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CHAPTER 8

INTEGRATED ANALYSIS

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1. INTRODUCTION

The empirical study carried out in the five jurisdictions aimed to explore the nature of the interrogation of juveniles. Its goal was to examine to what extent the practice lives up to the existing legal frameworks, and, where possible, highlight good practices in the protection of the juvenile suspect during interrogation.

Merging the national findings of the empirical studies was indeed a difficult endeavour, not only for methodological reasons. The national experiences proved to be significantly different from one another, as they are inevitably affected by the surrounding legal framework and culture of each system.¹ Nonetheless it was possible to highlight some recurrent themes in all the countries. In this respect it is important to observe from the outset that there is at times significant convergence in the experiences and opinions of the same group of respondents participating in the focus group interviews. The common function performed by the interviewees (or, in the cases of juveniles, the common experience of coming into contact with the criminal justice system) gives rise to experiences that are sufficiently similar to be compared across countries. The present chapter is intended to offer a comparative transversal overview of these different experiences and, insofar as possible, to combine the national findings into an integrated perspective.

The combined analysis also required that the empirical findings be tested against the underlying legal framework. The testing has been done according to a two-tier process: first, the relevant empirical findings have been measured against the national framework. Then, the transversal findings – which are presented in this chapter – have been evaluated in light of the differences/ commonalities between legal systems that had been highlighted during the legal

¹ Hawkins 2002, p. 53 and further (discussing how ‘surround’, ‘field’ and ‘frame’ influence discretionary decision-making).

study², presenting an integrated analysis in a legal thematic way. Inevitably, this chapter will summarise this process and only where relevant the empirical findings and the analysis will be discussed in light of the substantive legal findings.

The chapter is structured as follows. First it looks in general at the treatment of juveniles (paragraph 8.2), then it deals with the findings concerning the way in which juveniles are informed of their rights (paragraph 8.3). Next it formulates some reflections on the difficulties concerning the (lack of) assessment of the juvenile's maturity, health and fitness to be interrogated (8.4). The following paragraph (8.5) looks into the topic of assistance, first by a lawyer then by an appropriate adult (hereafter: AA). The following paragraph (8.6) goes into the interrogation room to discuss some of the dynamics that surfaced during the study. Finally, some considerations are made on the issue of training of the authorities involved in juvenile punitive proceedings (8.7). The chapter ends with some brief concluding remarks.

2. TREATMENT OF JUVENILES

In this first section of the integrated analysis, attention will focus in general terms on some of the key features that inform the police treatment of juvenile suspects in light of the empirical study conducted.

2.1. HOW ARREST AFFECTS THE BEHAVIOUR AND THE FURTHER TREATMENT OF JUVENILES

Across several jurisdictions, it appears that the initial treatment of the juvenile on arrest is likely to have an important, sometimes determinative effect on their behaviour in custody. Put simply, the behaviour of the young person was likely to mirror that of the police. Those arrested in a professional manner, without violence or aggression, felt more inclined to be helpful to officers later on in the process. Those treated courteously were appreciative that the police were doing their job and had more respect for the nature of the process.³ Where young people were treated badly, this seemed to set the tone for the custody period and the related interrogation(s), causing them to 'kick off' and be less co-operative.

² Panzavolta *et al.* 2015.

³ The ways in which the proper treatment of those stopped, questioned and arrested by the police can enhance individuals' respect for the law and their belief in the legitimacy of the criminal process has been well documented in existing literature. See for example the work of the psychologist Tyler 2007 and Jackson *et al.* 2012.

In *England and Wales*, for example, the young people interviewed in the focus group interview explained: “*If we’re treated badly by the police then we behave badly*”. Instead of the police recognising their vulnerability and ‘looking after them’, therefore, they all felt that the police were trying to scare and intimidate them. In *the Netherlands*, this was of concern to juveniles, who explained that they wanted to be treated with respect. Young people in the Italian focus group interview described the police attitude towards them as aggressive, threatening and designed to scare them.

What was different as between the jurisdictions, however, were the expectations of young people. Whilst young people in *the Netherlands* and in *England and Wales* had experienced both good and bad police practice, they were aware of the procedures to be followed and the rights to which they were entitled, and some expressed dissatisfaction if the police did not comply with these legal requirements. In *Poland*, boys and girls both reported the use of general aggression and violence on arrest, but there was neither the sense, nor the expectation, that formal procedures would be followed, that rights would be respected, or that they would be treated in any other way. There seemed to be an almost passive acceptance that the police hold all of the power and resistance will achieve little.

There were also expressed more ambivalent views about the overall detention process. Several young people in the focus group interview in *England and Wales* expressed less criticism but mostly because they had resigned to the fact that time in custody is always unpleasant. This view seemed to accept that the criminal process operates on a presumption of guilt rather than innocence and in the words of Feeley, to see “the process as the punishment”.⁴ As one boy told us: “*It’s supposed to be a deterrent and it is. You don’t want to go back*”.

2.2. FIRST OFFENDERS AND RECIDIVISTS

A common thread that ran through our focus group interviews with all criminal justice practitioners, was the distinction made between juveniles who had experience of the criminal process and those being arrested and detained for the first time. Though the relevant legal framework on safeguards in investigations does not differentiate between first offenders and recidivists, it appears that in practice the distinction is highly relevant. Young people themselves also recognised this as an important difference in their experience of the process, how they were treated and the expectations they now had. However, the ways that these two categories of detainees were distinguished and the significance attributed to this distinction, varied among different practitioner groups. Most police officers and – to a large extent – also lawyers, saw recidivists as less

⁴ Feeley 1992.

vulnerable. Those detained for the first time were seen as more vulnerable and so in need of more careful treatment – in particular, explaining the suspect’s rights in simple terms. More care may also be taken in the interrogation of these first timers, but that also depended on the seriousness of the offence and the age of the juvenile. The older the juvenile, the more serious the offence and the more experience the juvenile had of the criminal process, the less vulnerable they were considered and, as noted later, the more like an adult suspect they were treated.

The police officers themselves also represent a variable in the treatment of the suspect. Several Dutch police officers voiced the belief that if a juvenile has committed a crime they should be interrogated as a suspect in the normal way and not treated ‘with kid gloves’. Another was more sympathetic to how overwhelming the process might be, especially for a first offender. He described the procession of professionals the young person would be confronted with – two interrogating officers, a prosecutor, a lawyer, someone from the Child Protection Service – which was likely to leave the young person “*completely traumatised*”.

2.2.1. *Recidivists seen as less vulnerable by some*

Just as first time detainees are seen as more vulnerable, recidivists are seen as less vulnerable by police and lawyers, but not always by social workers and AAs. The police considered recidivists as less in need of protection and equated (one might say confused) confidence and bravado, with knowledge and understanding. Dutch lawyers, for example, said that recidivists know not to speak to the police and in *Belgium* officers added that experienced young suspects start to negotiate with the police from the outset – though this was not corroborated by defence lawyers. Belgian lawyers emphasised that the police did not appreciate that ‘cheeky’ juveniles were juveniles nonetheless. In *Italy*, one prosecutor explained that they would adopt a different approach during questioning depending on whether the suspect “*made a mistake*” (was in custody for the first time) or was “*already deviant*” (was a repeat offender).

The many ways in which young suspects are vulnerable, including their focus on short-term goals, suggests that the picture is much more complex than may appear at first sight. This is reflected in the different reactions we collected in our interviews. The contrast between practitioner approaches was seen clearly in *England and Wales*. Police officers said that suspects who were ‘repeat players’ had a good understanding of their rights and even some volunteer AAs considered them to be well-versed in their rights and in less need of the protection of an AA. Those AAs with a social work training understood the needs of juveniles very differently: for them, prior experience of arrest and detention was itself a signifier of vulnerability. They were concerned about what

was happening in the lives of these young people that resulted in them repeatedly getting into trouble with the police.

Juveniles with experience of arrest and detention may also see themselves as less vulnerable and better informed, and often give the impression of being confident and knowing their rights.⁵ In practice, however, as we shall see later⁶, they do not understand as much as it first appears. The juveniles interviewed in *Poland* had experience of the criminal justice process (they were in correctional institutions, though in some instances this was because of school truancy rather than criminal offending) but it was unclear to them when they were being questioned as witnesses and when as suspects. From their perspective, when the police questioned them, they always wanted them to admit to something.⁷

Young people themselves felt that they had better system knowledge as more experienced suspects and this determined their decision-making. As well as preferring to choose their own lawyer rather than have the duty lawyer, it also influenced their decision whether or not to request a lawyer and their strategy during interrogation.⁸ Those in the focus group interview with experience of police detention did not always consider the lawyer's presence to be necessary, as they would simply remain silent in any event and they did not feel they needed the presence or support of the lawyer to do this.

The distinction between first time and repeat suspects also connects with embedded narratives around the (un)deserving nature of accused persons. The more vulnerable a suspect or defendant is seen to be, the more deserving of legal protection they are considered. The definition of vulnerability is a fragile one, all the more so when the law does not provide for clear indicators.⁹ The young, scared suspect, in custody for the first time, accused of a minor offence will perhaps be seen as especially vulnerable, but this status can soon be displaced by, for example, behaviour perceived to be that of a non-vulnerable person (such as shouting and swearing at officers, or other forms of non-cooperation) even if it is in fact motivated by fear and a lack of understanding of the process. Although the police spoke of first time offenders needing more assistance, officers lacked any real belief in the importance of suspects' rights and were at points critical of suspects who were then able to understand and to exercise their rights. Dutch officers were unhappy, for example, about juveniles exercising their right to silence. Earlier studies have also found that officers often do not perceive suspects' rights as legitimate.¹⁰ Rather, they are an inconvenience and are often understood to run counter to the legitimate needs of the investigation. It should

⁵ See also *infra* paragraph 3.

⁶ *Infra* paragraph 3.

⁷ See *infra* paragraph 3.4.

⁸ See *infra* paragraph 5.

⁹ Panzavolta *et al.* 2015, p. 413 and further.

¹⁰ Blackstock *et al.* 2014.

be stressed however that these perceptions can change over time. Police officers in *England and Wales* exhibited fierce resistance to suspects' rights in the years immediately following PACE, but this has now become a more accepted part of practice.¹¹ In Scotland and *the Netherlands*, where the right to custodial legal advice is very recent, officers still are quite hostile to the idea and engage in a variety of rights avoidance strategies, similar to those seen in *England and Wales* in the 1990s.¹²

2.3. UNDERSTANDING THE JUVENILE AS SUSPECT OR 'ONE SIZE FITS ALL'?

In the previous section the differences in approach or treatment based on juvenile suspects' experience of the criminal process were highlighted. Here we examine how and whether juvenile suspects are treated differently from adult suspects, whether this depends on age (even within the juvenile category), or other factors such as case seriousness. We were especially interested in the different ways in which young people are understood to be vulnerable as suspects, and how legal procedures and safeguards map onto these vulnerabilities.

In our focus group interviews and observations of interrogations, there was no single model of the juvenile as suspect. It would appear however that the differences in the surrounding legal systems have only limited impact on the way the juvenile is effectively treated,¹³ and too often the juvenile suspect seemed just like any other suspect. *Poland*, and to some extent *Belgium*, favour a non-criminal family court approach with an emphasis on protective measures and the rehabilitation of the young person, though Polish police said that they did not treat juvenile suspects any differently from their adult counter parts. *Poland* adopts a paternalistic approach, focusing on the young person as an individual, but is less interested in procedural protections such as the right to silence. *The Netherlands* and *England and Wales* adopt a more traditional criminal route, in which young suspects were treated in a similar way to adults, with the addition of some specific procedural safeguards, such as the AA. This model adopts a procedural safeguarding approach, rather than one in which the juvenile is understood to be protected by specific individuals, such as a family court judge. *Italy* sits somewhere in the middle of these two points, with procedural protections in place but also quite a strong paternalistic ethos.¹⁴ In addition, the inquisitorial roots of the Italian process surface in practitioners' emphasis on finding the truth.

¹¹ Although some problems still remain, particularly with police officers resenting lawyers for advising 'no comment' replies: see Kemp 2012:54–56 and Kemp 2014: 25–32.

¹² Blackstock *et al.* 2014.

¹³ Panzavolta *et al.* 2015, p. 380–382.

¹⁴ *Id.*

2.3.1. Determining vulnerability – age and mental ability versus offence gravity

Across jurisdictions we might characterise the treatment of juveniles along a continuum, with the juvenile as child, or young person at one end, and as simply a suspect, with no real difference from adult suspects, at the other.¹⁵ Some jurisdictions and some practitioners emphasised the status of the juvenile as a young person, whose emotional and intellectual capacity was still in development. In *Belgium*, for example, some police officers described being conscious of the suspect's status as a juvenile when interviewing – their role was to question, but also to comfort. Others saw them simply as a suspect who happened to be younger than most other suspects, but required little or no special treatment. As a police officer in *England and Wales* told us: “*They are a suspect regardless of their age or the offence*”. Where age was considered important and some differentiation was made within the category of ‘juvenile’, practitioners differed as to where they might draw the line to distinguish the most vulnerable – some thought over 12, others 14. Across jurisdictions, police officers and AAs commented that the mental ability of juveniles was more significant than their physical age – which helped to determine to what extent things needed to be explained and/or simplified. Some officers in *England and Wales* and in *the Netherlands* recognised the importance of being aware of ADHD (Attention Deficit Hyperactivity Disorder) and other mental health, learning disability and/or behavioural issues that might affect the juvenile's response to detention and interrogation. Lawyers were more sceptical of the extent to which such issues were understood by the police, claiming that the police did not take these matters into account in practice. This was in part because they lacked the proper information to recognise and deal with mental health issues, which could include Asperger's or those on the autism spectrum.¹⁶ However, a lawyer did comment on a case where a boy was carrying a letter that explained his condition and the police were said to be “*brilliant*” in their treatment of him. This underlines once again the importance of training and ensuring that an appropriate person is available to assess young people's needs during detention.¹⁷

As noted in the preceding section, the seriousness of the offence was often a determining factor, underlining the young person's status as a criminal suspect rather than as a vulnerable young person. One of the interrogations observed in *England and Wales* illustrates this well. A boy of 14 was interrogated on suspicion of rape. Despite his age and the seriousness of the charges, he did not have a lawyer and the police used a technique of phased disclosure in a way that was designed to obscure the suspect's understanding of the offence and just how serious it was. In this way, no distinction was made between this young suspect and an adult: the gravity of the offence was the determining factor in his

¹⁵ *Id.*

¹⁶ See also *infra* paragraph 4.2 and 4.3.

¹⁷ See *infra* paragraph 4 and 7.

treatment. In *Belgium* too, we observed that around half of all young people were treated by the police primarily as suspects and half primarily as juveniles.

Lawyers and AAs were more likely to consider the age of the suspect relevant to their understanding and how they should be treated, but this was not universal. In *England and Wales*, there was a marked difference between AAs working as part of social services, who described all juveniles as being vulnerable because of their age and understood that even those displaying bravado were likely to be scared and vulnerable. Others, especially those with a law enforcement background, considered those with criminal records or who were insufficiently remorseful, as much less vulnerable. The narrative of these latter AAs was similar to that of the police, in which a suspect's vulnerability is aligned with their status as 'deserving'. The nature of juveniles' vulnerability and their emotional responses was less well understood by this group, underlining the need for some specialist training in working with young people.

