

Rape of Vulnerable People and Victim Statements: An Analysis of the Testimony of Children and Adolescents in the Judgments of the Court of Justice of Pernambuco in Brazil between 2018 and 2023

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How to cite this paper: Sampaio, G. B. F., & Luz, D. (2024). Rape of Vulnerable People and Victim Statements: An Analysis of the Testimony of Children and Adolescents in the Judgments of the Court of Justice of Pernambuco in Brazil between 2018 and 2023. *Beijing Law Review*, 15, 2400-2426.

<https://doi.org/10.4236/blr.2024.154131>

Received: August 14, 2024

Accepted: December 22, 2024

Published: December 25, 2024

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Abstract

This study deals with rape cases of vulnerable individuals tried by the Court of Justice of the state of Pernambuco, Brazil, published from 2018 to 2023, especially regarding the statements of child and adolescent victims or witnesses. It is clear that criminal evidence in these cases faces challenges due to the need for technical-professional support to take statements from people protected by the Child and Adolescent Statute and by Law No. 13.431/2017. This law establishes the rights and guarantees of child and adolescent victims or witnesses of violence and seeks to reduce revictimization by regulating special testimony, a hearing procedure intended for victims or witnesses of violence under the age of 18 in court or before police activity. The inductive method with quantitative and qualitative approaches was used through bibliographic research and documentary data collection techniques, in addition to content analysis. As a result, it was possible to identify the means of evidence and procedures most used in child and adolescent testimonies before and after the validity of Law No. 13.431/2017. It was found that the special testimony methods were not adopted in most cases tried by the Court of Justice of Pernambuco (*Tribunal de Justiça de Pernambuco—TJPE*), even though they are consolidated in the protectionist legislation and in the recommended investigative protocols.

Keywords

Special Testimony, Protected Testimony, Rape of a Vulnerable Person

1. Introduction

Rape of vulnerable people is a crime that is often associated with silencing of victims and underreporting of many cases. It is also rarely committed in the presence of third parties or leaves physical traces. The architecture of the evidentiary set of criminal proceedings involving sexual violence encounters difficulties due to the lack of support for the victims' statements that form the basis of the investigation and criminal proceedings, which are considered a fragile and inconsistent means of proof. Law No. 13.431 (2017) established a system of guarantees of rights for children and adolescents who are victims or witnesses of violence, seeking to reduce revictimization in formal control institutions and to regulate the recommended methodologies for protected wiretaps in these cases. The investigation field of this study is directed at the rapes of vulnerable people tried by the Court of Justice of Pernambuco (*TJPE*) and the effectiveness of Law No. 13.431/2017, in the period from April 4, 2018 to April 4, 2023.

The law has been in force for six years, and hundreds of rape cases of vulnerable people have been processed since then in the *TJPE*, which led to the following question: how is the evidence structured in rape cases of vulnerable people in *TJPE* judgments after Law No. 13.431/2017 came into effect? Specifically, the objective was to locate rape cases of vulnerable people in *TJPE* judgments, with children or adolescents as victims and published since 2018; to identify the evidence means most used for incriminating purposes in decisions; to detect the procedures adopted in structuring the victims' statements; and to verify the application (or not) of the procedures determined by Law No. 13.431/2017.

The method applied to map the rape crimes of vulnerable individuals in the *TJPE* proceedings was the inductive method in a process which mediates premises of sufficiently verified particular data to infer a general conclusion (Aragão & Mendes, 2017). This particular data were obtained through articulation between data collection and theory. The research approach was initially quantitative, and then qualitative after categorization and tabulation. The breadth in the description, explanation and understanding of the judgments analyzed was guaranteed by the concomitant use of the two approaches (Marconi & Lakatos, 2022).

The study sought primary data sources using the documentary data collection technique in the judgments, which are documents from public archives containing the decisions of the *TJPE* available on the world wide web, to reach the desired materials directly from the source (Cellard, 2008; Marconi & Lakatos, 2021). An evaluation of the data found in this empirical work was aided by the bibliographic research technique (Marconi & Lakatos, 2022). The bibliography studied was supported by the interdisciplinary nature of criminal procedural law, criminal law, and psychology. This article was divided into two parts, which were subdivided into two more. The first addresses sexual violence against children and adolescents in general and specifically the psychological and social impacts when they are victims of the crime of rape. In Section 2.1, we understand the profile of the cases, the symptoms and the possible psychological phenomena surrounding the victim. Next, in topic 2.2, we present the historical construction of protected

listening¹ currently regulated by Law 13.431/2017, and the protection of the rights of children and adolescents. In the second part, we analyze the *TJPE* judgments on rape of vulnerable people, assessing the means of proof used and their value in the final merit decision when working with the testimonies and expert analyses admitted in the proceedings, whose reduced percentages reinforce the hidden figures of the crime of rape of vulnerable people (section 3.1). Next, (part 3.2) we investigate how the testimonies of child and adolescent victims or witnesses are collected, especially whether the specific procedure for special testimony provided for in the legislation is adopted.

In the end, it was possible to understand the evidence, especially the statements from the vulnerable victims of rape in the judicial processes in Pernambuco, Brazil. An evaluation of the methodologies used with the victims demonstrated that the *TJPE* does not comply with Law No. 13.431/2017.

2. Sexual Violence Against Children and Adolescents

The classification of frequent non-lethal crimes against minors under 18 years of age by the Brazilian Public Security Forum lists sexual violence as the most prevalent offense, followed by physical violence and abandonment, in that respective order (*Fórum Brasileiro de Segurança Pública (FBSP), 2023*). The Brazilian Penal Code (PC) provides for five crimes in the chapter on sexual crimes against vulnerable people, and rape of vulnerable people quantitatively stands out in the country's violence databases, whose impacts affect the mental and physical health of its victims and reverberate in the social sphere.

2.1. Psychological and Social Impacts of Rape of Vulnerable People

According to the 2023 Public Security Yearbook based on the 2022 database, rape of vulnerable people is the sexual violence subtype with the highest absolute number of cases in Brazil, with 56,820 victims, constituting an increase of 8.6% compared to the previous year (*Fórum Brasileiro de Segurança Pública, 2023*). Of this total, 1916 cases were completed in Pernambuco, with no data available on attempted crimes (*Fórum Brasileiro de Segurança Pública, 2023*). According to the state's Department of Social Defense, 70.18% of sexual abuse victims in 2023 were under 18 years of age, with an average of 5 children and adolescents being raped per day (*Guerra, 2024*) in Pernambuco. A recent study carried out by the Institute of Advanced Economic Research reveals worsening in the quantitative situation in the country, indicating that only 8.5% of rapes are registered with the police and 4.2% by the health system in the country (*Instituto de Pesquisa Econômica Aplicada, 2023*).

