cited aggravating circumstances across all offence types. These consequences included psychological harm (often substantiated through expert reports), physical injury or illness (e.g. HIV infection) or broader social fallout (such as the victim being excluded from a shared household where the offender was present).

However, courts varied considerably in how they assessed the existence and intensity of these consequences. Some grounded their evaluations in concrete evidence, citing expert opinions or trial testimony. For example, one judgment noted that the offence "left consequences on the victim, including emotional

distress, which was also evident from her testimony at the main hearing." Others relied on generalised assumptions, such as the court which concluded that "[t]he serious and reprehensible offence […] undoubtedly left a serious impact on the young girl," without providing supporting evidence.

More troubling still, some courts used the absence of lasting consequences (or lesser harm) as a mitigating circumstance. One court stated, for instance, that the offence "left no lasting consequences," thereby justifying a more lenient sentence. Not only is this practice applied inconsistently (many similar cases without demonstrable harm were not treated as mitigating), but it is also problematic from a normative standpoint. A victim's recovery, resilience or ability to function after the offence is not attributable to the offender's conduct. Using it as a mitigating circumstance risks shifting the moral focus of sentencing away from the harm caused and towards the personal characteristics of the victim. It may also penalise victims who suffer less acutely, inadvertently reinforcing a hierarchy of victimhood where only visible or long-lasting suffering merits punitive response.

A similar ambiguity emerged in the treatment of guilty pleas and remorse. Courts generally cited guilty pleas as mitigating, often referring to procedural efficiency or the protection of vulnerable victims. One court explicitly stated that mitigation was due to the guilty plea, allowing the court to conduct the proceedings "without any procedural complications, any additional burden on the minor victim and any unnecessary delays." However, in a number of cases where the defendant did not plead guilty or did not express remorse, this was treated as an aggravating factor ("[d]uring the entire proceedings the accused has not shown or even hinted at a trace of remorse and self-criticism"). As noted in section 3.1.2, this is particularly problematic in systems like Slovenia's, where there is no formal separation between the verdict and sentencing phases (Plesničar 2017; Roberts, Petzsche 2025). Using a defendant's silence or denial of guilt as evidence of moral failure contradicts the presumption of innocence and the right not to self-incriminate.

In addition to doctrinal and interpretive inconsistencies, some sentencing judgments invoke deeply problematic assumptions about victims and offenders. The final part of this discussion turns to these enduring stereotypes and the risks they pose for judicial impartiality.

4.4. Enduring stereotypes and problematic narratives

In addition to inconsistency, some judicial decisions relied – either explicitly or implicitly – on problematic narratives rooted in outdated stereotypes about victims, perpetrators and sexual violence. These narratives, though rare, remain troubling in their persistence and potential impact. Our analysis revealed a small number of cases where courts applied the victim's behaviour as mitigation of the offender's responsibility. In these cases, courts appeared to attribute partial blame to the victim. In one rape case, the court cited as mitigation the fact that the victim "naively

agreed to drive alone with the accused." In another, it was considered mitigating that the perpetrator "was in a relationship with the victim and went to the rented room voluntarily." In a third, the court stated that the victim "significantly" contributed to the offence by voluntarily coming to the offender's home in the early morning, intoxicated and alone. Similarly, in a case of sexual abuse of a defenceless person, the court cited as mitigation "the conduct of the victim herself, who, as an adult, should have been aware of her responsibility for her own safety, but who, in contrast, became seriously intoxicated and, by her own conduct, exposed herself to the dangers that could arise in such a state." These examples reflect a form of victim-blaming that is widely criticised in legal and criminological literature (Lees 1996; Zydervelt et al. 2016b; Gray, Horvath 2018), and which runs counter to contemporary understandings of consent, vulnerability and offender responsibility.

One might argue that the courts were simply acknowledging the lesser severity of the offence. Yet the explanations focussed not on the perpetrator's actions – such as using less physical force against the victim – but on the victim's behaviour, socially accepted and ordinary behaviour (visiting a friend, consuming alcohol or being alone with a trusted person). The reasoning suggests that because the victim engaged in such conduct, the subsequent violation of her sexual autonomy is regarded as less grave. The problematic nature of this logic becomes even clearer if extended to other contexts: applied to rape committed outdoors, it would imply that the victim "significantly contributed" to the offence by failing to remain indoors. Such reasoning effectively blames victims for the violation of their sexual autonomy on the basis of behaviour that is wholly ordinary in everyday life, frames it as supposedly careless and conveys the message that living in constant fear and vigilance against potential perpetrators is socially desirable (Lakes Wood 1973; Briški 2021).