Young people themselves did not perceive the police as being concerned about their vulnerability, nor as having any role in protecting them as juveniles. Rather, they saw the detention process as part of their punishment, or at the very least as a deterrent, designed to frighten them.

2.3.2. Gender

Gender is potentially another factor in assessing vulnerability. In *Poland*, boys said that they were never asked if they would like someone informed of their detention, but the girls said that they were. Girls in *Poland* were very aware of their vulnerability and stated that they always preferred to have an adult present as they felt safer and the police tended to behave better. They expressed concerns about their physical safety when in custody. They were made to feel especially vulnerable by the police, who exploited the girls' fears and weaknesses, rather than protected them as additionally vulnerable. The girls reported that officers humiliated them by using abusive language and made them sexual proposals to meet out of the officers' working hours. One girl noted that sanitary towels were not easily accessible at the police station, which made her embarrassed and stressed when her period had begun during an interrogation and she did not have her own towels with her. These gender differences also highlighted a concern about the effectiveness of procedural safeguards in *Poland*. Whilst teachers and psychologists attended the police station for girls, they came at the end of the interrogation for boys – signing the interrogation record and so giving the appearance of legitimacy. The interrogation record itself is a long confession monologue that fails to reveal the underlying questioning that elicited the suspect's responses, making it impossible to assess the credibility of the responses. In other jurisdictions, such as *Italy*, gender was not considered relevant, though officers mentioned that boys were seen as being easier to manage as they are emotionally weaker than girls.

2.3.3. Family situation

In most jurisdictions, social work AAs described the importance of a suspect's home situation while police and lawyers did not raise the social demographic context of the suspect as relevant to juveniles' offending behaviour. In *Italy*, however, prosecutors were very aware that juvenile suspects would typically be from a disadvantaged background and this was often relevant to their offending. They described the "crime legacy" that existed in cases where other family members had criminal histories, and the distance in social values between them as prosecutors and the juveniles whose world was so far away from their own. This might also lead to the prosecutor deciding to question the young person himself, rather than leaving it to the police, so that they could have a better understanding of the social context of the suspect's behaviour and whether some form of family intervention was required. Italian lawyers also described criminal behaviour as the "last symptom" of a range of other social problems. In *Belgium* too, one officer explained how the institutionalisation of offenders did not rehabilitate them, but made them more vulnerable to re-offending.

2.3.4. Detention and interrogation

A moment of extreme vulnerability of suspects is arrest and/or detention. The procedures for booking in suspects are designed to assess risk and to ensure the safety of the detainee. Yet, if applied to juveniles in the same way as adults, the process itself might have a brutalising effect. For example, the police in *England and Wales* explained that they will go through the same set of risk assessment questions with juveniles as they do for adults, asking them if they have addiction problems, or whether they have ever self-harmed *et cetera*. For a young person, especially if this is the first time in custody, this could be a very alienating experience.

Detention is likely to be experienced as longer for children than for adults, as time can be seen to pass more slowly for young people.¹⁸ Yet, in some jurisdictions, detention times did not vary for adults and juveniles, nor was any effort made to keep detention to a minimum. In *England and Wales*, for example, although the interrogations themselves were all under an hour, detention periods in six cases ranged from between 12 and 24 hours, often involving overnight custody. In one case a 13 year old suspect was arrested for assault with intent to rob. He was brought to the station just after 20.00, held overnight and finally questioned for 20 minutes at 13.00 the following day, spending over 18 hours in custody. In *the Netherlands*, although there was criticism that young suspects were kept in police custody overnight in too many cases, lawyers reported that juveniles were usually sent home overnight in minor cases. The police tended to blame delays on others – waiting for lawyers, AAs or an interpreter.

¹⁸ Pearse *et al.* 1998.

Detention is described by practitioners as a procedure for evidence gathering. It is their job of work and as a consequence, it comes to be seen as a routine activity. Officers in several countries (e.g. *England and Wales*) described detention as a safe place for young people. However, for juveniles, it is a lonely experience during which they are often scared and upset, unsure of why they are there and what will happen to them. Polish girls experienced the most fear, as they feared for their own safety as well as being uncomfortable with the process as a whole. Juveniles in *England and Wales* stated that the worst part of detention was being placed in a cell for such a long time. It was often very hot or cold, it was noisy with the sounds of other prisoners in adjoining cells and it was difficult to sleep or eat as the food was said to be horrible. They also found it humiliating, particularly if they had fixed cords in their trousers and these had to be removed and placed with plastic trousers and also with a camera watching them in the cell and so on. Some experienced violence: others witnessed it and found it disturbing. Detention can be a brutal process and one juvenile described the shock of seeing someone being carried into a cell, with handcuffs on and straps on their legs. Polish juveniles also described the process as one of humiliation. Social workers were sensitive to these experiences and some lawyers were, but this varied across jurisdictions – in *England and Wales*, some lawyers seemed very concerned about the vulnerability of juveniles in custody; and in *the Netherlands*, they sometimes seemed unaware and appeared to treat them no differently from adults.

Juveniles often experienced further emotional distress during their time in custody. There were sometimes difficulties in contacting parents or ensuring that they attended the police station. Arrest may also result in some young people being placed in local authority care. Lawyers in *England and Wales* complained that, due to the inadequate presence from social workers, it was often left to them to explain to the juvenile that they were going into care and assist them in coping with such an emotional issue. For those juveniles without a lawyer it was the police who advise them if being placed into care.

2.3.5. *Detention following arrest or as ‘volunteer’*

Another relevant aspect in the treatment of juvenile suspects is connected to the protection of rights in non-custodial interrogations. In some countries, juveniles were especially vulnerable when attending the police station as a volunteer as they were not aware that they enjoyed the same rights as when they were under arrest. Even AAs, whose role is to assist the young person, were often not well-informed as to the status of the questioning and the rights of the young suspect. In *England and Wales*, for example, AAs did not appreciate the formal nature of a voluntary interview and so did not require a lawyer to be present as they would following arrest. In *Belgium* too, lawyers and police officers agreed that invited

juveniles suspects are less informed about their rights in comparison with those taken into custody.

2.4. CONCLUDING REMARKS

The legal study critically remarked that the law in the books of the five countries makes no differentiation between categories of juveniles and treats all juveniles the same. The legislations do not provide for any categorisation or classification of juvenile suspects in light of their greater vulnerability.¹⁹ The criticism particularly concerned the fact that the age of punishable juveniles can significantly vary across countries and it seems improper to treat a 13 year old just like a 15 year old and both like a 17 year-old. The same was observed with regard to the identification of vulnerability (and of further vulnerabilities).²⁰

The practice does not adequately fill in this gap. First, in some countries the label of suspect still prevails. Second, even in countries where more emphasis is placed on the juvenile being a young person than a suspect, the lack of guidelines leaves wide discretion to practitioners, to the extent that there is little agreement on where to draw the line of greater vulnerability. Overall, the empirical findings do not demonstrate a difference in the treatment of juveniles related to the suspect's age or effective maturity.²¹ Likewise, other factors of vulnerability are not always duly considered. Moreover, an aggressive or improper behaviour by the police toward the juvenile can increase, or even create, vulnerability.

The empirical study reveals some of the factors that contribute to the juvenile's vulnerability: these include the age of the juvenile, their social demographic, the family situation, and the gender of the suspects. These factors should be taken into account by practitioners – particularly public authorities – dealing with young suspects.

Being placed in arrest and detention is also a factor of increased vulnerability, though this also applies to those attending as volunteers. In cases of voluntary attendance juveniles are more vulnerable due to the lack of legal safeguards. Even practitioners tend to downplay the need to ensure adequate protection in such situations.

The practice knows however some classifications. The categories that are relevant in practice are the distinction between first offenders and recidivists and between suspects of serious crimes and other suspects. These categories are in essence used to treat some juveniles in a way no different from adults, from the information on rights²² to the way in which interrogations are conducted.

¹⁹ Panzavolta *et al.* 2015, p. 302–305.

²⁰ *Id.*

²¹ See also *infra* paragraph 4.3.

²² See *infra* paragraph 3.1.

This differentiation leaves much to be desired not only because it undermines the very principle that all suspects should be entitled to the presumption of innocence. The difference between suspects is in fact related to a purely exterior factor, without adequate evaluation of the effective maturity of the young person.

The importance of dealing with suspects in a way that is more consonant with their vulnerability is important also because the behaviour of juvenile suspects mirrors that of the police. Hence, a disrespectful and/or aggressive treatment of juveniles produces a higher degree of uncooperative and aggressive behaviour by the juvenile, to the detriment of any educative function of criminal justice.

3. INFORMATION TO JUVENILES

Providing information to suspects in criminal proceedings is a crucial feature of fair justice. Knowledge of rights is a determining factor for their conscious exercise. Differences remain in the legal framework, as to the specific rules and the general procedural context, although these differences are being reduced by the recent Directive 2012/13/EU.²³

Earlier research has demonstrated that suspects' understanding of their rights is likely to depend in large part on the ways in which those rights are administered.²⁴ When the suspect involved is a juvenile, the administering of rights becomes even more important due to the vulnerability of juveniles and all factors related to it.²⁵ As mentioned before, young people are already vulnerable because of their age and emotional and intellectual immaturity compared with the average adult suspect, suggesting that a distinction should also be made in how the juvenile suspect is addressed and how their rights are administered.

As we shall see, in most cases efforts are made to adopt a more child-friendly approach. In some cases, however, juveniles are informed of their rights in the same way as adults. Across all jurisdictions it proves difficult to administer rights in a 'juvenile-friendly' way and sometimes sticking to the letter of the law becomes the safest choice for officers. Nonetheless, the empirical findings offer hints of some good practices that can be implemented across the different jurisdictions.

3.1. ADMINISTERING RIGHTS

Given the type of research conducted it is difficult to establish whether juveniles are normally given their rights or whether there are omissions in this respect. Juveniles in some focus group interviews lamented that they were not informed

²³ Panzavolta *et al.* 2015, p. 390 and further.

²⁴ Blackstock *et al.* 2014.

²⁵ Panzavolta *et al.* 2015, p. 409 and De Vocht *et al.* 2014, p. 492.

about their rights. This was the case of Polish juveniles (both boys and girls), although this complaint could not be verified and it remains difficult to assess (also in light of prior research) whether it corresponds in fact to a widespread and systematic bad practice. A similar grievance was also raised by a majority of the interviewed Italian juveniles, but in this case too there is no further evidence to confirm the grievance or to assess the existence of a generalised malpractice. In both cases the complaint might be more related to the limited understanding that juveniles have of their rights²⁶ and of the difficulty in paying attention to all the different communications when juveniles come into contact with the criminal justice process. In other words, it might be that juveniles were not able to understand when they were administered their rights; or that they were not able to concentrate sufficiently on the communication so as to retain it and later remember it. There are two possible reactions to this difficulty of juveniles to retain and remember the rights communicated: one is to provide a written communication; the other is to administer rights repeatedly.

3.1.1. *Written and oral communication*

Providing the suspect with a written document explaining the rights (a so called letter of rights) could be a useful practice when juveniles are informed about their rights. In *England and Wales* this is common procedure. An interviewed lawyer witnessed this practice also in *Poland*. In other jurisdictions this practice is also known and used, but not systematically. For instance in *Italy* and *the Netherlands*, letters are sometimes given although such a practice remains infrequent, with oral information remaining largely predominant in these jurisdictions. In any case, as was confirmed by several respondents across jurisdictions (e.g. one interview with a Polish lawyer), it is considered preferable to accompany the letter of rights with an oral explanation of the rights and of their meaning.

3.1.2. *Repeated administration of right*

A second natural reaction to the difficulty of juveniles to understand and retain rights might be the tendency to administer rights repeatedly. From the empirical findings it is possible to see that it is not infrequent that juveniles are repeatedly given their rights, *i.e.* on multiple occasions. In *Poland*, for instance, the interviewed police officers considered most juveniles incapable of understanding their rights and would therefore often repeat them. Another example is the case in *Belgium*, where this behaviour of repeated administration of rights prior to the commencement of the interrogation was highlighted (not without some criticism) by some of the respondents. This is not *per se* a bad practice, but it also requires attention on the part of officers. On the one hand,

²⁶ See *infra* paragraph 3.2.

it is good that information is repeated, in order to ensure that children are more (and effectively) aware of their rights; on the other hand, if the information is repeatedly conveyed but always in a standardised and bureaucratic manner the risk is that the juvenile is overwhelmed with information and thus only more confused, with the juvenile maybe retaining only pieces of (maybe even less important) information or not listening at all. In both focus group interviews in *Belgium*, practitioners warned about this potentially risky effect. Previous evaluation of the so-called *Salduz Act* in *Belgium* raised a similar concern: too much information may be given, especially when it is repeated (several times).²⁷

Another problem that may arise when giving rights repeatedly is the risk of inconsistent (or, at least, not entirely consistent) information: for instance, observations in *the Netherlands* showed that the information on the right to silence was always repeated to the arrested juveniles before the interrogation, but the same was not the case for the information on legal assistance.

3.1.3. *How information is provided*

The aforementioned observations lead directly to the crucial issue of how rights ought to be administered, *i.e.* what is the best way for informing juveniles of their rights. Several elements are central. The wording and content of information provided is important. But there is more to it than that. As one Dutch lawyer put it: “*it’s the tone that makes the music [...]*.” In other words, the overall situation and context must be considered. Several dangers lurk behind the giving of information: first, that the wording used or the ‘tone’ in which information is given might convey less information than required (depriving the juvenile of some relevant knowledge of his rights); second, there is the risk of giving excessive information, with the information in excess being misleading and thus detrimental to the purpose itself of the right to information; finally, the risk of giving confusing or misleading information.

3.1.4. *Incorrect practices*

In some cases it was possible to observe some incorrect practices in the way rights were communicated. For instance, the observations in *England and Wales* showed some cases where the caution (*i.e.* information on the right to remain silent) was administered by adding that the suspect was required to “*tell the truth*”, undermining the very essence of the right to silence. In *England and Wales* a certain amount of confusion on the essence of the right to silence also derives from the obligation for officers to explain the possibility of drawing adverse inferences from the suspect’s choice to remain silent. One case is particularly illustrative of the difficulties in conveying the technicalities

²⁷ Penne *et al.* 2013, p. 117–118.

of this part of the law. Here the police officer tried to explain what it means that adverse inferences can be drawn against a suspect who has remained silent in the first place. In an attempt to convey the information in simple language (also by making reference to a TV series) the information on rights was provided in a misleading way and an inducement (or slight pressure) to tell the truth (maybe inadvertently) was observed. Another example taken from the English study was a poster hanging in a room used for conducting voluntary interviews with the – incorrect – information that legal advice was available but at a cost.²⁸

The Italian findings also document practices using dissuasive techniques. The police and the prosecutors openly observed that, when explaining the right to silence, they consider it important to explain that remaining silent can be counterproductive, as it can be taken as a sign of an uncooperative attitude.