In reference to the particular features of the offense presented by other studies and reports on sexual violence against children and adolescents, the analysis of

¹The term "protected listening" is used in this work to broadly and indistinctly refer to the two methodologies for hearing children and adolescents who are victims or witnesses of violence provided for in Law No. 13.431/2017, specialized listening (art. 7) and special testimony (art. 8).

materials from Brazilian public security yearbooks reveals convergent social points. The age limit for a minor violated by the crime of rape of a vulnerable person is 14 years old according to the caput of article 217-A of the (PC), although the Statute of Children and Adolescents (*Estatuto da Criança e do Adolescente—ECA*), (Law No. 8.069, 1990), art. 2, establishes that an adolescent is a person between 12 and 18 years old. Thus, the prevalence of children registration is justified by the age range admitted as a result of only adolescents aged 12 and 13 being classified as passive perpetrators of the crime (Silva et al., 2023). From another perspective, a large part of the rapes of people between 14 and 17 years old are also classified as rape of a vulnerable person, however not due to age, but due to the inability to offer resistance under the terms of §1, of art. 217-A of the Penal Code (Fórum Brasileiro de Segurança Pública, 2023); and, even so, the numbers prevail with children.

Followed by age, the victim's sex raises discussions about being female and being male in pre-established positions in the poles of the criminal lewd act. The wording of the crime of rape of a vulnerable person in the Penal Code does not limit the passive pole to women, nor the active pole to men (Bitencourt, 2022)². The count of rapes of vulnerable female victims completed in Pernambuco was 1681 (88.7%) in 2022 (Fórum Brasileiro de Segurança Pública, 2023). When subtracting them from the total number of cases, the result is 235 (11.3%) boys; however, despite the discrepancy, the statistical significance of sexually abused boys does not agree with the real number of occurrences. It is clear that the hidden figures are higher in relation to male victims. This lower expressiveness is the result of traumatic invalidation through “differentiation in the perception of violence based on the identification of gender”, generating the impossibility of precision due to the sociocultural condition experienced by them (Lessa & Mayor, 2021: p. 343).

Certainly, the social environment repudiates episodes of any kind of lewd violence, but there is a shared idea that boys are not affected by such violence; on the contrary, they experience discrediting of their testimony or are blamed for the abuse (Rosa & Souza, 2020). The male population, from children to adults, has its self-perception damaged by cultural norms when they find themselves as victims or witnesses of experiences that bring possible weaknesses (Ferreira, Bortoli, Machado & Veras, 2023). The motivations understood for the low credibility in treating cases of sexual crimes against male minors are surrounded by comments based on sexism and homophobia when they are victimized by someone of the same sex.

Men are considered active in sex due to their virility and initiative and praised for the premature act of having sex with women, interpreting rape as sexual initiation (Rosa & Souza, 2020). On the other hand, there is condemnation and

²Until 2009, only females could be the passive subject of the crime of rape in Brazil (art. 213 of the Criminal Code). The crime when sexual violence was perpetrated against males was classified as a violent attack on modesty (art. 214). Law 12.015/2009 amended article 213, allowing any person to be the passive subject of the crime of rape, regardless of gender, and repealed the crime in article 214, since its elements became part of the criminal type of rape.

understanding of same sexual orientation confession when denying or interrupting sexual relations when violated by women, “for subverting the socially expected of the male universe” (Lessa & Mayor, 2021).

This distortion in the perception of violence against boys creates an environment of condoning the act and affects studies on victims of vulnerable rape. Research on child sexual abuse has a point of view directed at the group of female victims and male aggressors, with few that truly and exclusively seek to reach cases of male victims (Ferreira et al., 2023). There is the exclusion of a portion of the offended people who equally have their lives invaded by negative mental health, clinical and behavioral diagnoses—such as Post-traumatic Stress Disorder, drug use and abuse, suicidal ideation, and sexual dysfunctions—arising from the act of rape aggravated by social reactions that promote victimization (Ferreira et al., 2023; Lessa & Mayor, 2021).

Another important social fact is that the Brazilian Public Security Forum (2024) found that 52.2% of rape and vulnerable rape victims in 2023 were black, a term which includes black and brown girls and women; while 46.9% were white³. The epidemiological bulletin of the *Ministério da Saúde* (2023) that deals with reports of sexual violence against children and adolescents in Brazil, shows that 31,707 (49.3%) cases between 2015 and 2021 involved black and brown girls, compared to 24,841 (38.7%) cases of white minors who were raped. The conclusions indicate that black and brown children are the most victimized by rape in Brazil.

For Trindade (2021), the symptoms of children and adolescents can last for a short, medium or long term, vary quantitatively and qualitatively, and have a greater negative impact due to their inexperience with stressful events and their limited cognitive resources. This is a brutal form of violence and is not limited to causing a risk to the health of those directly affected by the crime, since equally “witnessing, watching or perceiving a violent act in itself constitutes a victimizing episode” (Trindade, 2021: p. 498). The deteriorating effects of abuse are consequently felt on the victim and on minors who may have witnessed the crime. The same symptoms present in cases of child and adolescent sexual violence can be associated with other victimizing experiences in accordance with scientific evidence (Schaefer, Brunnet, Lobo, Carvalho, & Kristensen, 2018).

From another perspective, violence can be divided into categories depending on the crime location, and according to the type of interpersonal violence used: family and conjugal violence and community violence (Schmidt, 2020). Family and conjugal violence occurs within the victim’s own home; and community violence, outside the home, is the first form that has seen the highest numbers and increases, particularly during the SARS-CoV-2 pandemic. The social distancing period in public spaces, the suspension of classes, remote work and the reductions

³However, it is important to highlight that this analysis is quite precarious, relying only on partial data due to the limited availability of information regarding the race or ethnicity of the victims in the police documents. The field provided to include this information in the police documents was not filled in in many of the cases analyzed, which makes it impossible to correctly confirm the racial profile of these victims (Fórum Brasileiro de Segurança Pública, 2024).

or suspensions in the operation of child and adolescent protection networks are indicated as causes of the increase in aggressions against children and adolescents in 2020, and not only in Brazil (Silva et al., 2023). After the pandemic, cases of rape of vulnerable people in Brazil within the child's residence were 71.6% in 2022, followed by public roads, schools, hospitals and rural areas with percentages lower than 7% each, corresponding to community violence (Fórum Brasileiro de Segurança Pública, 2023).

The recognition of where the crime was committed reflects the nature of the relationship between the victim and the aggressor. Rape of vulnerable people is essentially intrafamilial in nature, characterized by the use of the child or adolescent's sexuality by people with kinship or emotional ties (Schmidt, 2020). In example, 64.4% of the accused in Brazil in 2022 were family members, and 21.6% were known to the minors, but had no kinship relationship. The aggressors who were actually unknown to the children accounted for 14% of the cases. Furthermore, intrafamilial abuse takes advantage of the period when the relative or person responsible for the child is absent from the residence, resulting in 65.1% of the occurrences occurring during the day (Fórum Brasileiro de Segurança Pública, 2023). It is important to note that abuse committed by someone with whom the child or adolescent had authorized sexual relations (boyfriends/girlfriends, for example) was included in the group of known aggressors, since there was no possibility of consent from the victim to lewd acts due to age, unlike cases of rape of people over 18 years of age. Therefore, the categories of "sexual partners" or "intimate partners" cannot be admitted in these cases, as can occur with adults.

Sexual crime operates through seduction, physical force or threat, and presents contours of durability and habitualness when it occurs within the home of the offended person (Schmidt, 2020; Bitencourt, 2022). The child has an affectionate bond with the perpetrator of the rape and affection is transformed into sexuality through it (Trindade, 2021). Feelings of guilt and contribution to the abuse make it impossible to perceive the aggression, in addition to the lack of knowledge about the sexual practice imposed on the child or adolescent, and maintenance of the secret is often perpetuated by blackmail and threats from the aggressors (Sansón & Hohendorff, 2021).