Other judgments invoked biological or gendered stereotypes to explain or partially excuse sexual offences. In one rape case, the court considered as mitigating the fact that the "perpetrator has been alone [single] for a long time; in these conditions he does not have a regular opportunity to follow his natural instincts, which is why he primarily succumbed to temptation." Such reasoning, which frames rape as a consequence of unmet male sexual need, echoes long-debunked myths about male sexuality and minimises the violent and coercive nature of sexual offences. Such explanations shift the focus away from the offender's agency and responsibility, reinforcing problematic cultural narratives of sexual entitlement (Rumney 1999; Smith, Skinner 2017).

Another concerning example comes from a case of child sexual abuse, where the court cited as mitigation the failure of the child's mother to protect her, stating that the mother's passivity "created the circumstances" for the offence. While family dynamics may be relevant in understanding context, attributing responsibility to the victim's guardian in a way that reduces the offender's culpability is legally and ethically troubling.

At the same time, some courts explicitly rejected such narratives. In a case of sexual abuse of a defenceless person, one court stated unequivocally that "a de-

fenceless person is never the one who is to blame for sexual abuse" and that "such acts deprive the victim of their trust in the opposite sex, as well as the right to a carefree childhood or young adulthood." In another case, the court rejected the idea that living in a relationship with someone grants a licence for abuse, stating that "[t]he fact that you live with someone as a couple and have children with them does not give you the right to treat them badly, to insult them, to humiliate them, to limit them and to demand that they live up to your standards." These decisions are important not only for the individual cases, but also as signals to victims, legal professionals and the broader public that such stereotypes are unacceptable in a courtroom.

Thus, this study joins previous research in confirming that the courtroom environment is not immune to enduring myths and stereotypes about sexual violence. Although such reasoning appeared in only a small number of cases – four in total – its very presence in formal judicial decisions is cause for concern. It remains unclear whether these narratives had a decisive impact on the severity of the sanctions that were imposed, but that uncertainty does not diminish their harm. Even if infrequent, the use of such explanations – whether blaming the victim, excusing the offender through gendered tropes or minimising the nature of sexual violence – risks legitimising dangerous societal assumptions. It undermines trust in judicial impartiality and signals to the public that courts may be influenced by the same problematic beliefs that broader legal and criminological scholarship has worked to discredit. Courts wield symbolic authority, and when they invoke stereotypes they do not merely reflect public discourse – they help shape it (cf. Briški 2021).

While some strands of victimological research explore how certain behaviours or situational factors correlate with higher risk of victimisation, these analyses operate at the population level and are not concerned with individual blame or legal responsibility. Their purpose is to illuminate structural vulnerabilities and inform prevention policies, not to identify "risky" or "imprudent" victims or to allocate fault. In a judicial context, however, such correlations cannot be transposed into assessments of culpability. Courts adjudicate the defendant's conduct and the presence or absence of coercion, not the complainant's conformity to idealised behavioural norms. Allowing statistical associations to shape sentencing risks blurring the boundary between empirical risk factors and legal responsibility, and it invites reasoning that resembles victim-blaming. As the literature emphasises, using victims' ordinary social behaviours to mitigate offender culpability can inadvertently revive discredited assumptions about how a "real" or "careful" victim should behave (Cortina 2017; Briški 2021).

Our findings reveal that while most Slovenian courts avoid overtly stereotypical reasoning, the occasional reliance on outdated narratives still raises serious concerns. When courts invoke victim-blaming, biological justifications or other harmful tropes (even infrequently), they risk reinforcing societal myths that the legal system should instead challenge. The persistence of these narratives in judicial

decisions complicates the symbolic function of sentencing in sexual offence cases: rather than affirming norms of consent and sexual autonomy, they sometimes blur them. This tension underscores the need for greater doctrinal clarity and institutional awareness in how sexual offences are understood and adjudicated.