A problem that surfaces in the results of all jurisdictions is the bureaucratic approach taken by some officers, who simply stick to ritual formulas. This (negative) practice was explicitly observed by the Italian social workers in their focus group interview. The danger of a perfunctory approach in the administration of rights was also voiced by English officers and lurks in the Polish interviews with the police. Also in *the Netherlands* the observation of interrogations showed several cases (though not the majority) where officers simply read out the letter of law. In *Belgium*, instead, this practice seems to be marginal. In the observations of audio and videotapes, the majority of the observed officers opted for an explanation using their own words, sometimes combined with the formal reading of the text. The latter is certainly a way to avoid excessively bureaucratic approaches and increases the juveniles' understanding and awareness. However, as we shall see, it is important that the departure from the formal text in order to offer a simpler explanation is not detrimental to the communication itself.

3.1.5. *Child-friendly explanation*

The findings also give examples of some good practices, with officers trying to employ a more child-friendly form of communication when administering the information on rights. For instance, English officers said (and 10 out of 12 observations confirmed) that they would break down the reading of rights into the different elements, so that it is easier for juveniles to understand each one of them. Splitting the communication into different units and explaining each one separately seems to be more compatible with the cognitive skills of juveniles. In *Italy*, the police showed awareness that children would be unlikely to understand formal legal language. They emphasised that they would word sentences more simply or speak in the local dialect, to ensure that juveniles actually understood the process.

²⁸ See also *infra* paragraph 5.1.

In general, in the three jurisdictions where video/audio recordings of interrogations were analysed (*England and Wales, Belgium and the Netherlands*) it was possible to observe attempts of officers to combine a formal reading of the rights together with more accessible explanations, by using simpler and less technical words. For instance, both in *the Netherlands* and in *Belgium* the right to silence was also explained as the possibility for the suspect not to answer one or more of the questions put to him.

This also shows that in many cases police officers are aware of the importance of the form of the communication and will put extra effort into trying to ensure that the juvenile understands what was explained. Traces of such awareness can also be seen in the observations carried out in *England and Wales*, where officers were much more careful to explain rights in simple and clear language when giving information to unrepresented juveniles (*i.e.* juveniles who had waived legal assistance).

A potential risk lurking behind the less formalistic approach is that the use of own wording may contain negative or misleading connotations when explaining a right, which may induce the juvenile to take unwarranted decisions, such as a waiver of rights (see, in this respect, the example mentioned above on the explanation of adverse inferences). If it is the tone that makes the music, information should be conveyed in an unbiased, factual and easily comprehensible manner. This problem is not restricted to juveniles: the difficulty of informing all suspects of their rights in a meaningful way has been documented elsewhere.²⁹

With juveniles it is not only the wording of the communication that matters. In England some juveniles complained that the rights were given so quickly that they would not understand them or remember them. This confirms the finding of prior research where it was shown that suspects can become confused on their rights, particularly if their rights are read out quickly and/or unintelligibly by the police.³⁰

In general, it would seem that there is not a predefined manner for properly informing juveniles of their rights, since the right way to communicate is inevitably individualised to each juvenile suspect and his level of understanding. The age of the juvenile is of particular relevance here: it seems unrealistic to expect a 12-year-old to have the same understanding as a 17-year-old. Also, it seems to stem from the abovementioned considerations that officers need to be duly trained in order to be aware of all the relevant variables and of the potential risks lurking behind some bad – though not infrequent – practices. Furthermore, a good way to ensure a proper communication of rights would seem to be that officers check the effective understanding of juveniles.³¹

²⁹ Blackstock *et al.* 2014 demonstrates how this might be done both in a conscious and unconscious manner.

³⁰ Blackstock *et al.* 2014 and Kemp 2012.

³¹ *Infra* paragraph 3.4.

3.1.6. *Information on rights and beyond*

It is now uniform law across European countries that information on rights shall cover at least a minimum set of rights: (a) the right of access to a lawyer; (b) any entitlement to free legal advice and the conditions for obtaining such advice; (c) the right to be informed of the accusation, in accordance with article 6 of the European Convention on Human Rights; (d) the right to interpretation and translation; (e) the right to remain silent.³²

As we have seen, the correct information about these rights is not always properly conveyed. Furthermore, it would seem that the practice across all jurisdictions leaves much to be desired with regard to three issues: the information on the purpose and functions of interrogation itself and on the unfolding of the procedure (*e.g. Belgium*); the facts constituting the alleged offence; and the inculcating evidence.³³

3.1.7. *Assistance for juveniles when being informed of their rights*

Another relevant issue is whether juveniles should already have some assistance when they are informed (by the police) of their rights, and if so by whom.³⁴ In *England and Wales* it is common practice – mandated by law – that the juvenile is assisted by an AA when he is informed of his rights at the custody suite. This is meant as a safeguard to ensure proper communication between police and juvenile and improve the young suspect's understanding. Social workers in *Italy* deplored the fact that juveniles were often ignorant of their rights, highlighting the importance of their role of assistance when information on rights is being conveyed. The findings of the research do not however make clear whether the assistance of social workers or appropriate adults can effectively enhance the juveniles' understanding. The research study would suggest that lawyers can be more effective in this respect. The empirical findings show that, for instance, in some countries lawyers often represent a key figure to ensure that juveniles are correctly informed of their rights.³⁵ As will also be discussed later, this is particularly the case of *Belgium*, where both police and lawyers subscribed to this practice, sometimes even to the extent of placing the burden of proper information on the shoulder of the lawyer.³⁶ It should in this regard be stressed that, although lawyers can certainly increase the juvenile's awareness, the legal obligation to adequately inform the suspect rests on the public (prosecuting)

³² Article 3 Directive 2012/13/EU. In case of arrest, the suspect must also be informed of the rights mentioned in Article 4 of the same directive. See on these issues: De Vocht *et al.* 2014, p. 492.

³³ On this last issue, see *infra* paragraph 5.4 on disclosure.

³⁴ Panzavolta *et al.* 2015, p. 392 and further.

³⁵ See *infra* paragraph 5.2.

³⁶ *Id.*

authority: while it is true that lawyers can *de facto* compensate for an inadequate information, this cannot be an *alibi* for officers to take their duty to inform lightly.

As a final remark, it shall be pointed out that while the presence of an adult and particularly of a lawyer can improve the juvenile's understanding of his rights and of the procedural situation, such a practice bears the risk that information on rights is communicated in a less timely manner, having to wait for the arrival of the assisting person. In this respect, the practice of informing the juvenile in the presence of a supporting person can represent a good practice as long as it is not detrimental to an immediate and timely communication of the rights.

3.2. CHECKING FOR UNDERSTANDING

A good practice that emerged during the focus group interviews and the observations is the effort of interviewing officers to check the effective understanding of rights by juveniles. Across the studied jurisdictions several examples of a similar approach surfaced, particularly in *England and Wales* and *the Netherlands*.

A good example can be taken from the Dutch research where an officer had designed a 'quiz' to check for the understanding of the rights:

Officer: "Let's do sort of a quiz. Are you allowed to answer or obligated?"
Suspect: "Allowed."
Officer: "Yes, good."

A similar good example can be seen in *Belgium*, where some officers also ran a sort of quiz with the juvenile suspect to test effective understanding.³⁷ Other officers in the same jurisdiction, however, limited themselves to a more perfunctory check and simply asked juveniles if they had understood their rights. This more perfunctory way of testing compliance seems to be less appropriate, particularly if one considers the greater proneness of juveniles to compliance³⁸, which often brings them to reply with a simple "yes" without having fully understood what they were told. As will be discussed later, juveniles often think they have knowledge of rights even when they do not.

The Belgian picture is illustrative of the fact that the good practice is left to the initiative of the individual officer and it does not represent a uniform approach. Similarly, in *Italy*, a respondent in the focus group interview expressed

³⁷ This check is in the end not too different from some of the tests that have been used in literature to assess the juvenile's understanding of rights: see, for instance, the Rights-TF test performed by Grisso 1980, p. 1147.

³⁸ Kassin *et al.* 2010.

conflicting views on whether a test on effective understanding would be performed. In *Italy* too, the good practice remains dependent upon the personal sensitivity of individual officers.

3.3. DO JUVENILES UNDERSTAND INFORMATION?

It is known, from prior research, that juveniles are different from adults, due to their cognitive development still being underway³⁹, their lessened attention span⁴⁰ and because they are more prone to short term reasoning.⁴¹ These factors should be taken into account when informing juvenile suspects of their rights. Nevertheless, the practice does not always show sufficient attention being paid to these factors.

There is still a certain tendency to administer rights to juveniles in the same way as adults. Such an approach (often, as mentioned, the result of a bureaucratic/perfunctory method) does not sufficiently match the juvenile's awareness, attention and – sometimes – even cognitive capabilities.

The practice can have two explanations. First, it is chosen as the easiest and safest approach, the one that requires less effort from the officers. In essence, the interviewing officers often tend to assume a conservative approach and they do just what is required from them, without going the extra mile. As mentioned, bureaucratic and impersonal ways of administering rights are quite often detrimental to the effective understanding of juveniles.

Second, it appears that practitioners – just like legislators⁴² – overestimate the ability of juveniles to understand the information given and the unfolding of a criminal investigation. This shows for instance in the approach with regard to recidivists.⁴³

3.3.1. *Lack of awareness*

As mentioned before, the mere fact that the rights are communicated to the juvenile suspect does not necessarily mean that juveniles understand their rights. The views of practitioners here are divided. Sometimes practitioners start from the assumption that juveniles do not understand their rights. As was already mentioned, both lawyers and police in *Belgium* questioned the extent to which young people were able to understand their rights, despite being informed of them on several occasions. And the same was for Polish police officers. Other

³⁹ Viljoen and Roesch 2005.

⁴⁰ Pearse *et al.* 1998.

⁴¹ Feld 2013.

⁴² Panzavolta *et al.* 2015, p. 407.

⁴³ See also *supra* paragraph 2.2.

times practitioners instead assumed that juveniles had the same understanding as adults, like for instance some police officers in *the Netherlands*.

Across all jurisdictions, juveniles' lack of awareness of their rights emerged uniformly, mirroring the outcomes of previous studies.⁴⁴ The focus group interview with young people in *the Netherlands* documented that juveniles were often confused when they were given their rights and that they often misinterpreted their rights. The same was seen in *Poland* and in *Italy* where juveniles could even be confused about the definition of 'rights'. Particularly in *Poland*, young people themselves admitted that they did not always understand what their rights were. The observations in *Belgium* confirmed that when asked to explain the rights that they had been informed of a short time earlier, juveniles were not always able to do this. Sometimes, the understanding of rights is so superficial that the juveniles are not able to retain the rights even in the short term. As one juvenile explained in the focus group interview in *England and Wales*: "I've understood it [my rights] at the time but I can't think what they are". This goes to show that juveniles may well say they understand at the time rights are given and even believe they understand, but later on this is evidently not the case.

3.3.2. First offenders and explanation of the process

All the respondents in practitioner focus group interviews said that – according to them – those arrested and detained for the first time needed more explanation of the process in order to understand what would happen and what their rights were during custody. This was also the finding of earlier extensive empirical observations.⁴⁵ This difference is magnified when young people find themselves in custody for the first time.

First (alleged) offenders are both shocked and confused and it is easier for them to be overwhelmed with information, to the extent that they often feel rights are dealt with too quickly and they do not have time to absorb the information in order to understand and to act upon it. In *the Netherlands* defence lawyers said that those arrested for the first time look "dazed" and did not appear to understand what was being told to them. This lack of understanding was confirmed by the juveniles we spoke to during the focus group interviews in *the Netherlands* and in *England and Wales*. Police and prosecutors in *Italy* too, replied that they might take a more paternalistic approach to first time offenders, seeing their offending as a mistake rather than a truly criminal action.

It should be stressed that the need to offer a more detailed explanation of the process to those juveniles who come into contact with the justice system for the first time, should in no way implicitly mean that 'repeat players' are not entitled to an adequate and child-friendly explanation.

⁴⁴ Clare *et al.* 1998.

⁴⁵ Blackstock *et al.* 2014.

3.4. CONCLUDING REMARKS ON INFORMATION

All things considered, some good practices on informing juveniles can be extrapolated from the empirical studies in all five countries. It is crucial that juveniles are informed of their rights and procedures as early as possible. This can be repeated to make sure the information ‘sticks’, but when using this ‘multiple occasion approach’ an over-information effect should be safeguarded against. Assistance during the informing can be a safeguard, but if not feasible, at least a legal professional should explain the legal aspects and strategy afterwards.

When a juvenile is informed, it makes sense to use simple language, tailored to the age of the juvenile, considering understanding and cognitive abilities. A combination between legal terms and own wording may be good practice, as long as no (negative) connotations are attached to the own wordings used. Finally, checking for understanding in a more-encompassing way than simply asking “if it is understood” seems sensible practice.

4. ASSESSMENT OF JUVENILES

There is no standardised assessment of a juvenile suspect’s fitness to be interrogated undertaken in the five jurisdictions examined, although the findings from this study raise the issue as to whether one should be introduced and might suggest a positive answer.

In *England and Wales* a standardised risk assessment is carried out by the police only when suspects are first brought into custody and its main purpose is to address safeguarding issues while held in detention.⁴⁶ In *Poland* there was said to be a similar risk assessment undertaken by the police when making an arrest. This informal assessment requires officers to consider if any physical problems, such as intoxication, injuries or other medical issues could cause problems for suspects held in detention.⁴⁷ It also appears from the written transcripts of interrogations in *Poland* that an assessment is required prior to the questioning of juvenile suspects. This is because at the beginning of the written record the police have to comment on the suspect’s state of health. With the word “Good” being noted on all 20 transcripts examined by the researchers it seems that a tokenistic approach is adopted by officers and it is not known if the juvenile’s fitness to be interrogated is actually checked. Interestingly, the boys in the Polish focus group interview said that it was only at the end of the interrogation that

⁴⁶ The assessment comprises a series of questions which require ‘yes/no’ answers about the suspect’s use of alcohol and substance use, their medical and/or mental health needs, their ability to read and write and about additional needs while being held in custody. The same questions are posed to both juveniles and adults.

⁴⁷ The police can arrange for the suspect to be taken to a sobering center or a hospital casualty department if they are intoxicated.

they were asked any questions about their health. In *Italy* it is the police who routinely have direct contact with juveniles and any attempt to assess their fitness to be interrogated was said to be 'sporadic' and more 'accidental' than arising out of an explicit request by the prosecutor or a lawyer.⁴⁸

4.1. SUBJECTIVE ELEMENTS IN ASSESSMENTS

With an informal approach to assessment being adopted in *Poland* there is the potential for subjective factors to influence decision-making. This was also noted to be a problem in *Belgium* and *the Netherlands* when the police conducted an assessment of juvenile suspects. In both countries, for example, the police said that they tended to rely on 'gut feelings' when considering the fitness of juveniles to be interrogated. Other subjective comments made by the police in *Belgium* included them saying: "You know your repeat offenders", and in *the Netherlands* the police referred to "Sizing a suspect up." There was reference made to similar practices taking place in *England and Wales* with an officer stating that they were "constantly assessing" juveniles and he continued saying: "It helps us to judge them too, even though we probably shouldn't." The police have been criticised for relying on their 'gut feelings' as this encourages the use of stereotypes when making decisions on the ground.⁴⁹ This can lead to the police perceiving people as either 'good' or 'bad', or otherwise 'rough' and 'respectable'. Instead of the police showing themselves to have the capacity to conduct a fair assessment of juveniles, present practices in some jurisdictions show them relying on subjective judgments which can lead to ill-informed and discriminatory decision-making. Such practices in the five jurisdictions help to highlight the need for an independent quality standardised assessment of a juvenile's fitness to be interrogated. Once this is established, some further issues open up: issues concerning the involvement of specialists in assessing the fitness of juveniles to be interrogated, how vulnerabilities can influence responses to police questions and the consequent need for improved safeguards. Also to be explored is the way in which the assessment can help to identify juveniles who could be diverted from court or the criminal justice system. As we shall see, the findings of the research suggest that there is potential for developing a quality assessment based on current practices.