The victim's words, inherent to their emotions, in their narration of the violence received are not detached from them, and therefore caution is required with the potential psychological effects capable of forming gaps, distortions, amplifications and reductions of the memory in order to form a safe report of interest to Justice (Amaral & Ávila, 2022). The process of consolidating the memory of an abuse can last up to 6 hours, which is the interval of sensitivity to internal and external deforming agents (Izquierdo, 2018). However, studies indicate that events immersed in emotional alert become lasting and detailed in the memory compared to less emotionally impactful events, however without preventing that they can become contaminated, because the fact that a memory has greater intensity does not necessarily imply that it is true, and there may be false memories

(Rohenhohl, Gomes, Silveira, Pinto, & Santos, 2010).

Memory gains the probability of losses with each translation and changes in an unconscious process, given the similarity of the cognitive and neurophysiological basis between true memories and false memories (FM), unlike lies in which the author is aware of their creation space and manipulation (Brust, Neufeld, & Stein, 2010). The accepted classification for FM is based on the origin of the falsification as a result of the memory functioning itself (spontaneous) or of the suggestion of a factor that is external to the subject (suggested) (Brust et al., 2010).

The cognitive immaturity of abused children and adolescents is a causal topic of discussion in FM, but the propensity to produce them is independent of the person's age group and can occur from children to older adults, with insufficient research that can confirm the suggestive compulsoriness of the child's report (Kagueiama, 2021). Infants from 2 or 3 years old can articulate the language of memory evocation, and despite the difficulty in monitoring the memory source, a safer retrospective of the crime is obtained if the methodology used in listening to the narrative is in accordance with the scientifically validated investigative procedures recommended for the group (Barbosa, Ávila, Feix, & Oliveira, 2010; Feix & Welter, 2010). Fenoll (2012) emphasizes that there are no infallible methods for verifying the sincerity of a statement, but rather techniques which enable an approximation of what may have been the reality of the events.

From another perspective, remembering may not be partially or fully aroused by the defense mechanisms of the human psyche, in which previous sufferings can be repressed and their repetition involuntarily, unconsciously and spontaneously prevented due to the phenomenon of repression (Izquierdo, 2018; Kagueiama, 2021). The reconstruction of history goes beyond simply remembering or not having a certain memory. A report with little information or without psychopathological signs does not presuppose negative evidence of violence (Feix & Welter, 2010). In addition to the victim of sexual violence testifying about a difficult and embarrassing event, they have the mission of "condemning" a loved one, considering the recurrence of the intra-family relationship in this type of crime (Fiorelli & Mangini, 2021).

Dias presents parental alienation as another psychological phenomenon that is efficient in FM production, in which one of the parents adopts a pattern of negative behaviors to weaken or break the parental bonds between the child and the ex-spouse (2022). However, the aforementioned author expands this rule and indicates the possibility of: the behavior occurring during the marital relationship and not only after the breakup; the alienating party's pole not being exclusive to the female gender; and both parents being able to be alienating at the same time. In a standardized and perpetuated manner over time, alienating parents are able to induce the child or adolescent to falsely accuse the former partner of sexual violence and present it as the truth. This abuse of parental power grafts a false accusation into the minor's mind, allowing a false memory, which prevents recognition of the veracity of the crystallized information (Dias, 2022). The symptoms

of a child involved in false rape accusations may be similar to those of a child who has actually been abused, going through the same victimization process and becoming ill (Ribeiro, Silveira, & Corrêa, 2019).

Children and adolescents are people undergoing development, whose maturation are ongoing. There are studies that indicate that in addition to psychological damage, violence also affects physical health. There are certain development stages which are considered critical when sexual violence can impact brain development, the consequences of which will depend on the age at which this occurs. There are records of anatomical and functional changes in parts of the brain, such as reduced development of the left hippocampus, functional changes in the hypothalamus, amygdala, prefrontal cortex and temporal lobe, among others (Rizo Martinez et al., 2014).

Formal social control institutions promote inadequate care for victims and their families who are legally underprivileged individuals, which aggravates the damage caused by sexual violence and the potential for psychological and neurological phenomena. Public security professionals ensure that the person who has been raped is the first person to be contacted by the criminal prosecution, but they also perpetuate different levels of rape myths, which are reinforced by the lack of immediacy of the report (Scarpati, Cecconello, & Bernardes, 2023). The attitude of distrust, disbelief, insensitivity and skepticism of police officers is sustained by the lack of investigative interview protocols to be applied by the Police and by the failure to comply with the recommendations determined for these cases (Scarpati et al., 2023).

When victims do not find good service at the police station, they go to the Public Prosecutor's Office, where they are once again left confused about the path to be taken to solve the crime (Iulianello, 2019). The guidance is limited to waiting for the evidentiary hearing to be held. Slowness in taking statements in the judiciary process and the slowness of the justice system in providing a definitive state response pave the way for (re)experiencing violence, as the criminal configuration immerses the victim in a multidimensionality beyond the primary action, this time institutional (Iulianello, 2019).

In a study with 119 judges, Schmidt, Krimberg and Stein (2020) structured questions on topics relevant to the Psychology of Testimony, and 86% of the participants stated that they were aware of the factors that can affect the testimony of witnesses and victims, of which 64% mentioned that they learned from professional experience; 36% through reading works; and 28.8% through dialogue with other judges. Regarding specific points, 75% of judges are aware of the FM phenomenon; while 72% are aware of interview techniques; and 69% are aware of human memory. Although a significant portion of the respondents expressed practice and understanding, on average only 58% of the interviewees had their opinion in the Testimony block aligned with the literature and studies of Testimony Psychology.

The beliefs held by jurists and the egocentric insistence on personal experience

and that of colleagues as absolute truth resonate in errors and injustices in criminal proceedings and diverge from the entire development of the scientific nature of human memory (Schmidt et al., 2020). Improvement of judicial institutions depends on knowledge about the psychological mechanisms of human behavior, primarily of children and adolescents, who also participate in criminal proceedings and need to have their procedural rights observed due to the vulnerability inseparable from their age group.

2.2. Protection of Rights and the Historical Construction of Protected Listening in Brazil

Law No. 12.015 (2009) inserted article 217-A into the Brazilian Penal Code, *Decreto-Law No. 2.848 (1940)*, defining the crime of rape of a vulnerable person as carnal intercourse or the practice of another lewd act with a minor under 14 years of age, or someone who, due to illness or mental deficiency, does not have the necessary discernment, or, for any other reason, cannot resist the act. The classification of this crime is justified by having vulnerable victims in the passive pole due to the complete lack of discernment to consent to lewd acts due to age and incomplete personality formation (Schmidt, 2020). The configuration of the crime does not depend on the victim's consent or proof of previous sexual relations, as these are irrelevant facts, according to *Súmula No. 593 (2017)* of the Superior Court of Justice (*Superior Tribunal de Justiça—STJ*) which supported inserting this thesis in the crime article by *Law No. 13.718 (2018)*.