4.5. Concluding reflections

Our analysis highlights several systemic tensions and inconsistencies in the sentencing of sexual offences in Slovenia. While the broader sentencing culture is marked by moderation and penal restraint, this pattern takes on a distinct significance in the context of sexual violence. Across all the examined offence categories, we observed a consistent concentration of sentences at the lower end of the statutory ranges and a widespread reliance on conditional sanctions. Crucially, this narrow use of the available sentencing spectrum persisted even in cases involving serious or repeated violations of sexual autonomy, raising concerns about proportionality, differentiation and the coherence of sentencing practice with the statutory framework.

The substantial sentencing gap we identified can be understood in both ordinal and cardinal terms. Ordinal proportionality concerns the relative ranking of offences: whether more serious intrusions into sexual autonomy are sentenced more severely than less serious ones, and how sexual offences compare to other serious crimes such as robbery or serious assault. Cardinal proportionality concerns the overall level of punishment. Our findings suggest tension on both fronts. Within sexual offences, courts often impose very similar sentences for markedly different harms. In the broader penal landscape, sexual offences sometimes attract sanctions that appear more lenient than those imposed for other offences of comparable statutory gravity, such as robbery, where courts appear more willing to use higher parts of the statutory range (as suggested by national sentencing statistics).

Equally troubling is the frequent lack of substantive reasoning in sentencing decisions, particularly in cases resolved by a guilty plea. The rhetorical recognition of harm often fails to translate into meaningful punitive outcomes, and when reasons are provided they are frequently abstract, inconsistent or underdeveloped. This disjunction between judicial language and sentencing practice risks undermining the communicative and legitimising functions of criminal punishment.

The inconsistent treatment of mitigating and aggravating circumstances further compounds these concerns. Courts differed in whether they applied certain circumstances as well as how they interpreted them – sometimes treating the same factor (such as parenthood, prior convictions or the victim–offender relationship) in fundamentally opposing ways. These divergences suggest the absence of a shared normative framework for interpreting key elements of sentencing, particularly in cases involving intimate or relational harm. Finally, while relatively rare, the appearance of gendered and stereotypical reasoning in some judgments – ranging

from subtle victim-blaming to explicit biological justifications – underscores the lingering influence of outdated cultural narratives. Conversely, those courts that explicitly rejected such reasoning demonstrated the potential for judicial decision-making to affirm principles of equality, dignity and accountability.

Taken together, these findings suggest that sentencing practice for sexual offences in Slovenia is not only lenient, but often incoherent in its justifications. They reveal a disconnect between legal norms, judicial practice and public expectations. These tensions, and the unresolved dilemmas they produce, lead us directly into the final section of this paper, where we reflect on the broader implications of these findings and the difficult normative space they occupy.

Before turning to those broader implications, it is important to clarify the interpretive limits of the material available to us and the scope of the conclusions that can be drawn. While our findings reveal clear structural patterns, determining whether the sentences in our sample are substantively proportionate in a numerical sense requires caution. Court judgments in Slovenia rarely contain the level of factual detail or structured assessments of the seriousness of the offence that would allow researchers to reconstruct a consistent baseline sentence from which proportionality could be measured. Unlike jurisdictions with rich administrative sentencing datasets, Slovenian decisions do not record starting points, quantify the weight of individual mitigating or aggravating factors or indicate whether specific circumstances were overlooked. For this reason, a strictly variable-based evaluation of severity, or a fine-grained calibration of "correct" sentences, is not feasible with the available material. Our aim in this study was therefore not to determine the ideal sentence for any given case, but to examine how courts use the statutory ranges and justify their decisions. In this area, our findings are robust: courts make limited and inconsistent use of the upper halves of sentencing ranges, rely heavily on sentences close to the statutory minima – even in cases with serious aggravating features – and treat similar circumstances unevenly. This pattern is consistent with our previous quantitative work on sentencing for sexual offences in Slovenia, which also found restrained use of the statutory ranges and strong procedural effects on custodial outcomes (Plesničar, Lipovac forthcoming). While future research could combine richer quantitative data with qualitative reasoning analysis, the present findings already reveal structural features of Slovenian sentencing practice, rather than isolated anomalies in single cases.