⁴⁸ Prosecutors in *Italy* are responsible for making decisions in juvenile cases, including whether a prosecutor or police officer should conduct the interrogation but their decisions are often based on a review of the case file rather than a face-to-face meeting with the juvenile.

⁴⁹ Particularly when using 'stop-and-search' powers and when making arrests – see Reiner 2000.

4.2. THE INVOLVEMENT OF 'SPECIALISTS' IN ASSESSMENTS

The police in *Italy* have a mandatory requirement to contact social workers when dealing with juveniles and this would seem to provide an early opportunity to involve specialists in juvenile cases. In practice, however, this was not found to be the case. On the contrary, social workers' involvement in juvenile cases was said by the police to be infrequent due to having heavy caseloads and operating under resource constraints. Instead of notifying social workers when dealing with juveniles, there is said to be a tactical agreement between the police and social workers that they would only be contacted in certain cases, particularly those involving serious offences, if the juvenile is a recidivist, or at the discretion of the prosecutor. In particularly difficult cases, prosecutors can request the participation of social services early on in the investigation and if the social worker considers the juvenile to be unfit to be interrogated they can ask for the involvement of other specialists, such as a psychologist or neuropsychiatrist.

There were different arrangements noted in the five jurisdictions in providing for the involvement of specialists. If any concerns are raised during the risk assessment in *England and Wales* when a juvenile is first brought into custody the custody officer can arrange for a forensic medical examiner (hereafter: FME) to undertake a more detailed assessment. The FME can then arrange for a further assessment to be conducted by a mental health or other specialist. Both the FME and the specialist, if required, can comment on the juvenile's fitness to be interrogated. The police in *Poland* can arrange for an assessment to be conducted by a physician if concerns are raised over the physical health of the suspect when first arrested.⁵⁰ In *the Netherlands*, it seems that seldom are any concerns raised over the need to involve specialists in the interrogation of juveniles. Indeed, when the police were asked if they had ever encountered a juvenile they considered to be unfit to be interrogated, one immediately replied: "No". Lawyers too seemed to be content that most juveniles were capable of being interrogated.

4.2.1. Independent assessment and lack of specialists

When considering the potential for an independent assessment to be undertaken it is important to reflect on the lack of involvement of specialists in cases involving juveniles in police custody in the five jurisdictions. Even if they were involved, a lawyer in *Poland* argued that it was inappropriate for the police or lawyers interrogating juveniles to undertake an assessment due to a potential conflict of interest. Instead, she argues that assessments should be conducted by independent specialists, such as psychologists.

⁵⁰ The juvenile can also make a request to be seen by a physician.

In the absence of youth justice specialists in *the Netherlands* a lawyer suggested that it could assist if the Child Protection Service was routinely involved in the assessment of juvenile suspects. The police too felt that this could be beneficial, particularly as this service is responsible for the protection of children and, from previous encounters, they might have prior knowledge of the juvenile which could be helpful. However, it was also noted that the juveniles were 'very suspicious' of these social servants, which is perhaps not surprising as they are also responsible for taking children into care. Due to the personal and sensitive information which needs to be discussed, it is important that those conducting the assessment have the trust and confidence of juveniles. When considering the suitability of an independent assessor it would be helpful to ask juveniles who they trust in the criminal process. When juveniles were asked this question in the focus group interview in *England and Wales* they all responded that it was probation officers and YOT workers who they most trusted. While YOT workers acting as AAs are involved with juveniles in police custody in some geographical areas, this did not include all juveniles. On the contrary, in the majority of cases it is the parents who take on the role of appropriate adult. In other areas where YOTs have contracted out their statutory responsibility to provide AA services it seems that rarely are YOT workers involved with juveniles held in police custody.

4.3. ASSESSMENT AND VULNERABILITIES AND THE INTERROGATION OF JUVENILE SUSPECTS

When assessing juveniles there are vulnerabilities related to their age which need to be taken into account. As mentioned before, developmental psychologists contend that immaturity and vulnerability make juveniles uniquely susceptible to police interrogation tactics.⁵¹ Within strange and stressful conditions, such as in police custody, for example, it has been noted that juveniles appear to be less able to use their cognitive skills than adults.⁵²

It was when focusing more specifically on the vulnerabilities of juveniles in the interrogation that the police and/or lawyers in the five jurisdictions highlighted the need for an early assessment. Problems identified included juveniles presenting with Asperger's syndrome, ADHD, autism, a low IQ ('intelligence quotient') and learning disability. Some juveniles were also seen to be highly emotional, particularly girls in *the Netherlands* and *Poland* who were distressed about their situation. In *Poland* the girls complained that they felt vulnerable because of the way the police behaved towards them, which included

⁵¹ See Feld 2006. On interrogation tactics, see *infra* paragraph 6.2.

⁵² Compas *et al.* 1991, p. 24.

using “*vulgar language*” and suggesting “*sexual favours*”.⁵³ These accusations do highlight the potential benefit of involving independent youth justice specialists and/or healthcare practitioners in custody as their presence could usefully provide a check and balance on police powers.

A review of the research literature highlights the particular vulnerability of those drawn into the criminal justice system. Juveniles appearing in the criminal courts in *England and Wales*, for example, were described as “*doubly vulnerable*”, not only because of their young age and developmental immaturity but also due to high levels of mental health problems, learning disabilities and learning difficulties, as well as having communication problems.⁵⁴ According to the Police Behavioural Sciences Unit in *Belgium*, who examined 35,000 audio-visual records of juveniles interrogated by the police (including victims, witnesses and suspects), 30 per cent of juveniles suffered from problems such as intellectual disability. Relevant vulnerabilities related to a juvenile’s age which can have implications for the interrogation, include low intelligence, the inability to focus or cope with police questioning, and a high suggestibility or compliance, which can lead to juveniles going along with police questioning, accepting statements presented as true when this was not necessarily so.⁵⁵ The compliant way in which juveniles can respond to police requests was noted in one of the observed interrogations in *Belgium*. In this case the police asked the juvenile to sign the written record as a true account and he did so without checking its accuracy.

In general, it is acknowledged that juveniles may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating.⁵⁶

4.4. DOUBLE VULNERABILITY

It is particularly when juveniles have been diagnosed with a mental health problem that they can be seen to be ‘doubly vulnerable’. Recent studies into ADHD have helped to identify problems which can arise in interrogations and also highlight the prevalence of suspects diagnosed with this disorder. In the United Kingdom, for instance, research studies indicate that around 45 per cent of juveniles screen positive for ADHD and that this can lead to problems in the interrogation, such as struggling to sustain their attention during lengthy questioning and being more susceptible to pressures exerted during the

⁵³ It was because of police attitudes towards them that the girls said they wanted their parents with them at the police station as they felt their presence could help to protect them from the police.

⁵⁴ Jacobson and Talbot 2009.

⁵⁵ Gudjonsson 2003.

⁵⁶ See in England, Code C to the Police and Evidence Act 1984 (PACE 1984), Notes for Guidance: 11C.

interrogation.⁵⁷ In order to avoid such pressures, suspects with ADHD have been found to be more likely to comply with suggestions put to them by people in authority.⁵⁸

People with ADHD have also been noted to give a disproportionate number of ‘don’t know’ responses when questioned by the police, which can be misconstrued as their being uncooperative, and they are also more likely to make false confessions.⁵⁹ From our observations of juveniles interrogated by the police in *Belgium* it was noted that, when juveniles were silent, and/or giving ‘don’t know’ responses, police officers could become irritated and lose their patience, which encouraged them to adopt a more adult rather than juvenile oriented approach. Accordingly, it is important that an assessment of a juvenile’s fitness to be interrogated takes into account vulnerabilities and what impact this could have on what is said in the interrogation. It is also useful to consider further potential safeguards, which could be included in an assessment of juvenile suspects.

In order to take into account a wide range of vulnerabilities in *England and Wales*, the Codes of Practice arising out of the Police and Criminal Evidence Act 1984 (hereafter: PACE) have broadened the definition of ‘intellectual disability’ so that this now includes all people who are ‘mentally vulnerable’. Despite acknowledging such vulnerability, there are very few additional safeguards required for juveniles, mostly related to the (mandatory or optional) involvement of an AA.⁶⁰ This is despite research findings highlighting the prevalence of mental vulnerability of juveniles interrogated by the police.

The police in *the Netherlands* said they expected mental health issues to be identified early on but acknowledged that sometimes such problems only became apparent during the interrogation. It is of concern to note that such problems can be minimised with the police coining the term “*light mental disability story*” and continuing with the interrogation. It was only in cases involving serious mental health issues that the police said the questioning would be stopped. This was because, as one officer pointed out: “*He will even confess to having killed Kennedy.*” An assumption made by the lawyers in *the Netherlands* is that the police undertake an assessment of a juvenile prior to the interrogation. If problems subsequently arose in the interrogation they would allow it to continue, even though it was recognised that such problems could complicate matters. When examining the 12 cases observed, the researcher noted that no

⁵⁷ Harpin and Young 2012.

⁵⁸ Harpin and Young 2012 and Feld 2013.

⁵⁹ See Young *et al.* 2013.

⁶⁰ Panzavolta *et al.* 2015, p. 380 and further.

assessments were made during the interrogations even though the juveniles were seen to be mentally vulnerable in some cases.

A recent review of mental health provision in the criminal justice system in *England and Wales* found the police failing to identify suspects with mental health problems.⁶¹ In response to such criticisms improvements are currently being rolled out nationally, which includes improved screening for vulnerabilities. The changes are bringing healthcare practitioners into custody who have access to mental health specialists and to national health records. However, with the police continuing to be responsible for the initial screening of suspects a recent study suggests that the new procedures have not had the desired effect.⁶² In particular, with a PACE requirement for the police to arrange for an AA to be involved in cases involving adults identified as vulnerable, there was found to be little change in the new screening arrangements over the frequency with which AAs were required to provide support.⁶³

The under-identification of suspects' vulnerabilities during interrogations means that their impaired capacity to understand their legal rights, and to cope effectively with police questioning in custody, is seldom addressed.⁶⁴ More generally, research has identified that the younger the juvenile the less they are likely to understand what is happening in the criminal process. In particular, it has been noted in the United States that many youths lack a mature concept of a legal right as an entitlement. This can be due to, 'youthfulness, linguistic complexity, educational deficits, and low IQs' which prevent many juveniles from grasping the meaning of their legal rights.⁶⁵ Accordingly, it is important when considering safeguards for juveniles that there is a mechanism which addresses the need for juveniles to understand their legal rights.⁶⁶

⁶¹ Bradley 2009.

⁶² See Young *et al.* 2013.

⁶³ There were 4.2 per cent of cases where an AA was required which is almost identical to the 4.3 per cent identified in a study conducted over 20 years ago (Gudjonsson *et al.* 1993).

⁶⁴ Gudjonsson *et al.* 2007.

⁶⁵ Juveniles aged 15 years of age or younger were noted to exhibit a clear lack of understanding and those aged 16 years and older were noted to have the cognitive ability to understand the words but many displayed deficits that increased their vulnerability during interrogation – see Feld 2013, p. 57–58.

⁶⁶ In the recent HM Inspection of Constabulary in *England and Wales* there were noted to be examples of good practice in the treatment of young and vulnerable people by the police but this seemed to depend on individual officers' own experiences, "rather than being able to refer to official training or guidance". It was also noted that in the HMIC's view this helps to explain, in part, some of the inconsistency seen in practice. Inspectors were also concerned about some of the measures used by the police to try and reduce the risk of people harming themselves. Noting that the measures of control available for the police are designed more for those who are violent through ill will, rather than those who are agitated because of mental distress, or who are frightened children. Indeed, it is noted that: "A significant finding from this inspection is that police officers are trying to respond to children and those suffering from

When making an assessment of juveniles' fitness to be interrogated this could usefully include a role for the assessor in checking that they understand their rights.⁶⁷ This could help to counteract attempts by the police, noted in some jurisdictions, to discourage juveniles from having legal advice. In addition, the assessor could usefully explore if the juvenile understands the legal implications of the allegations made against them. This can be an important safeguard in cases where the police might use pressure or other tactics to encourage a response, such as seeking either to minimise or maximise the seriousness of the offence.⁶⁸ Even if no pressure is exerted by the police it is important that juveniles understand the reason why they are being questioned. In an audio-recording examined in *England and Wales*, for example, it was noted that the juvenile did not know what 'rape' was when he was being interrogated for this type of offence and no explanation was provided by the officer. With legal issues likely to arise when discussing the type of offence during the assessment it would be helpful, if required, when/if the assessor could arrange for the juvenile to receive legal advice.

4.5. DIVERSION AND THE ASSESSMENT OF JUVENILES

In three jurisdictions mention was made of alternative approaches which can lead to juveniles being diverted out of court.⁶⁹ There is the HALT scheme in *the Netherlands*, for example, where juveniles (aged 12 to 18 years) who commit a minor offence can be referred by the police for an alternative punishment.⁷⁰ The police commented on the 'HALT trajectory' as providing a diversion mechanism for juveniles, particularly those arrested for the first time.⁷¹ When arresting juveniles in *England and Wales* the police can decide whether or not to pursue an out-of-court criminal sanction as an alternative to taking the case to court. However, it is generally following the interrogation that the outcome decision is made.⁷² When reviewing cases early on prosecutors in *Italy* can consider whether it would be appropriate to impose a civil measure as an alternative to pursuing a criminal action. At this stage it seems that they have little information which could help to inform such a decision as rarely do they seek information

mental health crises in an environment and with policing tools, skills and knowledge that are wholly unsuited to the task." (HMIC 2015, p. 20).

⁶⁷ See also *supra* paragraph 3.2 and 3.3.

⁶⁸ Feld 2013, p. 25.

⁶⁹ On the difference concerning diversion see Panzavolta *et al.* 2015, p. 377 (and for the different countries p. 76, 156, 198, 259 and 342).

⁷⁰ See Van Hees 1999 for an evaluation of the HALT scheme.

⁷¹ The HALT project has a national network of offices which deals with young offenders diverted from court. There is a programme of activities which provide alternative punishments.