Victims of this crime must have the opportunity to be heard, “either directly, through a representative or through an appropriate body, in accordance with the rules of national legislation”, according to the Convention on the Rights of the Child (*Decreto No. 99.710, 1990*), in its art. 12, ratified by the Brazilian Government. However, Brazilian criminal procedural legislation, *Decreto-Law No. 3.689 (1941)*, has not included guidelines for the testimony of children and adolescents and does not distinguish between the questioning of offended adults and children, with no rules aimed at the latter in article 201 and following provisions for testimonial evidence.

The pursuit of the truth in criminal proceedings has historically allowed children and adolescents to be treated as mere objects of investigation, without concern for the possibility of revictimization of abused minors (Bitencourt, 2022). Recognizing this unique moment in which the accounts of children who were victims of violence were written and the legislative neglect, the Children and Youth Court of Porto Alegre, of the Court of Justice of Rio Grande do Sul, created the project “Testimony without harm” (*Depoimento sem dano*) in 2003, which operated for 14 years without support from the Legislative Branch. The idea came from magistrate José Antônio Daltoé Cezar when he received a child who had been sexually abused by an adolescent in a traditional hearing. The pilot project began with the use of cameras in an environment separate from the courtroom for the hearings, and the conditions created for the permanence of this system

were created by the magistrate and the Public Prosecutor João Barcelos de Souza, using their own resources for this purpose (CNJ, 2018a).

Then in 2010, the National Council of Justice (*Conselho Nacional de Justiça—CNJ*) ratified the project through Resolution No. 33, and granted the term “Special Testimony”. It was confirmed in 2017 at the federal legislative level by a proposal from ChildHood Brasil, adapted into a bill by the deputy from Rio Grande do Sul, Maria do Rosário (PT). *Law No. 13.431 (2017)*, the Protected Hearing Law, guarantees the hearing of children and adolescents who are victims or witnesses of violence and regulates two possibilities for hearing to be implemented by the bodies of the protection network and by formal social control institutions: specialized hearing and special testimony. The expansion of the concepts and proposals came from Decree No. 9.603/2018, which regulates Law No. 13.431/2017. It should be noted that these procedures are rights and not duties of participation of the abused minor in the process in which they are a party or witness (Amaral & Ávila, 2022).

Specialized listening (art. 7) is provided by the protection network bodies in the fields of education, health, social assistance, public safety and human rights, primarily by the Specialized Reference Centers for Social Assistance (*Centros de Referência Especializados de Assistência Social—CREAS*). The arrival of cases of child and adolescent abuse requires immediate communication to the local Guardianship Council and the network will promote the necessary protection and care for the abused child (Schmidt, 2020). In addition, reporting cases of interpersonal violence against children and adolescents through SISNAN (the Information System for Injuries and Notifications of the Ministério da Saúde—Ministry of Health), has been mandatory since 2011.

The procedure in the text of Law 13.431/2017 does not specifically have the function of producing evidence for criminal proceedings. However, there is a division of opinions regarding the professional limits of social workers. Some of the doctrine believes that specialized listening should be treated as a means of evidence using interview protocols, so that the child or adolescent refrains from narrating again in the event of refusals or impossibility of new statements (Schmidt, 2020). On the other hand, other professionals understand that the use of specialized listening as a means of obtaining evidence indicates an attempt to hold the aggressor accountable and punish the violation to the detriment of the full protection of the minor when it places the social worker’s professional practice to anticipate the testimony (Galvão, Morais & Santos, 2020).

On another level, the special testimony is in fact given an investigative nature and evidentiary force within the jurisdiction of the police or judicial authority. Special testimony consists of a means of oral evidence and takes place in a hearing designated for this specific purpose; it is done at the police station with the person responsible being a police authority or before the Judiciary. As a rule, the testimony is taken through a precautionary procedure of anticipating evidence or incidentally within the criminal action, in which the police authority, the Public Prosecutor’s Office and the defense have the legitimacy to request. Selection of the

anticipated procedure is mandatory in cases where the person violated or witness to the violence is under 7 years old or in the case of sexual violence due to the indispensability of producing evidence considered urgent and relevant before beginning the criminal action (Nucci, 2021). Thus, this rule directs receiving the statement of victims of rape of vulnerable people to the precautionary procedure of the anticipated production of evidence.

Implementing these two methodologies depends on the operational integration between the Public Administration bodies and entities which are networked without hierarchy among themselves, and are solely driven by protecting the rights of children and adolescents. The first special testimony room (name chosen by the state) in the state of Pernambuco was opened in 2010 and reopened in 2023. It was the second special testimony room in Brazil, the first of which is located in the Court of Justice of Rio Grande do Sul. The municipalities of Camaragibe and Petrolina in Pernambuco, the city of Caruaru and the city of Jaboatão dos Guarapes opened testimony rooms in 2014, 2015 and 2024, respectively. The municipality of Goiana also has a testimony room, according to the *TJPE* website. In short, 6 cities host the special testimony, as well as a bus, the Special Itinerant Testimony (CNJ, 2018b). Although essential, the provisions and quantity of fixed rooms are deficient given the existence of 107 districts spread throughout Pernambuco.

The Protected Listening Law requires training professionals who will work in these rooms, but it fails to specify which types of professionals should carry out specialized listening and special testimony. Therefore, even though they are the professionals who have been hearing children and adolescents who are victims of violence since 2003, social workers and psychologists are positioned in a functional dispute between the professional councils and judicial decisions (Amaral & Ávila, 2022). The success of the project's development and the growing demand involving children as witnesses prompted the Federal Council of Social Services (*Conselho Federal de Serviço Social—CFESS*), the body responsible for issuing regulatory standards for the professional practice of social workers, to report the lack of a relationship between “harm-free testimony” and professional training or knowledge of the category (CFESS, 2009). This resolution stipulated a deadline that, upon expiry, would generate disciplinary or ethical responsibilities. However, some administrative conflicts, such as those in the Court of Justice of São Paulo and Minas Gerais, imposed attribution of the social worker to interview children and adolescents, going against the *CFESS* (Schmidt, 2020).

In correspondence with the *CFESS* statement, the Federal Council of Psychology (*Conselho Federal de Psicologia—CFP*) prohibited psychologists from the role of inquirer in the care of children and adolescents in situations of violence by Resolution No. 10/2010, and established theoretical, technical and methodological autonomy, without technical subordination to professionals from other areas and compliance with the Code of Professional Ethics (CFP, 2010). This was later reiterated by Technical Note No. 1/2018 (*Conselho Federal de Psicologia, 2018*). The *CFP*'s argument was based on characterizing the special testimony as a practice

that violates human rights, since it aims to obtain judicial evidence for representation of the category to the detriment of the hearing itself. The Federal Public Prosecutor's Office and the Public Prosecutor's Office of Rio de Janeiro filed a public civil action with a preliminary injunction granted that invalidated this resolution and approved the psychologist's role in the testimony without penalizing the councils (Silva et al., 2023).