Conclusion

We set out to examine how Slovenian courts sentence sexual offences, both in terms of the sanctions they impose and the reasoning that accompanies them. What emerges is a landscape shaped by leniency, inconsistency and, at times,

a troubling disconnect between legal norms, judicial language and sentencing outcomes. Suspended sentences were common even in serious cases, sentences rarely approached the upper parts of the statutory range and judicial reasoning was often absent or unconvincing. Aggravating and mitigating circumstances were applied inconsistently, and a small number of judgments relied on outdated or inappropriate narratives that risk perpetuating myths about sexual violence.

These findings return us to the broader tensions laid out in the introduction. On the one hand, there is a long-standing criminological and human rights tradition that resists carceral excess and values restraint, proportionality and procedural fairness. On the other hand, a feminist and victim-centred tradition insists that sexual violence be recognised as a serious harm requiring meaningful accountability and protection of sexual autonomy. These commitments often align, particularly when resisting punitive populism or challenging discriminatory enforcement, but in the context of sentencing they can come into friction.

This conflict produces a kind of cognitive dissonance for scholars, reformers and judges alike. It is deeply uncomfortable, as criminologists, to criticise lenient sentencing. Yet, it is equally difficult to defend patterns that appear so poorly aligned with the seriousness of the harms involved. In a system where the gravest cases of robbery or homicide routinely attract sentences from the higher parts of the statutory range, the persistent reliance on conditional or near-minimum sentences for sexual offences is difficult to reconcile with the principles of internal proportionality and equality before the law, as well as the symbolic function of punishment.

The heart of the tension stems from the nature of sexual offences themselves. They often involve intimate settings, difficult evidentiary questions and a deep entanglement of law with morality, gender and social meaning. They challenge conventional sentencing categories – culpability, consent and remorse – and expose the limits of traditional distinctions. However, this does not imply that indiscriminate harshness is either necessary or desirable. Rather, our data suggest that sexual offences in Slovenia are treated differently in an opposite way – sentenced less severely than comparable offences and, possibly even more troubling, sentenced very inconsistently. In no way do we advocate for a harsher sentencing system; we do, however, argue that the existing framework should be used in a more coherent, differentiated and transparent way.

Our study does not offer easy answers. But it does highlight the need for greater transparency, more consistent judicial reasoning and a deeper engagement with the moral and normative stakes of sentencing for sexual offences. It also calls on scholars and practitioners to sit with the discomfort: to resist both carceral reflexes and complacency, and to work toward a sentencing practice that is principled, humane and responsive to the real harms that sexual violence entails.

These findings also prompt consideration of how such inconsistencies might be addressed. Some jurisdictions respond to perceived leniency by tightening statutory frameworks, most commonly by raising minimum penalties or prescribing

closed lists of mitigating and aggravating circumstances. Our analysis suggests that such measures would not resolve the issues observed here. We do not claim that the minimum penalties are too low; for the majority of cases they may well be appropriate. The difficulty lies instead in the narrow and inconsistent use of the existing statutory range, particularly the near absence of sentences in the upper half of that range – even in more serious cases. Simply increasing minimums would do little more than shift the current pattern upward without encouraging more nuanced, proportionate or transparent sentencing. Likewise, more detailed and closed statutory lists cannot, on their own, prevent inconsistent interpretation or the occasional appearance of problematic narratives.

The challenges exposed in this study are therefore better understood as matters of sentencing practice, interpretive culture and institutional routines, rather than defects of statutory design. More promising avenues might lie in improving the transparency and quality of judicial reasoning. This could include introducing systematic publication of sentencing decisions, clearer articulation of the justification for sentences and more consistent explanation of how mitigating and aggravating circumstances are weighed. Non-binding forms of guidance – such as curated case digests, thematic summaries or judicial training materials – could support greater consistency without undermining the flexibility needed for proportional sentencing (Plesničar et al. 2023).

Finally, our qualitative analysis shows that interpretive frameworks matter. Occasional references to victim behaviour, inconsistent treatment of prior relationships or an overreliance on certain forms of mitigation point to the need for specialised training on the dynamics of sexual violence and the risks of implicit bias. Regular empirical reporting and feedback mechanisms would allow courts to situate individual decisions within broader patterns and foster a more reflective sentencing culture. In this sense, enduring improvement is more likely to emerge from strengthened reasoning, enhanced transparency and institutional learning, rather than from further statutory recalibration.

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