⁷² Panzavolta *et al.* 2015, p. 7 and Farber 2004, p. 696.

about a juvenile's family background if they are already known to the Youth Social Services or the Local Services.⁷³

The need for an early assessment of juvenile suspects to assist in identifying cases suitable to be diverted from court was highlighted in a recent review of the youth justice system in *England and Wales* conducted by Lord Carlile (the Carlile review).⁷⁴ In particular, it is recommended that an assessment is conducted by a health worker and YOT worker respectively, while the juvenile is held in police custody. The assessment proposed is required to take into account the health and welfare needs of the juvenile and also to provide an early opportunity to divert cases, if appropriate, not only out of court but also out of the criminal justice system.⁷⁵ It had earlier been observed in a research study of YOT workers in *England and Wales* that juveniles were being dealt with by the police for minor offences while at the same time as they were experiencing complex health and welfare issues which were being dealt with by other agencies.⁷⁶ A case reported in the Carlile review helps to highlight the importance of assessing early on what form of intervention might be required when dealing with juveniles. In this case a 15 year old boy was experiencing mental health problems and he was reported by a relative to the police for self-harming in the family home. He was arrested and subsequently prosecuted for putting people – which was the police officer involved – in 'fear of violence'.⁷⁷ It is to be assumed that the prosecution pursued this case in order to access an appropriate intervention through a court order. If an effective assessment had been undertaken the juvenile could have been referred for a mental health intervention and avoided a criminal conviction.

While there are cost implications in requiring an assessment of juveniles it is important to reflect that there could be substantial cost savings if an early assessment of juveniles helps to increase the number of cases diverted out of court and out of the criminal justice system. In this respect it would seem that an assessment of vulnerabilities at the stage of police station or early investigations could be worth considering. This assessment could include a comprehensive assessment of the juveniles' needs, their welfare, communication skills and mental health. The findings from this study suggest that it could also usefully include an assessment of juveniles' fitness to be interrogated. This would then provide an early opportunity for healthcare practitioners, social workers and youth justice workers to engage with juveniles arrested and detained by the police and to assist in the risk assessment of safeguarding issues whilst held in custody.

⁷³ In small municipalities it was noted that a request for additional information was not made because the waiting times to receive any information were too long.

⁷⁴ Carlile 2014.

⁷⁵ Carlile 2014, p. iv.

⁷⁶ See Bottoms and Kemp 2007, p. 151–153.

⁷⁷ Carlile 2014, p. 11.

4.6. DEVELOPING A QUALITY ASSESSMENT INSTRUMENT

In different jurisdictions there are assessments for juveniles in the criminal justice system currently being used or developed. In *Belgium*, for instance, the Police Behavioural Science Unit have developed an assessment tool for juvenile victims and witnesses and are currently developing one for juvenile suspects.⁷⁸ A lawyer in *the Netherlands* said that in his region juveniles detained by the police are required to complete a form with questions about their home life and schooling and this is then used as a screening tool to assist the police in identifying juveniles to be diverted into the HALT programme. In *England and Wales* there are standardised assessments used to assist in the preparation of reports and to provide information to the youth courts. The assessment involves gathering information on the juvenile's family and schools as well as addressing health and welfare information.⁷⁹ There has also been developed a 'Comprehensive Health Assessment Tool' (hereafter: CHAT) which is an instrument used to assess children in custody for physical and mental health, substance misuse and neuro-disability needs.⁸⁰

4.7. CONCLUDING REMARKS ON ASSESSMENT

A key finding arising out of this study is the need for a standardised quality instrument to be introduced which also provides an assessment of juveniles' fitness to be interrogated by the police and to check understanding of their legal rights.⁸¹ A requirement for an assessment to be undertaken prior to the interrogation would also help to involve health and youth justice specialists early on in juvenile cases. While a standardised assessment needs to include core elements which take into account vulnerabilities of juveniles interrogated by the police, different approaches will need to be developed depending on the practices and procedures adopted in the different jurisdictions. In developing such a multiple approach-instrument it would be helpful to take into account the views of juveniles who have experience of being interrogated by the police. This will help to ensure that they understand their legal rights and encourage them to have trust and confidence in the assessment process.

⁷⁸ Training Audiovisual recorded interviewing of Minors (for juvenile witnesses and victims – TAM) and Training Audiovisual recorded interviewing of Minor – Suspects (for juvenile suspects – TAM-S).

⁷⁹ The 'Asset' assessment tool is used by YOTs in *England and Wales* but as this has been criticised for being too focused on 'risk', a new 'AssetPlus' assessment tool is to be introduced which will also address juveniles' health and welfare issues (Youth Justice Board 2014).

⁸⁰ A version of CHAT is being made available for children in the community – see Public Health England 2014.

⁸¹ A standardised assessment also needs to be undertaken in cases where juveniles are not arrested but are interrogated by the police on a voluntary basis.

5. ASSISTANCE OF JUVENILES

A characterising feature of juvenile justice is that suspects must receive assistance, particularly in interrogations. As already shown in the legal study⁸², there can be different kinds of assistance.⁸³ On the one hand, there is legal assistance, concerning the awareness of the applicable rights and rules and the best choices to make in terms of legal strategy. On the other hand, there is psychological and emotional assistance, which serve to minimise the distress of the young suspect, to make him feel more comfortable and not so scared by the involvement in criminal proceedings, in particular during police questioning; in short, to minimise the mental pain and stress for the young person.

When looking at the law in books the difference between these forms of legal assistance appears quite sharp and it normally corresponds to the different figures involved: the lawyer charged with assisting and advising on legal matters; the AA, the social services or other similar figures, tasked with providing psychological guidance, emotional support and practical assistance.⁸⁴ Nonetheless, the results of the empirical study seem to offer a more blurred picture: where, for instance, the role of the legal advisor may stretch beyond legal counselling to also accommodate the psychological needs of the defendant (the Italian case being the clearest example of such a trend); where AAs may be required (or feel it necessary) to offer some legal guidance.

5.1. THE RIGHT TO ASSISTANCE OF A LAWYER

The right to assistance of a lawyer in pre-trial interrogations is granted in all countries, but only in *Belgium* is the presence of a lawyer formally mandated. In some countries the right to the presence of legal counsel can be waived (as in *England and Wales, the Netherlands and Poland*), in others waiver is not possible but the lawyer can decide whether or not to be present (*Italy*).

It is important to observe that the effective presence of lawyers during the interrogations of juveniles varies significantly from country to country. The two poles of the spectrum in this respect would seem to be *Poland* and *Italy*. In *Poland* all respondents in focus group interviews (police officers, lawyers and juveniles) agreed that the presence of a lawyer is in practice exceptional. In *Italy* it seems ordinary practice for lawyers to be present and this practice appears to be encouraged by the authorities themselves, who are willing to wait for the

⁸² See Panzavolta *et al.* 2015, p. 392 and further.

⁸³ See also Cape and Hodgson 2014 for an evaluation of some of the challenges of effective legal assistance for suspects in police custody.

⁸⁴ Given the difficult dynamics of the different actors involved in the interrogation, the young suspect finds himself 'at the centre of a complex web of relationships between the police, the AA and the legal advisor', Quinn and Jackson 2007, p. 235.

lawyer to arrive. It is interesting in this respect that the Italian police officers during the focus group interviews referred at times to a general obligation of the lawyer to be present, an obligation which does not expressly appear in the legislation (where the presence of the lawyer is mandatory only if the interrogation is carried out by the police under certain specific circumstances). It would appear that a lawyer is in fact more often present in *Italy* than in *Belgium*, where the law mandates that a lawyer be present. The Belgian case stands out because the presence of the lawyer cannot be waived, but it is not always the case that the lawyer is present. It seems that the unavailability of a lawyer is one of the main reasons for the police to carry out the interrogation without legal assistance, at times combined with the officers' unawareness of the mandatory character of the right. In sum, it would appear that the mere fact that a right is qualified as mandatory does not make it effectively so unless further practical conditions (training, availability of lawyers) are put in place.

The findings do not give a uniform picture concerning telephone consultation. In most of the countries the interviewed lawyers observed that it is not used, or almost never used, and in some cases lawyers appeared to be expressly averse to this form of consultation (e.g. Belgian lawyers). This position could be justified in light of the need to establish a direct relation of trust with the young client. Telephone consultations are more impersonal and they might not allow the lawyer to entirely grasp the juveniles' vulnerability. The lawyers in *England and Wales* commented on the need to attend in person at the police station in order to take the opportunity to examine the evidence disclosed by the police before advising their client. And it should also be noted that the lawyers in *the Netherlands* and *Belgium* expressly referred to telephone consultation as a minimum sufficient form of contact with lawyers before the young suspect could waive the right to legal assistance.

5.1.1. Waiver

In *the Netherlands*, the observations showed that a waiver occurred in half of the selected cases. Although the sample is too small to have any statistical significance, it shows that waivers of the right cannot be qualified as exceptional. Waivers are also not exceptional in *England and Wales*, where it would seem that they are more frequent when parents take on the role of the AA, which is in the majority of cases. It is difficult to test the frequency of such occurrence, but previous research conducted in *England and Wales* has shown that the rate of waivers in that country was more or less equivalent to that of adults and have highlighted that those who are the least likely to request and receive legal advice are children aged between 10 and 13 years old, who are undoubtedly the most vulnerable age group.⁸⁵ As mentioned, in *Poland* the

⁸⁵ Kemp *et al.* 2011, p. 37.

majority of suspects were questioned without a lawyer being present, although this seems to depend on the fact that the juveniles did not positively assert their right to a lawyer and not on them expressly refusing the assistance of a lawyer. In any case, the absence in *Poland* of a clear mechanism to arrange for a lawyer significantly increases the likelihood of a lack of representation of the juveniles, regardless of their effective will to waive the right.

5.1.2. *Reasons for waiving the right to a lawyer*

In countries where waiver is possible, it was difficult to observe clear common patterns, particularly with regards to the factors that motivate the decision to waive. It is difficult to assess the reasons which might lie behind a suspect's waiver of the right to legal assistance. Previous research on adult suspects shows that often waivers are simply based on the suspects' belief that a lawyer is unnecessary. In a survey of over 1,000 adults who had been interrogated by the police in England and Wales, the main response given when asked why legal advice was declined was because they "*did not need*" a lawyer – for some because they were 'innocent' and others because they were 'guilty'.⁸⁶ This helps to highlight the lack of understanding people have of their legal rights and the need for improved safeguards.⁸⁷

In the focus group interviews, respondents also offered further explanations. In *Poland*, for instance, a police officer suggested that some waivers might be related to the issue of costs and some of the interviewed girls confirmed this impression. This seems to be the case also in other countries. While legal advice is free in *England and Wales* some AAs did mention that juveniles could be deterred from having a lawyer because they thought they had to pay for it.

Lack of adequate information on the existence of a right could also be another factor behind a waiver. In *Poland* until 2014 it was the legal obligation to inform juvenile suspects of the right to legal assistance of a chosen lawyer but there was not such an obligation regarding the right to apply for the assistance of a lawyer free of charge if juveniles and their parents did not have sufficient means to pay for a lawyer. A problem concerning information was also raised in *England and Wales* (mostly concerning voluntary interviews⁸⁸), where the lawyers complained about the police sometimes trying to deter suspects from obtaining legal advice. The two factors can merge: lack of information on the fact that legal advice is free of charge, might induce the suspect to fear for costs. It was also noted above that police tactics can be used to imply that legal advice has to be paid for when juveniles were interrogated on a voluntary basis. Research

⁸⁶ Kemp and Balmer, 2008 and Kemp, 2010.

⁸⁷ See also Skinns 2011, p. 26 where there were similar findings.

⁸⁸ See *infra* in this paragraph.

undertaken in England and Wales over the past 30 years has identified problems with the police seeking to discourage suspects from having legal advice.⁸⁹

Even in countries where waiver is impermissible, like *Belgium*, the interviewed police officers reported the determination of some juveniles to waive legal assistance, because they feared that they would have to wait for a long time at the police station⁹⁰, or because they were concerned that other people (lawyer, parents) would know about their misdeed. In *England and Wales*, lawyers observed that parents acting as the AA can influence their child's decision to waive legal advice because they are concerned that having a lawyer will indicate distrust of the police.

Overall, when looking at the reasons lying behind juveniles' waiver of legal assistance, the term 'fear' or 'concern' are the most recurrent: fear of costs, fear of showing distrust, fear of waiting, *et cetera*. There is a risk, therefore, that the waiver is not always the result of a deliberate and rational choice on the need to be legally assisted but instead it is dependant on these other factors or simply the suspect's ignorance of their rights. This is in line with the existing body of research which shows that the juvenile suspect is not always in the best position (or, as some would say, competent) to make informed decisions on such an issue. Both lawyers and police officers have different perceptions on the juvenile's competence to waive. In any case, all lawyers across the five jurisdictions highlight the potential far-reaching implications of a waiver and they are generally concerned that an informed decision is made and that this is not influenced by external pressures or otherwise inducements offered by the police. For instance, Dutch police expressed concern that young people would be unlikely to understand the value of a lawyer or the consequences of not having legal advice and some lawyers suggested that juveniles should not be permitted to waive their right to legal advice without first speaking to a lawyer.⁹¹

In general, it can be said that where the waiver of assistance is allowed by the applicable legislation, there is always a risk of pressure, at the time when the juvenile is informed about their rights. However, the findings of the focus groups seem to show that there is no widespread practice or consistent pattern across the jurisdictions of police officers deliberately (or maliciously) depriving suspects of the right to legal assistance.

5.1.3. *Improper practices*

The different strands of the empirical research showed only a few traces of 'circumventing-behaviour' on the part of police officers. For instance, as was just observed, at times lawyers lamented that information on the right to legal assistance is conveyed by the police in a way that could induce a waiver. In *the*

⁸⁹ See Sanders *et al.* 1989, Dixon *et al.* 1990, Brown *et al.* 1992, Skinns 2011 and Kemp 2013a.

⁹⁰ Blackstock *et al.* 2014, in line with earlier studies, found that the primary objective of most suspects was to get out of the police station as soon as possible.

⁹¹ Panzavolta *et al.* 2015, p. 396 and further.

Netherlands, it happened that information on the right was given without the clarification of it being free of charge. In *England and Wales* some lawyers were critical of the police for sometimes putting juveniles and their parents under pressure to decline legal advice. This was seen to be a particular problem in relation to voluntary interviews. In both *the Netherlands* and *England and Wales* lawyers reported that when attending on a voluntary basis a juvenile is less protected since the invitation does not require the suspect to be informed of their legal rights.⁹² There was also seen to be less protection for juveniles attending a voluntary interview in *Belgium* as there is a legal presumption that they have already received legal advice. Here the practice has moved in the direction of requiring police officers to check that juvenile suspects have consulted with a lawyer, but the interviewed officers have sometimes the impression that juveniles lie about it.