Thus, it is noted that the discussion about the competence to mediate the testimony without harm was triggered 6 years after its implementation in Rio Grande do Sul (2003-2009), and went through legal proceedings with unfavorable results for the representations of the categories. The role of the intermediary between the judge and the deponent and who should exercise it became a gap with no estimate of how long it will be filled, accompanied by a lack of choice in the investigative protocol to support the interview of minors by the protection network and by police stations due to the attempt to regulate it by Resolution No. 299/2019 of the CNJ having strictly referred it to the courts of justice (Coimbra, Nunes, & Cordeiro, 2021).

The CNJ stipulates that testimony be taken following a scientifically validated protocol and establishes instructions for the physical space and training of magistrates and representatives of the Public Prosecutor's Office for special testimony using the Brazilian Forensic Interview Protocol (*Protocolo Brasileiro de Entrevista Forense—PBEF*) (Schmidt, 2020; CNJ, 2019). This protocol was constructed through research in courts and universities in the states of Pernambuco, Rio Grande do Sul and the Federal District, with ChildHood Brasil and UNICEF as organizers, and translated and adapted since 2009.

However, there is nothing to prevent social workers and psychologists from working with other nationally and internationally accepted protocols when conducting specialized listening and special testimony at police stations, such as the NICHHD protocol and the Cognitive Interview, which are methodologies structured in phases aimed at memory recovery (Amaral & Ávila, 2022). The Cognitive Interview is similar to the *PBEF* in the stage arrangement, but has some differences, such as in relation to the procedure division and external observation. For Fenoll (2012), the first technique can be conducted in more than one session and allows the child to have distractions, such as games, resulting in a lengthy listening process, which can dispense with the simultaneous observation of the Public Prosecutor's Office, the judge and the parties, and lead to a dialogue with the psychologist after each session.

As essential as defining the training of the person to interview a child or adolescent victim of rape of a vulnerable person is to prevent certain individuals from playing this role. Military and civil police officers participate in the hotline for assisting sexually abused minors as a means of taking them to the appropriate authorities for their testimony. When notified, the Guardianship Council directs the case to the juvenile and youth court or the police, and when the latter does not have a special testimony room in its police station and does not have psychologists

on its staff, it must limit itself to opening the investigation (Dias, 2006). Caution of the hearing by guardianship counselors is also required by the position of not requiring higher education compatible with the activity of interviewing children and adolescents.

3. Rape of a Vulnerable Person in Brazilian Legislation and Evidence in the Judgments of the Court of Justice of Pernambuco

The crime of rape of a vulnerable person is provided for in article 217-A of the Brazilian Penal Code, which was introduced by Law 12.015/2009, to protect the sexual dignity of the vulnerable person. For the purposes of this legal article, the concept of vulnerable person includes minors under 14 years of age, or any person who does not have the necessary discernment to commit the act due to illness or mental deficiency, or who, for any other reason, cannot offer resistance. The legal provision also states that the penalties will be applied even if the victim consented or if they had already had sexual relations prior to the crime (§ 5). This legislative provision is justified because vulnerability is characterized by the inability to legally consent, and it is irrelevant whether the victim expressed consent to the sexual act.

The conduct consists of having sexual intercourse or practicing another lewd act with a vulnerable person who, for the purposes of this study, will be a minor under 14 years of age or an adolescent between the ages of 14 and 18 who has a mental illness or disability which prevents them from discerning the practice of the act, or who, for any reason, cannot offer resistance. This is because Law 8.069/1990, the Statute of Children and Adolescents, defines a child as a person under the age of 12 and an adolescent as someone between the ages of 12 and 18, to whom the Protected Listening Law applies. It is not any illness or mental disability that characterizes the crime, but only those that prevent the victim from discerning the sexual act. The victim's inability to offer resistance is understood as, for example, a state of drunkenness.

There was no provision for the specific crime of rape of a vulnerable person in a separate legislative article before Law 12.015/2009. The conduct could be classified as rape, as provided for in Article 213 of the Penal Code, or as violent assault on modesty, as provided for in Article 214 of the same law. Rape consisted of "forcing a woman into sexual intercourse, through violence or serious threat". Therefore, the passive subject could only be female and the conduct was sexual intercourse, understood as vaginal intercourse, obtained through violence or serious threat. Violent assault on modesty was provided for in Article 214 as "forcing someone through violence or serious threat, to practice or allow someone to practice a lewd act with him/her other than sexual intercourse". Thus, the typical suitability of the crime of rape required sexual intercourse and a female victim. Lewd acts other than sexual intercourse were classified as violent assault on modesty and the passive subject could be either female or male. Article 214 was revoked by Law 12.015/2009.

Vulnerability was addressed in Article 224 of the Penal Code, as a generic provision for all sexual crimes, based on the understanding that violence was presumed for a victim up to 14 years old, “alienated or mentally weak”, and the perpetrator was aware of this circumstance, or could not offer resistance, due to any other cause.

Law 12.015/2009 unified the conduct provided for in Articles 213 and 214, to define both sexual intercourse and any other lewd act, practiced with violence or serious threat, against any person, regardless of whether male or female, as rape.

On the other hand, it repealed article 224 and inserted article 217-A, providing for the specific crime of rape of a vulnerable person.

It is worth noting that, according to article 226, II, the sentence will be increased by half if “the perpetrator is an ascendant, stepfather or stepmother, uncle, brother, spouse, partner, guardian, curator, preceptor or employer of the victim or by any other title has authority over her”, as is the case in most cases of rape against children and adolescents, since most of them occur within the family environment.

If there is a kinship, liability for improper omission is also possible (Cunha, 2021), when the perpetrator should and could have acted to avoid the result (art. 13, § 2 of the Criminal Code). The duty to act exists for those who have a legal obligation of care, protection or supervision, as is the case of parents or others who hold parental authority; for those who, in another way, assumed responsibility for preventing the outcome, such as those who assume responsibility for care through an agreement, such as caregivers and nannies; and for those who, with their previous behavior, created the risk of the outcome; for example, in the case of a mother who, aware of her stepfather’s sexual interest in her daughter, leaves the house and leaves the child alone with the agent.

There is no longer any presumption of violence in relation to a minor under 14 years of age as there was until 2009; violence is implicit in the act (Bitencourt, 2022) of having sexual relations with a person of that age. There is not even a need for there to be any type of violence or threat, completely dispensing with the old discussion about whether it is an absolute or relative presumption, whether or not to admit evidence to the contrary.

Until Law 12.015/2009, sexual crimes were treated as crimes against customs. Currently, they are crimes against sexual dignity. In the case of adults, specifically against sexual freedom.

This explains the legislative insertion that the penalty is applicable even if the victim has had sex before, because crimes against customs did not always protect the victim in a sexist society, since the judgments of the cases were permeated by moralisms, including about the past sexual life of women and girls. Since the protected legal right today is sexual dignity, it matters little what is considered appropriate to the morals and good customs of the place and time. This is an important step forward in a society that aims to be free and equal for men and women.

Before 2009, the action was processed by means of a complaint, except if the crime was committed with “abuse of parental authority, or of the role of stepfather,

guardian or curator”, in which case it was an unconditional public action. With the legislative change of 2009, the crime of rape began to be processed by means of a public criminal action subject to representation, but the rape of a vulnerable person became subject to an unconditional public action. In 2018, Law 13.718 began to provide for unconditional public action for all crimes against sexual dignity.