The respondents did not highlight any other significant factors concerning police practice which could discourage juveniles from having a lawyer. On the other hand, there were observed cases where the police were concerned over a juvenile's rejection of legal advice. In one case in *England and Wales*, for example, an officer was concerned that a juvenile arrested for rape had refused legal advice and he wanted to ensure that the waiver was made knowingly and willingly, by enquiring further about the reasons for the waiver. It remains however difficult to assess whether the behaviour of police officers toward juveniles is different from when dealing with adult suspects. Apart from the good example just mentioned, it would seem from the focus group interviews and the observations of interrogations that overall, police officers tend to approach juveniles in a way which is not that different from adult suspects. The communication on the right to have a lawyer seems to follow more or less the same standardised procedure which is in place for adults. It seems that the police are more likely to pay attention to juveniles' legal rights when dealing with those who have been arrested and interrogated for the first time. When communications about legal rights are not sufficiently child-friendly, there is always the risk that juveniles are not always entirely clear on their right to legal assistance and on the exact consequences of a waiver.⁹³

5.1.4. *Costs and availability of lawyers*

The national reports highlight the cost and availability of lawyers as being two further issues which can inhibit their involvement in interrogation. The first problem concerns the cost of lawyers, which can be connected to juveniles' choice of lawyer which raises issues concerning the economics of providing legal assistance for juveniles. Juveniles predominantly do not have their own

⁹² PACE requires the police to advise suspects of their right to have a lawyer prior to the interrogation. See *supra* paragraph 2.3.

⁹³ See *supra* paragraphs 2.2, 3.1, 3.2 and 4.4.

resources with which to hire a lawyer. In some countries advice in the phase of police interrogations is free of charge: this is the case in *England and Wales* for all interrogations and in *the Netherlands* for interrogations of arrested suspects. When assistance is not offered free of charge, it is normally the case that lawyers are paid and appointed by the family of the child, as was expressly mentioned by the Italian and Polish juveniles. This might be problematic at times, particularly when the child is in conflict with the family, or when the family is not involved early on in the case. The risk is that, as in some Polish cases, the juveniles are left without representation until a later stage (often, at the trial). In *Belgium* and *the Netherlands* there was seen to be some concerns raised over the cost of a lawyer, which can deter parents from requesting legal advice. This was seen to be particularly difficult in *Belgium* where there it is mandatory for a juvenile to have a lawyer but there is no legal aid provision which provides comprehensive cover. While free access to legal advice is provided for juvenile suspects in *the Netherlands*, one officer reported that this is not explained to parents and they were then deterred from having a lawyer due to the potential costs involved. This begs the question whether it would not be advisable to offer free of charge legal assistance to juveniles before and during interrogations, as this would enhance the effectiveness of the right and diminish the incentive to waive the right.

The second concern is over the availability of lawyers. It can be the case that ensuring the presence of a lawyer is not immediately possible and requires the police and the juvenile to wait. In some countries, such as *Poland* and *Belgium*, the delay is often the reason for the police to proceed without a lawyer. In other countries this continued wait in police custody is a situation that inevitably adds to the vulnerability of the juvenile. As one Dutch juvenile put it during the focus group interview: “*I rather wait, although I know I go crazy.*” The delay can put the juveniles under pressure to decline legal advice in order get out of custody. For some of the more experienced juveniles they recognise the importance of waiting for a lawyer. In this respect it is important to ensure an effective mechanism which provides juveniles with early access to a lawyer.

Overall, the importance of the presence of the lawyer and of his role before and during the interrogation is largely recognised, even by police officers. Lawyers are aware that their assistance is crucial and they are generally in favour of measures to strengthen their role. Indeed in *England and Wales*, where assistance can at present be waived, the lawyers argue that juveniles should not be allowed to waive their right to legal advice and instead the right should be mandatory.

5.2. THE ROLE OF LAWYERS IN GENERAL: BEYOND MERE LEGAL DEFENCE?

What clearly emerges from the different strands of the empirical research is the important role of lawyers in explaining the different procedural steps to

the juveniles. The presence of the lawyer would seem essential to enhance the awareness of the juvenile and it also proves important for juveniles in order to better understand the decisions to take (or to approve of the decisions suggested by the lawyer).⁹⁴

5.2.1. Consultations (prior to and during interrogations)

After the *Salduz* case⁹⁵, consultation with a lawyer prior to interrogation is a right granted to all juvenile suspects with only few legal exceptions.⁹⁶ In some countries there are no specific rules concerning the duration of the consultation, while other jurisdiction (e.g. *the Netherlands* and *Belgium*) provide for time limits.⁹⁷ In the latter case, the problem might arise with regard to the adequacy of the given time. Belgian lawyers, for example, lamented that 30 minutes is insufficient to address all legal topics, observing that consultation with juveniles can be more time consuming. The English lawyers reported that consultation would normally last longer than those with adults. As they observe, there are different reasons why more time is needed: to gain the trust of the young suspects; to thoroughly explain the situation and the suspect's rights, and to do so in simple language; to reassure the distressed juvenile; the need to communicate and arrange a strategy with juveniles who often pay less attention than adults. As already mentioned, telephone consultation does not seem to be a recurrent practice in the majority of countries.

In some cases, the respondent practitioners reported the possibility of having an additional consultation during the interrogation. Italian lawyers observed that they would sometimes request an interruption of the interrogation in order to consult with the juvenile. Belgian lawyers also adopt such practice and said they would sometimes stop the interrogation to consult with their client, particularly if they were answering questions which could incriminate themselves or if they felt they required further advice in light of the answers already given.

Some of the topics and dynamics of consultation have emerged during the focus group interviews. As will be shown, they largely depend upon the role played by the lawyer in juvenile justice.

⁹⁴ See *supra* paragraph 3.1.

⁹⁵ ECtHR 27 November 2008 (Grand Chamber), *Salduz v. Turkey*, no. 36391/02. The right to prior consultation is also enshrined in the directive of the European Union on the right to access to a lawyer (2013/48/EU). At the time of writing, however, the directive still needs to be implemented in the majority of countries, hence its impact is still limited.

⁹⁶ One such exception is the current Belgian legislation concerning interrogations of suspects for crimes for which no deprivation of liberty can be imposed and the limitation of consultation for all other suspects to the first interrogation (see Panzavolta *et al.* 2015, p. 95).

⁹⁷ This is also the case in France. See Blackstock *et al.* 2014.

5.2.2. *Explaining rights and procedure*

It is important during the consultation for the lawyer to explain the overall situation (rights, proceeding, charges and consequences) to their client. Throughout all the focus groups, lawyers often stressed the importance of explaining rights to juvenile suspects in some detail. They consider it paramount to go through the rights of the juvenile during the consultation process (see, in particular, the Belgian experience). Some of them underscore the importance of explaining rights in a more accessible language to the juvenile. As this Belgian lawyer put it: “*You have to explain what it effectively means [...]. I have to explain it in simpler language.*”/ “*You have to explain it as a lawyer but on the level of a juvenile*”. Similarly, the lawyers in *the Netherlands* said that they would always ask the juvenile to explain what has been said during their consultation in their own words.⁹⁸ This seems to represent a departure from the experience of lawyers when dealing with adult suspects, where it seems to be less common for lawyers to systematically verify with them if their rights have been understood.⁹⁹

Overall, it seems a good practice for lawyers to give priority and devote attention to ensuring that juveniles are fully able to understand the situation and their rights. Clearly, lack of training, lack of expertise in criminal matters and poor quality lawyering are factors that can prevent this from becoming a reality.¹⁰⁰

The absence of lawyers seems to be significantly detrimental for juveniles in many respects, but particularly concerning their knowledge of rights. When the lawyer is absent there is no remedy to a missed or improper communication by police officers of the rights to which the suspect is entitled. *Poland* can be taken as an example in this respect, not only because the majority of juveniles interviewed were critical of having incomplete or missing information on their rights but also because they admit having little understanding of rights and proceedings. In general, it can be observed that the level of understanding of rights by juveniles is low across all jurisdictions; hence, it appears appropriate to remark that one of the functions of lawyers should be to enhance and improve such comprehension, as the lawyer is the person best fitted to do so.

The emphasis on the role of lawyers in explaining rights and procedure should not detract from the importance that police officers deliver an appropriate communication of rights. On the contrary, the two things must be seen as complementary. Neither should it become the primary role of the lawyer, whose

⁹⁸ See *supra* paragraph 8.3.

⁹⁹ Blackstock *et al.* 2014, p. 315.

¹⁰⁰ See Blackstock *et al.* 2014, who found that these factors characterised many of their observations in France and the Netherlands.

job is not simply to complement that of other legal actors such as the police, but is to provide effective legal assistance and aid in the defence of the suspect.¹⁰¹

5.2.3. *Duality of role*

The role of the lawyer is not limited to informing the client of the situation and ensuring that they understand their rights. Lawyers should guide their clients in the proceedings. One extremely interesting element is the duality of lawyers' approaches in some countries and the difference in the way defence lawyers interpret their mandate. In this respect it can be said that there is some ambiguity in the role of lawyers with regard to juvenile suspects.

The diversity of roles played by lawyers can be captured around the contrast between a pure 'legal counselling-defensive strategy' role and a more educative function, leaning toward a more paternalistic approach and also including psychological support.¹⁰²

In the first approach lawyers limit their assistance to a purely technical legal function, without indulging in considerations concerning the overall welfare of the juvenile, including the emotional distress he might undergo during criminal proceedings. In essence, they deal with young suspects more or less as they would with adult suspects, save for a slight adjustment of the tone of the communication. In *Poland*, for instance, lawyers seem more inclined to follow this adult-like approach: in the interviews they clarified that their role is about explaining the possibilities and it is for the juvenile to make the final choice. Similarly some Dutch lawyers observed that they treat juveniles no differently from an adult and they let them choose what strategy to follow.

In the second approach, the lawyers instead take a broader perspective and expand their function beyond mere legal counselling, taking into account the need to offer emotional/psychological assistance. This approach can be epitomised in the formula adopted in a previous study that 'lawyers for children must be caregivers as well as agents'.¹⁰³ This approach requires lawyers to exercise their duties in a way that is compatible with the greater emotional and psychological vulnerability of the juvenile. Lawyers tend to consider the detrimental effect of juvenile justice on the juvenile's personality, including the

¹⁰¹ The limit of 30 minutes on the lawyer-client consultation in France has been justified on the basis that this is sufficient time to explain to the suspects what her legal rights are. See Hodgson 2005. Although France now permits the lawyer to be present throughout the suspect's detention, including during interrogation, consultations remain limited to 30 minutes. One might question whether 'effective' legal assistance (in the sense of *Salduz*) can be provided in this time.

¹⁰² A similar contrast between a more paternalistic approach (built around 'the best interest of the child') and a mere advocate approach has been identified long ago in the US literature, both with reference to both criminal and civil proceedings: Lawrence 1983–1984, p. 51 (writing of a transition 'from child advocate to defense lawyer and, most recently, children's lawyer').

¹⁰³ Margulies 1996, p. 1475.

use of defence prerogatives. In more extreme cases, this approach brings lawyers to take a stronger paternalistic stance and emphasise the welfare of the juvenile even beyond the possibility to win the client's case. In other terms, lawyers accentuate the educative goal of juvenile justice and they choose the strategy that is preferable to (their view of) the overall well-being of the juvenile, regardless of considerations concerning the possibility to win or lose the case. This approach shows, among other things, the greater willingness of lawyers to suggest a cooperative strategy to their young clients, often leading to the admission of charges. *Italy* is the country where a paternalistic role of lawyers seems to be more common, although there too it does not go unchallenged. A similar trend is visible in *Belgium*, where the role of a lawyer is sometimes extended to an educational function and equated with the role of a social worker. As a Belgian lawyer said: "You're operating on the edge of being a social worker and also have to educate your juvenile a little". In both *Belgium* and *Italy* it appears that the role of lawyers within this second approach can range from a more 'minimalistic' approach (only psychological approach) to a more paternalistic position.

This duality of approaches is reflected in a different relationship between the lawyer and the client and in the choice of the strategy to adopt. Lawyers who remain anchored to their technical role and do not indulge in educational or other similar considerations tend to favour an independent relation with their client. On the other hand, lawyers leaning more toward an educational role are more inclined to 'dictate' the choices to the juveniles, convincing them that a certain course of action is preferable; and they tend to value a more cooperative approach with the prosecution, if this proves to be in the interest of a better education for the child. Once again, *Italy* stands out as the archetype in this respect where it is more frequent for lawyers to recommend that their client cooperate and confess so that the outcome can be more favourable.

It must, however, be highlighted that a fully cooperative approach, even leading to the admission of charges, does not merely depend upon a cultural difference on the young client-lawyer relationship. It is also grounded in the peculiar traits of the sentencing system of each country, which might offer very lenient alternatives to the defendant who acknowledges wrongdoing and repents of his action.¹⁰⁴

Finally it should also be stressed that the relationship between the lawyer and the young client depends on whether it is the juvenile's first contact with the justice system or not. Lawyers in *Belgium*, *the Netherlands* and *England and Wales* emphasised that repeat offenders are more able to make decisions. As one lawyer said: "They know how far they can take things. They feel at home. You see a big difference with a juvenile who has never been at the police station before. Then I think it is really important to explain our role".¹⁰⁵

¹⁰⁴ Panzavolta *et al.* 2015.

¹⁰⁵ See *supra* paragraph 2.2.

5.3. TRUST-BUILDING

One of the most recurrent words in the focus group interviews with regard to the relationship between the lawyer and the young client is the word ‘trust’. Trust building appears to be a crucial factor in establishing a fruitful and satisfactory relationship between the juvenile and the lawyer. Juveniles show quite some scepticism toward lawyers and their role, an outcome mirrored in the findings of previous US studies.¹⁰⁶

The problem of having adequate trust in lawyers, particularly duty lawyers, is present in all national reports. This was highlighted by the juvenile girls interviewed in *Poland*, who were dissatisfied with *ex officio* appointed lawyers and at any rate showed little appreciation for lawyers in general. It is not easy for lawyers to win the confidence of juveniles, yet there is no evidence in the extant research which suggests that juvenile suspects should be more wary of lawyers than adult suspects. Indeed the dynamics of building trust with young clients may be different from adult suspects: they may have to depend more on showing empathy and developing appropriate communicative skills with juveniles rather than rely on their knowledge of the law and other traditional professional skills. Establishing trust requires adopting an appropriate child friendly approach, having patience, being willing to listen to what the young person has to say. All this, depending on the circumstances of the case, can take more time than when dealing with adults.¹⁰⁷ Previous research has particularly emphasised the importance of lawyers having face-to-face contact with their client in order to help build trust.¹⁰⁸ This is even more important when dealing with vulnerable suspects, particularly juveniles.

Given that lawyers are mindful of the importance of needing to explain everything to juvenile suspects and establishing a positive relationship with them, it appears that the difficulty in trust-building mostly rests in the lack of adequate communication skills by the lawyers and in their ability to establish a sufficiently close relationship with the juvenile.

5.3.1. Duty lawyers

A common trend across jurisdictions is that the lack of distrust particularly grows with regard to duty lawyers. Juveniles fear that the quality of duty lawyers is much lower than that of chosen lawyers and they also perceive duty lawyers to be less trustworthy. This belief is vividly mirrored in the bold expression of an English juvenile: “*It’s like they are working for the police*”. Lawyers also normally

¹⁰⁶ Lawrence 1983–1984, p. 50 and Grisso 1981.

¹⁰⁷ See Malempati 2014, p. 659.