3.1. Means of Proof and Assessment in the Decision on Crimes of Rape of Vulnerable People in the *TJPE*

The time period chosen to identify the decisions in the process of detecting the body of evidence and structuring the victims’ statements was between April 4, 2018 and April 4, 2023, *vacatio legis* of Law No. 13.431/2017. The *TJPE* website was accessed by opening these tabs in sequence: Publications, Jurisprudence and *TJPE* and Recursal Panels. In the latter, the page is redirected to another, the Jurisprudence Web Search, which contains the physical and electronic processes of the Court of Justice. The search area started with a detailed search and not with the free search, because 545 documents appeared when entering the term “rape of a vulnerable person” in the latter; however, not all of them actually refer to this crime due to encountering the terminology in summaries even when they did not correspond to a case of rape of a vulnerable person. In the detailed consultation, we opted for a cross-comparison of the CNJ Class in Criminal Appeals and the CNJ Subject in Rape of a vulnerable person, which resulted in folders with the procedural files. The appeal type served as a filter to separate the appeals which dissect the evidence from the other appeals.

In four files found with cases of rape of vulnerable people, files 01 and 04 did not produce results, but 02 brought 11 appeals, and 03 presented 176 appeals; therefore, a total of 187 cases were identified. Of these 187, 22 cases did not have the document with the decision, only the summary, making their analysis impractical. Thus, 165 were categorized according to the case number, name of the reporter, competent chamber and year of the decision to order them and facilitate case detection and the following steps. Qualitative tabulation of the research helped to find the processes by numbers from 1 to 165. The judgment of the appeals took place in Recife (1st, 2nd, 3rd and 4th Criminal Chambers), with 48 judgments (29.1%), and in Caruaru (1st Regional Chamber - 2nd Panel), with 117 judgments (70.9%). More specifically, 28 judgments are from 2018; 41 from 2019; 45 from 2020; 37 from 2021; and 14 from 2022. There are no decisions published on the website within the deadline for the year 2023.

The following results are based on 149 decisions, considering that 16 judgments were withdrawn due to their content being limited to sentencing or allegations of illegalities. Of the 149 decisions, 16 (10.7%) came from appeals by the Public Prosecutor’s Office seeking conviction of the defendant in the second instance, and 133 (89.3%) from those convicted seeking acquittal. In addition, 10 (62.5%) of the appeals by the public prosecutors were granted, while 6 (37.5%) were denied. Of the 133 appeals by those convicted in the first instance, the motivations were: insufficient evidence (79.7%); lack of knowledge of the victim’s age (9.8%); victim’s

consent (4.5%); parental alienation (1.5%); lack of awareness of illegality (0.7%); acquittal of another crime (0.7%); complete intoxication (0.7%); revenge (0.7%); not indicated (0.7%). Only 2 (1.5%) convicted in the first instance were acquitted, one due to insufficient evidence and the other due to a typographical error generated by the lack of knowledge of the victim's age.

These decisions made in the second instance review the evidence⁴ present in the investigation. Each piece of evidence allows recognizable activity of the narrative anticipated by the indictment in the pre-trial and procedural course and will be received by the judge so that they can demonstrate their conviction in their sentencing (Lopes, 2022). Criminal proceedings for the crime in question (rape of a vulnerable person), commonly rely on the following means of evidence: expert evidence, testimonial evidence and the testimony of the sexually abused child or adolescent. A small portion of the cases in fact allow a combination of these three means of evidence. Therefore, their value in the doctrinal field of criminal procedural law and in the judgments of the higher courts on the subject of sexual violence is discussed.

Expert evidence is defined as unrepeatable evidence, usually incriminating and technical, as it requires immediate collection and mastery of certain technical knowledge. The examination itself depends on where the victim of rape of a vulnerable person was initially treated. If the victim has first contact with the public security system, the police advise that he or she be directed to a forensic medicine agency, and later to the public health system, the Unified Health System (*Sistema Único de Saúde—SUS*). The conclusion of the Police Report (*Boletim de Ocorrência—BO*) is the basis for referral to the Medical-Legal Institute (*Instituto Médico-Legal—IML*), the competent and official body responsible for issuing forensic medical reports in rape episodes in Brazil (Queiroz et al., 2020). Finally, the abused minor receives prophylaxis for sexually transmitted infections and emergency medical treatments in the *SUS* network, undergoes laboratory tests and emergency contraceptive measures, in addition to being referred to other monitoring teams depending on the peculiarities of the case (Ministério da Saúde, 2015).

If the victim is likely to be admitted to the health system, the order of follow-up depends on the flow of the support network and formal agreements between local institutions. The police authorities are notified when a police report is filed, a communication from the Guardianship Council or an anonymous report is made on Dial 100, a 24-hour hotline for reporting human rights violations (Silva, 2022). Choosing support from the health system does not prevent the police from seeking assistance and filing a police report. Victims over 18 years of age have the right to file a report or not, follow other legal procedures and undergo a forensic examination, but it is up to professionals to encourage such actions (Ministério

⁴It is worth noting that the research analyzed the *TJPE* judgments in a documentary manner, which dealt with the evidence produced in the proceedings, meaning what the judgments record about the means of evidence, without verifying the specific evidence itself.

da Saúde, 2015). If the crime is committed against a child or adolescent, the police report will be filed in the presence of their parents or guardians, and the forensic examination requires the presence of a close person (Vanrell, 2020).

The purpose of a forensic examination conducted at a forensic institute is to find materials that belong to the victim or the aggressor. A thorough inspection of the victim's body determines the presence of injuries and biological samples (Queiroz et al., 2020). Regarding things, the forensic doctor must be aware of the possibility of traces of the aggressor on the clothes and objects (Ministério da Saúde, 2015). There are numerous reasons why it is impossible to examine the body of a rape victim, and the disappearance of biological remains is a disturbing cause. Mendes (2020: p. 139) exposes the senseless point of view of the criminal process so that the victim has rationality and understands that the "filth" of their body is evidence:

Something extremely common in cases of sexual crimes, especially rape, in which the traces, if any, in the case of real violence, require the victim, before any medical evaluation, for example, not to throw away or change clothes, not to wash, not to take a bath, not to use a shower, not to cut their nails, not to brush their teeth or use mouthwash, all at the risk of, in doing so, destroying the evidence of the materiality of the crime. In other words, what is required of the victim is the complete opposite of what the immediate work of their psyche is known to order them to do (...).

Furthermore, the time between the crime, the forensic examination of the body of the crime and the analysis of the biological sample in the laboratory varies the quantity and quality of the biological traces, and therefore lacks speed, as it presents significant reductions 72 hours after the violence (Ministério da Saúde, 2015). Three of the cases analyzed admitted inconsistencies in the expert reports caused by the passage of time. In the first case, the doctor from the public health system certified a conclusive report with the presence of bleeding and injuries, while the *IML* wrote an inconclusive report three days later. The doctor's report in the second case was conclusive and found biological material; however, the sample was examined 16 days after its collection and resulted in an inconclusive report by the laboratory. An expert assessment was performed in the third case, even within the procedural process, years after the crime had been committed and on only one of the victims, and undoubtedly resulted in an inconclusive report. Thus, 26 (27.5%) of the 149 cases evaluated resulted in inconclusive reports.

In addition to the inconclusive reports, the research found 51 (34.2%) cases which did not carry out or did not mention expert evidence, and 9 (6%) that refer to the report without informing its diagnosis. The conclusive expert reports correspond to 53 (42.7%) cases. The number of victims in which the aggressor's genetic substance was identified reached 10 (6.7%), either through the DNA of the sample or through pregnancy resulting from the rape. Thus, corroboration of the child and adolescent's account, although it may rely on expert analysis on certain occasions, is subject to the addition of testimonial evidence.

In theory, the testimony would have the witness as its source, an uninterested person who has information about the crime that he or she had access to with one of his or her senses. Being a witness is characterized by the incidental acquisition of memory despite the lack of intention to witness the crime, in addition to being subjected to questions directed by the parties to confirm or deny the act (Kagueiama, 2021). When a child or adolescent is designated to testify regarding the rape of a vulnerable person, as they are witnesses to violence (as previously mentioned), Law No. 13.431 (2017) requires that their testimony be brought forward in the special testimony procedure to be carried out in the pre-trial stage. The duty to give an undertaking to tell the truth does not extend to this type of testimony, because children and adolescents under 14 years of age are classified as informant witnesses, regardless of direct contact with the crime (Lopes, 2022).

From the set of evidence from the 149 cases in this research, 22 (14.8%) presented eyewitnesses, individuals who personally witnessed the abuse. In most cases, 115 (77.2%), it can be seen that the witnesses were “hearsay witnesses”, meaning they did not witness the rape and only spoke about what was reported to them by third parties. Likewise, the testimony of many fathers and mothers conveys what the child or adolescent narrated or the conversation they had with the alleged aggressor. The remaining 12 (8%) cases did not have or did not report the participation of witnesses in the evidentiary phase. Based on this data, it can be seen that direct witnesses to the rape of a vulnerable person were not heard in 85.2% of the trials.

3.2. Hearing of the Victim and (in) Effectiveness of the Special Testimony

The victim’s statement is a means of obtaining oral information, as it does not require a commitment. However, it receives different evidentiary value in crimes of sexual violence in judgments, mainly by the *STJ*, where the jurisprudence is that, “in crimes of a sexual nature, the victim’s word should be attributed special evidentiary value, when coherent and credible” (TJDFT, 2021). Souza and Ayrosa (2023) analyzed the decisions of cases of rape of vulnerable people in the jurisprudence of the *STJ* in the year 2022 and verified the signs demonstrated to ratify the word of the violated person. In terms repeatedly described by the ministers, the act occurs “hidden”, “in clandestinity” and “in secret”, so in contrast the magnitude given to the victim’s narrative for the conviction of the defendant is based on demonstrating harmony with the set of evidence. Conversely, Lopes (2022) understands that the victim’s word cannot serve as evidence in criminal proceedings due to contamination of the testimony on a material level and the procedural violation due to the partiality of the testimony.

Although important, the testimony of a child or adolescent who is a victim of rape of a vulnerable person, according to Law No. 13.431/2017, may be waived if there is other evidence that proves the crime from the testimony of witnesses or the results of expert examinations. If this is not the case, continuation of the

testimony through a special testimony in court must follow the *PBEF*, an investigative protocol designed to understand the recommendations starting with the physical field and reaching the conversation stages. The courtroom is considered an unsuitable environment for children, therefore they proposed the infrastructure of a diverse, welcoming place to guarantee the victim's privacy and avoid contact with the suspected perpetrator and people who may represent a threat or coercion (CNJ, 2020).

Determining a location other than where the competent authority presiding over the act is located allows the observation room to be located in another building, floor or public office, since the media transmission will be in real time. This tool uses two rooms in closed-circuit television (CCTV) mode that connects the courtroom and the interview room via electronic transmission. The entire session will be recorded, however recording alone is not possible without simultaneous availability (Schmidt, 2020). A complete recording allows for the personal evaluation of the intermediary, improvement in their practices and verification of possible contamination in the questions asked (Scarpati et al., 2023). In the event of technical problems preventing the conclusion of the hearing, it will be rescheduled in accordance with the particularities of the means of proof of the child and adolescent's statement.

The psychologist and the minor who is a victim or witness of violence are inside the special testimony room, as communication with the outside world is restricted to the ears of the former. The responsibility for humanizing the child and adolescent questioning is outsourced by the magistrate to a specialized sector that is the psychosocial center, without relinquishing their authority. The victim has the right to consult about the gender of the interviewer, but usually the professionals are psychologists and social workers and of the female gender due to the social imposition of the mission of listening and welcoming being the woman's, while the mission of judging and deciding is the man's (Azevedo, 2022). The legislative provision presupposes training and not gender specificity, therefore the euphemistic and empathetic work of the professional can be independently manifested of the reductionist maternal perspective.

The psychologist or social worker who initiates the special testimony will conduct the interaction moment with the courtroom in a comprehensive manner. The opening communication introduces the interviewer and his/her role, informs the purpose of the conversation to be held and the participation of others in an alternative room, and finally demonstrates that the recording instruments are for protection and not for disclosure. Once the intermediary and the purpose of the special testimony are clarified, the conversational engagement begins to create bonds and build the relationship between the interviewer and the victim (Lino, Bernardes, Santos, & Cecconello, 2023).

The technician needs to put aside any personal statements and prejudices and build emotional harmony, which is why it is not advisable to change technicians for the same case (Fiorelli & Mangini, 2021). This interaction is possible with

mutual attention in sharing ideas and interests, aspiring to meet the objectives of the testimony, so the interviewer needs to demonstrate their interest in what is addressed by the victim through encouraging words that demonstrate understanding and permission to continue (Lino et al., 2023). Neutral or positive topics from the child's routine and material resources such as drawings and toys help to deepen openness with unfamiliar adults by providing comfort. Furthermore, the person being interviewed should be introduced to the guidelines "correct me", "don't guess/don't make it up" and "I don't understand" and be informed of their right to correct their statement or misimpression of the interviewer, as well as not to respond or to invent an answer to please the interviewer or meet an expectation (CNJ, 2020).

The next and most interesting phase of the judicial process, the substantive part, directs the victim to describe the violence witnessed or received. Long pauses, silences and time are allowed as the child or adolescent needs when it becomes difficult to manage feelings or understand behavior or conduct during the testimony (Scarpati et al., 2023). The indictment or procedural documents of the respective criminal action should not be read, nor should the free narrative be intervened when unnecessary. A point of caution appreciated by the intermediary is the choice of words for questions directed at the criminal act: the questions should not be closed or alternative, but rather open and non-repeatable, removing the suggestibility of memory by not including information that was not previously provided by the child about traces of violence or authorship (Schmidt, 2020).

In order to verify compliance with these guidelines and the application (or not) of the procedures determined by Law No. 13.431/2017, there was a change in the location of part of the following data: the location of the victim's statement and the space where they were heard in the judgments remained via the *TJPE* archives in full, where the evidence present in the investigation is retrieved; however, the final step was taken on the same website, but this time via the Services tab and following to the 1st and 2nd degree Proceedings. The page is redirected to the Unified Procedural Search that provides access to the dates of the procedural acts, sometimes with details of what happened in each of them, by the process number, information obtained in the first categorization of the search with the judgments.