¹⁰⁸ On the importance of face-to-face contact with a lawyer at the police station contact for suspects in general: Skinnis 2011, p. 36.

prefer to assist juveniles on the basis of a direct personal relationship, as this allows them to have better acquaintance with the juveniles and knowledge of their situation. As a Belgian lawyer said: “*We should come to a situation where a juvenile, when arrested by the police, has the reflex to call his lawyer*”.

Enhancing trust between lawyers and clients appears a necessary precondition for improving the effectiveness of legal advice. Trust is also critical when lawyers provide advice to the juvenile which is meaningful during the interrogation. The importance of building trust with the young client requires a careful consideration of the elements which can help establish a closer relationship between the juvenile and their legal adviser.

First, as mentioned above, for lawyers to gain the trust of their client this can be improved by the quality of the lawyer themselves. Second, trust can sometimes be encouraged by the role adopted by the AAs and social services as they can help mediate and facilitate the lawyer/client relationship particularly during the initial contact. This is not to suggest that the role of the AA and the lawyer can be intertwined. On the contrary, they are required to undertake different roles in the interrogation. With the AA predominantly being responsible for the welfare of the juvenile while the lawyer is predominantly concerned with legal issues. The relationship the AA has with the juvenile, however, could assist them in gaining trust and confidence in their lawyer, which then helps them when providing instructions and in developing a positive lawyer/client relationship.

Third, trust can also be enhanced by the existence of adequate safeguards and practical preconditions. Effective disclosure of evidence by the police is one such safeguard. As English lawyers mentioned, the advice they give to their client can depend on the extent to which the police are proposed to disclose what evidence (or at least some evidence) they have against them. The juveniles commented on the consultation with their lawyer being particularly helpful when they could give more information about the offence and what was happening. With less information available lawyers have one less tool for winning the confidence of their young clients. If the police do not provide adequate disclosure, then this can place the lawyer at a disadvantage when trying to establish a positive relationship with the young client.

Having adequate time for consultation is another factor which can improve trust-building between the young client and the lawyers (although, as we shall see, no particular concern was raised on this issue). When consultation takes place at police headquarters, the confidentiality of consultation rooms is also a factor. Belgian lawyers lamented the absence in their regions of adequate rooms where they could have “a normal conversation”. In general, enhancing safeguards is a factor which could help the lawyers in gaining the trust and confidence of juvenile clients, which then puts them in a better position to advise and guide the young client.

5.4. DISCLOSURE

It seems to be a common trend that little evidence is disclosed to lawyers before the interrogation in all five countries, sometimes even despite the existence of cogent rules. In *Poland*, the police officers could not remember an instance where they had talked to a lawyer before the interrogation about the existing evidence. Officers further stressed that the law does not allow the lawyer to access directly any investigative materials. In *Italy*, prosecutors emphasised that the rule for interrogating officers is to give no disclosure, showing a narrow interpretation of the applicable legal provisions. In essence, it can be said that the legal provisions concerning disclosure are already quite ‘tight’ on this point (in the sense that the laws of the different countries do not allow it to a large degree¹⁰⁹) and practice makes them even ‘tighter’.

The exceptions to this common trend depend on lawyers having a good relationship with the interrogating officers. For instance, one Polish lawyer said that he is normally able to obtain some information. Italian lawyers highlighted the importance of having trust between the lawyer and the officer, as this one said: *“If, for example, a police officer or a prosecutor tells me something, he does so because he knows that I will make proper use of this information”*.

In general, the tendency of officers to give little disclosure seems to be connected to a deeply rooted cultural approach among police forces (and prosecutors), based upon the belief that disclosing evidence to the suspect allows him to fabricate a false version of events perfectly matching the existing information. As an English officer said: *“It’s not good practice to give all your evidence away, particularly as the lawyer can use it in constructing an alibi or a defence”*. As illustrated by other studies¹¹⁰, this seems to be a self-fulfilling prophecy on the part of the police: that is they believe lawyers can hinder the truth finding process, provide little or no information on the case file, and by this token they offer the greatest incentive to lawyers to advise their client to remain silent (as lawyers normally do when the evidence, or large part of it, remains unknown).

5.5. THE ROLE OF LAWYERS DURING INTERROGATIONS

In general, it is difficult to assess the extent to which lawyers maintain a more passive or active approach during interrogations and whether they are willing to challenge the police. First, when considering this issue it should be noted that

¹⁰⁹ Panzavolta *et al.* 2015, p. 413.

¹¹⁰ See Kemp 2013b, p. 25–27. However, in general, previous studies are divided on whether the assistance of a lawyer will increase the likelihood of the suspect remaining silent. See for example several UK studies on the differences in the numbers of suspects remaining silent before and after PACE as mentioned in Vanderhallen *et al.* 2014, p. 99–100.

there are already diverging legal and cultural approaches, which determine the context and atmosphere of an interrogation.¹¹¹ Practitioners in one country may consider as highly interventionist behaviour that in other jurisdictions would be viewed as a mild intervention.¹¹²

The same concept of ‘active intervention’ is sometimes confined to asking further questions, whereas in other cases it stretches to include (as should be the case) interventions to challenge the officers’ questions, in their tone or content, or any other improper behaviour by the interrogating officers.

It is also difficult to state whether lawyers are more interventionist in cases concerning young suspects than adults. A Polish lawyer said that he would intervene just as much as with adults, but nobody else clarified whether they tend to adopt a different demeanour.

Furthermore, when lawyers declare to be interventionists, it is not entirely clear whether such a statement on their propensity (or willingness) to intervene corresponds to reality. The observations in the different countries do not entirely confirm the lawyers’ assertions on how active they are in the interrogation room. In *Belgium* for instance, lawyers declare that they have a propensity to intervene on a number of occasions but the findings of the observations seem to show that the lawyers mostly tend to play a passive role, in line with the expectations of the police, although there may be different explanations for the attorney’s demeanour.

The issue of whether and to what extent lawyers should be active or passive in the interrogation room is one which is open to debate. From the perspective of some police officers, lawyers’ interventions should not be excluded but they should be confined to situations where they are meant to avoid pressure on the client and/or protect his rights. Interrogating officers view it less favourably when the lawyers want to influence the outcome. As a Belgian officer put it, lawyers want to intervene “*on content*”, “*they try to steer the interrogation*”. Italian officers also shared this point of view: since the way of influencing the interview is to ask further questions of their clients, they would invite the lawyer to ask the juvenile any questions at the end of the interrogation. The same position was voiced by English police officers: “*We have to control the interview and not let the solicitor take over*”.

Lawyers seem to have different views on how active their role should be. In general, they all seem to acknowledge the importance of having an active role. Belgian and Dutch lawyers, who admittedly seem to have a more passive role

¹¹¹ Blackstock *et al.* p. 2014, p. 322.

¹¹² In some countries a request to rephrase a question or to explain the question to the juvenile can be treated as a direct intervention and disturbance of the police conduct, while in others it is perceived as being complementary and supportive to the police’s role. When talking of the need for lawyers to challenge the police some practitioners are in fact suggesting the need for a more confrontational/adversarial approach towards the police. In other cases, an intervention or challenge is intended as little more than seeking clarification either to the juvenile or to the police.

inside the interrogation room (when they are permitted to be present at all), were of the opinion that a best practice would allow a far more active role for them during interrogations. English lawyers were very clear in saying that their ability to intervene is crucial in ensuring the interrogation is conducted properly and to protect their clients' rights. One lawyer said about the police: "*It seems that they don't know that what they are doing [in the interrogation] is wrong*". And Italian lawyers feel 'forced' to stop the interrogation when the police put leading questions inappropriately.

But this does not mean that lawyers always view having a passive role as being negative. Some English lawyers actually value this as a good tactic particularly if the police are 'digging a hole' for themselves by using oppressive or other interview techniques which could lead to the interrogation evidence being excluded at court.¹¹³ Italian lawyers stressed that being too challenging of the police can encourage an adversarial approach which is contrary to best interests of the juvenile. An Italian lawyer explained: "*It becomes complicated to make the juvenile aware that the system is there for him and not against him*".

The different position of lawyers with respect to a passive role seem to confirm the already highlighted duality of approaches concerning the lawyers' mandate. English lawyers, with a more ingrained adversarial culture, are open to view the interrogation more tactically. Italian lawyers instead seem to downplay the adversariality of the procedure and to think more in cooperative/re-educative terms.

In the countries where observations were possible, it would overall seem that lawyers tended to be more passive than active at least in *Belgium* and *the Netherlands* (as said, partly in contrast with their own self-description). Lawyers were seen to be more active in *England and Wales* but there were still issues raised concerning the effectiveness of their role, particularly as the police are dominant in the interrogation. It was mainly in relation to legal issues that the lawyers were prepared to challenge the police.

5.6. QUALITY OF LAWYERS AND SPECIALISATION

It is extremely difficult to measure the quality of lawyers through an objective lens. In general, however, there seems to be an acceptance that the quality of lawyers acting for juveniles can be increased if they are specialised and receive appropriate training on matters related to juveniles, juvenile interrogations and justice. As an Italian lawyer voiced: "*The specialised subject has a different approach*". Belgian, and to some degree Italian lawyers, are specialised in that they receive specific training. English lawyers have a different kind of

¹¹³ Whilst this is the claim made by lawyers, it seems unlikely to be borne out in practice, as evidence is excluded only very rarely and mostly when the accused pleads not guilty.

specialisation: in order to give advice at the police station there is an accreditation scheme but this does not at present specially deal with issues relating to juvenile suspects. Lawyers feel that it would be good to include in the accreditation some specific training on how to deal with juveniles.

However not all lawyers were willing or interested in specialising, as was expressly stated by a Polish and a Dutch lawyer. Indeed, it is not always feasible for lawyers to specialise in juvenile cases unless there is a sufficient volume of work available. It is in this context that it should also be highlighted that it is often unlikely that lawyers across the five jurisdictions deal exclusively with cases involving juveniles.

Furthermore, it should also be noted that even in countries where some forms of juvenile specialisation is in place, such as *Belgium* and *Italy*, this has not prevented some ambiguity arising in the role of lawyers.¹¹⁴ In this respect it would be helpful to develop training modules for lawyers working with juveniles which provide a more detailed and uniform approach and help to enhance quality.¹¹⁵

5.7. THE RIGHT TO ASSISTANCE OF AN APPROPRIATE ADULT

The right to be assisted by an AA is not uniformly recognised in the legislation of the five jurisdictions. In some cases it is a mandatory safeguard for all vulnerable suspects including juveniles (*England and Wales*), while in countries adopting a more welfaristic approach it is not required (*Belgium*), or it is interchangeable with legal assistance, meaning that the assistance of a lawyer 'or' an AA is sufficient (*Poland, the Netherlands*).¹¹⁶

The empirical research shows that it is difficult to capture a consistent practice with regard to the presence, role and function of AAs across the five jurisdictions. Differences depend in part on the law in the books, but also on cultural perspectives. Nevertheless, some general traits can be sketched.

AAs are generally present in the interrogation in countries where the law expressly provides for their mandatory involvement. In *Belgium* there is no such requirement and interrogations are ordinarily conducted in the absence of appropriate adults, with only few – mostly regional – exceptions. Police officers do not consider the need to develop a practice of having AAs which goes beyond what is required by the law, although those who have received specific training in questioning child witnesses can see the value of this. In *the Netherlands* the

¹¹⁴ See *supra* paragraph 5.2.

¹¹⁵ See also *infra* paragraph 7.4.

¹¹⁶ See Panzavolta *et al.* 2015, p. 393.

presence of an AA (referred to as a ‘trusted person’) is not mandatory, but an adult was present in the majority of cases. In *Poland, Italy* and *England and Wales*, the presence of an AA is mandatory and with one exception (an Italian boy who did not want his parents to be present during the interrogation) this right was observed.

In the majority of cases it would seem that the assisting person, if present, is a direct relative (mainly the mother or the father). This is the case also in *the Netherlands*, despite the legislation not requiring the assisting person to be an adult, but simply a ‘trusted person’. In some countries AAs can also be trained specialists and volunteers, as is the case in *England and Wales*, although this remains less frequent.

In *Italy* the law also requires the presence of a member of social services (social worker) in the interrogation but it appears that in many cases this does not happen.

5.8. THE ROLE OF APPROPRIATE ADULTS IN GENERAL

As mentioned above, the role of AAs should in principle be to offer psychological and emotional assistance. Overall, it would seem that this is normally the case when a parent is present: when family relationships so allow, the presence of a parent seems to have a positive effect. The research in *the Netherlands* and *Poland* seems to show that parents (or other adults) can offer good support (emotional, psychological and even practical) to the young suspect. In a couple of Dutch cases the mothers involved were able to give relief or to make practical arrangements for their son’s job. The risk seems to be – at least when looking at the Italian and Polish experience referred to by practitioners – that parents may be “*overly intrusive*”, either siding too much with their child (as Polish officers lamented) or, on the contrary, by assuming a position of blame towards their children. The police officers in the Italian Focus group interviews reported on some intrusive behaviour of parents, to the point that they would ask them to intervene only at the end of the interrogation. This matches the results of previous studies, which questioned the parents’ ability to provide meaningful protections for juveniles in interrogation. For instance, Grisso and Ring observed that “*the socially accepted role which a parent plays in raising a child, and the child-rearing practices associated with that role, may be incompatible with the task of deciding what is in the best interest of one’s child in the context of adversarial legal proceedings*”.¹¹⁷ In general, the literature documents that parents might not be well equipped to act as AAs¹¹⁸, because their ability to be objective

¹¹⁷ Grisso and Ring 1979, p. 224.

¹¹⁸ Brown 1997.

can be overcome by their emotional involvement with their child¹¹⁹, let alone that parents often do not have adequate understanding of legal procedures.¹²⁰ The prior studies also document the lack of clear standards for determining a possible conflict of interest between parents (and other familial members) who are acting as the AA and the juvenile.¹²¹

The views on the importance of requiring the presence of an AA differ between countries and from category to category of interviewees. In *Belgium*, for instance, where there is no requirement to have an AA, the position of officers and lawyers mirrors the legislation and considers that the AAs provide no added value. In *the Netherlands* most of the young people interviewed did not consider the presence of a trusted person to be strictly necessary and police officers too did not see the attendance of AAs too favourably. They stressed that the presence of parents can influence the juvenile's willingness to tell the truth.

The criticism raised against AAs for being too emotionally involved and not neutral is however applicable only to parents (or other close relatives) and not to social workers.

The role of AAs can change depending on whether a lawyer is also present. Where the AA is on their own, not only should he offer psychological and emotional assistance but he is also tasked with ensuring the fairness of the interrogation. There is no doubt that the adult can be a restraining factor on the behaviour of the police, encouraging the interrogating officers to adopt – as a Polish girl put it – a more “*humane*” behaviour. This has been highlighted in previous empirical studies.¹²² It also seems to be the case that the presence of an AA can help to reduce the juveniles' fear of the police. However the AAs generally lack the legal skills required to advise juveniles over legal issues arising and, particularly to challenge inappropriate police behaviour.