Based on the knowledge of the day and the authority that heard the infant, it was possible to distinguish the statements made before and after the Protected Listening Law came into effect. If the crime was committed after April 2018 or if the proceedings only began after April 2018 and the victim spoke out in court, it is possible to state that the child or adolescent reported the abuse suffered within the scope of the law. However, it is important to be aware that the judges did not specify the interview protocols used, the questions asked or the structure of the spaces.

The investigation of the methodologies adopted in structuring the victim's testimony included 137 cases, removing 12 in which they did not demonstrate or did not collect the testimony of the abused minor. Only 20 cases (14.6%) alleged application of the methods recommended for children and adolescents, and these were segmented into antecedent and consecutive to Law No. 13.431/2017. In

addition, 13 (9.5%) complied with the *CNJ* resolution before the law came into effect, with 6 special statements in court; 2 special statements at the police station; 1 specialized hearing in a specific protection agency (Tutelary Council); 2 specialized hearings in an undetermined protection agency; and 2 cases in which they admitted both specialized hearing and special testimony in court. Seven (5.1%) children surveyed were approached by protected listening within the validity of the law, being 4 special statements in court, 1 special statement at the police station and 2 specialized listenings at *CREAS*.

Therefore, it is concluded that the *TJPE* has not followed the procedure of Law No. 13.431/2017 and consequently of the special testimony in cases of testimony in court. The special testimony, as mentioned above, is a scientifically validated protocol and recommended for the age group of children and adolescents and allows for mitigating the possibilities of contamination during recollection of the victim-genic episode, such as False Memories. In addition, the emphasis on the limitation of the special testimony rooms to the *TJPE* properties points to the technical deficiency of the police stations, making it impossible for them to recognize psychological factors external to the victim that can manipulate true memories. The victim's narrative is inseparable from emotional modulation, and therefore must be accompanied by the rights provided for in Law No. 13.431 in order to prevent further violence and not allow revictimization of the sexually abused.

The remaining 117 (85.4%) cases did not follow or did not report the use of any type of protected listening device. The tendency to believe in the lack of follow-up prevails over the lack of reporting, since in the cases of special testimony use, the judges highlighted the type of methodology used in the decision, namely the Special Protected Testimony. Of these 117, the places where the victim's reports were collected were: 15 (12.8%) at a police station; 38 (32.5%) in court; 54 (46.1%) at a police station and in court; 1 (0.9%) at a protection agency and in court; and 9 (7.7%) at an unknown location.

Repetition of the interview is pointed out by [Feix and Pergher \(2010: p. 223\)](#) as a potential contributor to revictimization, since it is natural that inadequate questioning perpetuates the presence of "doubts and/or gaps about certain aspects of the crime" and creates the convenience of hearing it again. Repeated interviews also lead to false memories, therefore good conduct and recording of the testimony are established as measures to minimize errors and the psychological impacts of the person being interviewed. Even though studies on the Psychology of Testimony censor repetition of the interview and Law No. 13.431/2017 does not allow taking a new special statement, a serious flaw is implicitly seen in the protection network for sexually abused children and adolescents, observing the number of institutions or bodies through which the child passed, allowing 57 (41.6%) to testify more than once, without demonstrating reasonable justifications, nor with agreement from the victim or their legal representative.

4. Final Considerations

In conclusion, this study investigated all cases found associated with the topic and

was able to answer the research problem, verifying the evidence in cases of rape of vulnerable individuals tried by the *TJPE* after the enactment of Law No. 13.431/2017. In order to meet the first specific objective (the location of cases based on a cross-comparison between criminal appeals and the crime of rape of vulnerable individuals), the research identified 187 cases, which generated 165 processes available for categorization and 149 directed to content analysis.

The second objective was to identify coordinated evidence to ratify the victim's report, whose veracity and reliability were contested by the convicted. Although the processes mention witnesses and expert reports, this evidence proved to be weak, generating allegations of insufficient incriminating evidence in 79.7% of the appeals. The reports of sexually abused children and adolescents were confirmed by 42.7% of the conclusive expert reports, and only 6.7% of these presented compatible genetic material. In other words, it can be seen that 93.3% of the expert evaluations were unable to determine the relationship between the results of the forensic examination and the genetics of the aggressor, thus preventing an association of the accused with the crime solely through expert evidence. Regarding the testimonies, only 22 cases included witnesses who actually saw the crime happen, as the others were restricted to third-party narratives.

Objectives 3 and 4 are connected, since the procedures adopted in the interviews with victims necessarily reveal whether protected listening was used in administration of the child and adolescent's testimony. As of the *CNJ (2010)* resolution, 13 victims were assisted by specialized listening or special testimony, while 7 cases highlighted the presence of supportive testimony after the law came into effect in 2018. Therefore, it is noted that regardless of being tried during the valid period of Law No. 13.431/2017 and the existence of special testimony rooms in the state, the processes presented on the *TJPE* website portray quantitative insignificance of the victims who were heard by qualified professionals and in accordance with the *PBEF*.

In seeking to apply the procedures provided for by Law No. 13.431/2017, the research revealed two more errors committed in hearing victims of rape of vulnerable people: the hearing in an institution without support of a special testimony room or qualified team, and its contraindicated repetition.

The *TJPE* announces maintaining special testimony rooms in the court's own facilities. Thus, special testimony should not be held in police stations in the state of Pernambuco due to the lack of special testimony rooms and multidisciplinary teams in the police force. From another perspective, it can be seen that the victims in 54 cases had to narrate the violence they suffered to the police authority and in court, without any type of protected hearing, which disregards the fact that their narrative is full of emotions, especially because they have an affectionate relationship with the perpetrator of the act in most episodes due to the intra-familial nature of the aggression, which imposes conflicting feelings on them, including guilt. Such a relived experience increases suffering and can trigger psychological defense mechanisms that unconsciously lead the victim to not bring up facts due to the

mechanism of repression. Understanding and identifying these psychological phenomena, as well as the correct intervention to minimize suffering, are not within the reach of legal professionals.

Failure to comply with Law No. 13.431/2017 was aggravated by interference from institutions that were unprepared to listen to minor victims and by the insistence of judges on repeating the hearing of the victim, even though they were aware that the child or adolescent gave his or her testimony to a protection network agency or another place that may or may not be suitable for such purposes, thus contributing to revictimization. This secondary violence aggravates the psychological impacts of victims of rape of vulnerable people and subjects them to an endless cycle of suffering, the perpetrators of which are precisely the public agents who should protect children and adolescents from any invasions of their protection and dignity. As judicial institutions ignore the human brain's ability to unconsciously activate psychological defense mechanisms and distort memory, such as False Memories, they contribute to committing errors and injustices in criminal proceedings, as they prevent the witness from obtaining a reliable recollection of the sexual violation suffered. Thus, the victim's account is largely compromised by more than just the common lack of credibility in relation to narratives coming from minors.

Fund

This study was conducted with financial support from the Pernambuco Science and Technology Support Foundation (Fundação de Amparo a Ciência e Tecnologia de Pernambuco—FACEPE) in the form of a scholarship and its dissemination had financial support from the University of Pernambuco—UPE, in the form of funding to support research developed in the Veredas Criminal Sciences Research Group.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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