In general, it seems that the role of AAs remains partly undefined. The English experience of social/youth justice workers explicitly raises the issue of the ambiguity of the role of adults in *England and Wales*¹²³, between referee (mediator) and caregiver for the juvenile. In that country this ambiguity is emphasised by the existence of three types of AAs: the parents (family members) who are not trained and then the trained AAs who are predominantly volunteers recruited by local services or, in some areas, YOT workers which could (but not always) include those with a social work background. In Italy the role of AAs

¹¹⁹ Gudjonsson 2003.

¹²⁰ Grisso 1980, 1163 and Woolard *et al.* 2008.

¹²¹ Farber 2004, p. 1291.

¹²² Medford, Gudjonsson and Pearse 2003, p. 263 (observing in the UK a greater openness by officers, a higher willingness to explain procedural formalities, a reduced use of tactics and a milder confrontational attitude: “officers interviewing adult suspects without an AA were significantly more likely to challenge the suspect's account with reference to what was known and what was not and they also interrupted the suspect more often when giving their version of events”).

¹²³ Already observed in Hodgson 1997, p. 791.

and social services are distinct, with the former aiming at emotional support and the latter at psychological support; in the study it emerged that the Italian social workers are present only in a small amount of cases, yet they can positively complement the parents and the lawyer with their preparation and experience.

Research conducted in England has found that AAs can have the positive effect of increasing the likelihood of the presence of a legal representative.¹²⁴ From the research findings it would appear that this can be more the case with trained/specialised AAs.¹²⁵ The English volunteers and YOTs we spoke to follow a policy of always requesting a lawyer to be involved, but it is not known to what extent such a policy is reflected in other areas. It remains less clear if the same positive effect is connected to the involvement of parents (or other relatives).

5.9. THE ROLE OF APPROPRIATE ADULTS IN THE INTERROGATION ROOM

The demeanour of AAs in the interrogation room differs across jurisdictions. In *Poland* and *Italy* (and in the few Belgian cases) AAs were seen to be quite passive. A slightly more active approach was observed in *the Netherlands* and in *England and Wales*. Overall, however, it is quite unlikely that AAs intervene massively during the interrogations.

In general, police officers are not particularly approving of the interventionism of AAs and they prefer them to adopt a passive approach. In the one Belgian case where an AA was involved, the officers did not even mention his presence and they did not consider in the transcripts any of the interventions of the AA. In *Italy* prosecutors sometimes ask AAs who try to engage to intervene only at the end of the interrogations. In general, from *Poland* to *the Netherlands* to *England and Wales*, the police mainly expect AAs to remain passive and at the most to undertake a mere consoling role, without interfering in any answers juveniles give to questions put by the police. Furthermore, in some countries, such as *Italy* and *the Netherlands*, guardians are normally asked to sit behind the juveniles. This is unhelpful as it impedes any communication AAs can have with the juveniles, which is the intention of the police and highlights the distrust they have over the role of the AA in the interrogation. Another sign of distrust identified in Belgium is that the police fail to capture in the transcripts of interrogations any inputs made by the AA during the interrogation. The attitude of the interrogators who want to marginalise AAs is summarised in the statement of the Italian prosecutor when he said: “*The parent is a figure of*

¹²⁴ Medford, Gudjonsson and Pearse 2003, p. 262.

¹²⁵ See on this matter (how the distinction between professional/voluntary AA's on the one hand and relatives as AA's on the other affects the take up rate of legal advice in the *England and Wales*): Kemp 2011, p. 37–38.

psychological support and that's it. Through his presence and not his action. It happens so many times that I have to distance them".

Inevitably the role undertaken by the AA will be influenced by whether or not a lawyer is involved in the interrogation. If a lawyer is involved the AA is likely to take a 'back seat' in that they refrain from intervening and checking the accuracy and correctness of the written transcripts. Nevertheless, it is important that AAs also recognise their role in making sure that the juvenile understands what is being said in the interrogation and also takes responsibility for checking the accuracy of written transcripts.

5.10. CONCLUDING REMARKS ON ASSISTANCE

The approach adopted here has been to analyse separately the assistance provided by lawyers and that offered by AAs and other adults. Nevertheless, the topic of assistance must also be viewed as a whole. The role of lawyers and that of the AA (whether taken on by parents or those trained to support juveniles in interrogations) is theoretically distinct from one another, but in practice the roles can intertwine, overlap and affect one another. This already shows in the tendency of some jurisdictions to be satisfied with the presence of one adult only in the interrogation (whether the lawyer or the AA), such as is the case in *the Netherlands*. Even in countries where the legislation mandates for both the presence of lawyers and AAs, such as *Poland*, it is often considered acceptable to involve either the AA or the lawyer. In *England and Wales* it is mandatory for an AA to be involved in all juvenile interrogations but there is no similar requirement in relation to lawyers, irrespective of the seriousness of the offence or the young age of the suspect. In this respect *Italy* stands out as an exception for the constant simultaneous presence of adults and lawyers.

In practice, it is clearly visible how the role of lawyers and AAs can change depending on whether they act alone or in the presence of each other. This is particularly true of AAs, who in the absence of lawyers could feel compelled to extend their role to ensuring respect for legal rules – even though they are not trained in matters of the law – and encouraged to take on a more interventionist approach during the interrogations. AAs in *England and Wales* are not allowed to provide legal advice to juveniles and so in the absence of a lawyer there is no support available to challenge the police over the law.

As mentioned above, one of the most challenging problems arising out of the interrogation of juveniles is the propensity for long delays, which can be due to the police arranging for a lawyer and AA (and interpreter if required) to attend in time for the interrogation.¹²⁶ In the meantime, the juvenile is forced to

¹²⁶ Although, as lawyers in *England and Wales* remarked, long delays can as well be caused by the police gathering evidence and putting back the interrogation.

wait, often being placed in an uncomfortable cell, and having to sustain further distress. On the one hand, it takes time to ensure the arrival of adults and even more of lawyers. On the other hand, the priority for many juveniles is to be released as soon as possible, which can encourage them to be cooperative with the police and even to admit to offences of which they are innocent in order to secure their early release.¹²⁷ There is a risk is that providing for the assistance of juveniles comes at the cost of lengthier police detention (maybe even in cells), which can be detrimental for the vulnerable personality of the juvenile. It is another application of the never-ending dilemma between safeguards and time. Most safeguards are time-consuming, hence the more safeguards the longer the delays. At the same time, more waiting time means more time under pressure for the juvenile in the unfamiliar context of a police environment, all the more so if the time is spent in a cell.

As a final remark, it must be said that the empirical evidence also highlights divergences which seem to be grounded on cultural differences, particularly with regard to the involvement of families in the defensive strategies and the decision-making process for juveniles (whether it should be left in the hands of the juvenile or controlled more by the adult figures, particularly lawyers). It is not possible to measure the national cultural dynamics around the role of children in families and in society, the role played in the society by the police and the like.¹²⁸ But inevitably these are factors which lurk behind the practical assessment of the assistance of juveniles during interrogations.

6. INSIDE THE INTERROGATION ROOM

The vulnerability of juveniles should play a crucial role also inside the interrogation room, where the juvenile often experiences some of the most stressful moments during the investigations and, depending on what is said, where the fate of the case might be decided. It has been noted that legal rules tend to “*remain outside of the interrogation room*”, in that there is a lack of rules on how to conduct interrogations.¹²⁹ It is thus extremely interesting to see what dynamics emerged from the observed practice.

The duration of interrogations varies significantly from interrogation to interrogation. In general, however, it would seem that an interrogation rarely last more than one hour. In *Belgium*, for instance, out of the selected cases an average of 44 minutes was recorded; in *England* the average length observed was of 26

¹²⁷ It is not infrequent, as previous research has shown, that the police use the threat of delays to discourage a suspect to have a lawyer: Kemp 2013a, p. 198–201 and Blackstock *et al.* 2014.

¹²⁸ Nelken 2012.

¹²⁹ Panzavolta *et al.* 2015, p. 405.

minutes¹³⁰, and also in *Italy* the available data show interrogations that would normally not last more than one hour.

Nonetheless concerns were expressed by AAs in *England and Wales* with regard to the length of interrogations and even the English police considered 15 minutes of questioning too long for some juveniles, suggesting that for longer interviews regular breaks are needed. This appears to be good practice when considering the already mentioned short attention span of juveniles.¹³¹ However, lawyers in *England and Wales* expressed regret that such a good practice is far from being a common practice, generally applied, and no ‘comfort’ breaks were observed in the 12 interrogations examined. On the whole, interrogations tend to be longer in cases where the juveniles do not make admissions.

As far as the timing of the interrogation is concerned, it should be stressed that in *Poland* all interrogations were carried out during the day (at least according to the official transcripts), in *the Netherlands*, 8 of the 12 interrogations observed were conducted during the day, but 5 of the 12 interrogations observed in *England and Wales* were conducted after 7pm, including one at 11pm, five hours after arrest.¹³² A couple of young people in the focus group interview in *England and Wales* reported having been questioned by the police in the early hours of the morning. Also in *Belgium*, cases of night time interrogations were recorded, although the respondent officers were critical of such practice because the concentration and attention span of juveniles is at its lowest at this time. In fact juveniles (particularly in *England and Wales*) observed that night time interrogations caused them great discomfort and distress.

It was difficult to measure whether there were unjustified delays in the conduct of interrogations, particularly with regard to juveniles who had been arrested or taken into custody. Observations in *England and Wales* showed at time traces of inappropriately long delays, including juveniles being held in custody overnight. The problem was also highlighted by lawyers and AAs in the focus group interviews in *England and Wales*, with both groups raising concerns that the delays could be detrimental to the health of juveniles. English lawyers voiced concerns that the police sometimes seem at times to have an “*attitude to teach them a lesson by holding on to them for such a long time*”. Also in one Belgian case it was not clear why the suspect had been kept in custody for quite a long period of time.

In some focus group interview practitioners reflected on the never-ending dilemma of juveniles arrested during the night: whether to proceed to a speedy interrogation or have them wait in custody until the following morning.

¹³⁰ This was in a sample of cases where the juveniles had been prosecuted and the offences were denied, where there is likely to be a longer interrogation than in cases where the offences were admitted.

¹³¹ See *supra* paragraph 3.3, footnote 40.

¹³² The interval between arrest and arrival at the police station varied from five minutes to an hour and twenty minutes.

English lawyers took a very critical stance on night time interviews and expressed a preference for holding the juvenile in custody overnight in order to be able to question them the following morning. Similarly, in the *Belgium* focus group interviews, both lawyers and police officers agreed that remanding the juvenile home in order to question him the following day would not be a good option.

6.1. THE JUVENILE'S Demeanour

The empirical findings seem to offer a picture of juveniles who tend to be cooperative in the interrogation room, at least in the sense that they respond to the questions posed.

Although the sample of observed cases was limited, it is noticeable that only a very small number of juveniles chose not to answer questions put to them in the interrogation. In countries like *Belgium* and *Poland* no such cases were observed, in *Italy* only one, two in *the Netherlands* (where the lawyers confirmed the willingness of juveniles to answer the questions). There were four out of twelve cases in *England and Wales* where 'no comment' was made by juveniles: while there is the potential for a court to draw 'adverse inferences' in cases where information is later relied on which was not mentioned in the interrogation, in these four cases a lawyer was involved.

In the focus group interviews the dichotomy between 'first timers' and 'repeat players' was to surface once more.¹³³ In the Polish focus group interview police officers said that juveniles with longer criminal careers are those more likely to be less cooperative and to avail themselves of the right to silence, while inexperienced juveniles are normally ready to answer the questions asked by the police. The same remark was made by Belgian police officers. This reflects (at least in part) the Italian findings. In *Italy* the lawyers said that juveniles involved in organised crime were more likely to exercise their right to remain silent as they were more aware of the seriousness of their situation and which strategy they needed to adopt.

The focus group interviews, particularly in *England*, also confirmed the existing literature on short term reasoning of children. Despite being still partly intoxicated, a juvenile accepted to be questioned in order to get out of the police station as soon as possible. A similar pattern was registered in *Belgium*, where officers said that juveniles would be likely to waive their right to counsel in order to reduce the time at the police station.

¹³³ *Supra* paragraph 2.2.

6.1.1. Confessing

Not only would it seem that juveniles tend to answer police questions, but it also appears that they are often willing to confess to the crime. In *Italy* it was the case that all interviewed juveniles in the selected cases had made a confession. And in the observations juveniles mostly admitted their involvement in an offence. This is hardly surprising when one considers the fact that normally Italian juveniles are told that remaining silent will be detrimental to them¹³⁴ and that several Italian lawyers expressed a clear preference for them to adopt a cooperative behaviour.¹³⁵ However, also in the Polish observations confessions were recurrent.

Overall it would appear that juveniles are not likely to take a strong adversarial approach and they show greater willingness to confess to their crime than adults. This finding should however be considered in light of the already mentioned tendency of juveniles to comply with police requests and particularly with suggestions put to them.¹³⁶

In a detailed study of juvenile interrogations in the United States, Feld invites to consider the issue carefully. In particular, when noting that the police reported a “high level of successful interrogations” he states:

*“Justice system professionals attributed juveniles’ proclivity to confess fully to several factors: socialization, a desire to tell the truth, lack of appreciation of consequences, emotional needs, or the compulsive pressures of interrogation. Officers attributed some juveniles’ willingness to confess to respect for authority.”*¹³⁷

In a number of jurisdictions it was noted how the police put an emphasis on trying to encourage juveniles to ‘tell the truth’, even though this can undermine their right to remain silent.¹³⁸ Another finding in the United States was that officers would sometimes take the opportunity to build rapport with juveniles, which included asking if they wanted food or drink.¹³⁹ This seems to have been a successful strategy adopted by some officers in *the Netherlands* as the juveniles reported that they would not talk to the police unless they were first given “chocolate milk”, instead of the usual tea or coffee.

The problem of juveniles making false confessions was highlighted in a study in the United States of 340 cases where defendants had been exonerated. The study found that 42 per cent of juveniles gave false confessions, compared to 13

¹³⁴ See *supra* paragraph 3.1.

¹³⁵ See *supra* paragraph 5.2.

¹³⁶ *Supra* paragraph 4.3.

¹³⁷ Feld 2013, p. 148.

¹³⁸ See also *supra* paragraph 3.1 and *infra* paragraph 5.1.

¹³⁹ Feld 2013, p. 78.

per cent of adults. Most worryingly, for juveniles aged 15 years and younger, 75 per cent were found to have given false confessions.¹⁴⁰

As far as this study is concerned, no conclusion can be drawn as to whether confessions made are false or not but it is of concern to note the high proportion of cases in which an admission was made.

6.1.2. *Juveniles and strategy*

It is difficult to understand to what extent the juvenile's decision to confess was their personal choice or was made on the advice of their lawyer. Juveniles heard in the focus group interview in *the Netherlands* felt perfectly capable of deciding on strategy and one commented that their lawyer can "simply be quiet together with me". However, the same juveniles gave signs of misinterpreting legislation and criminal procedure rules. Lawyers in *the Netherlands* said that, despite their young age, juveniles are considered to be *dominus litis* in the sense that they make the ultimate decision on invoking the right to remain silent. Observations in *the Netherlands*, however, showed juveniles following their lawyers' advice after they intervened in five cases, but it remains difficult to establish who decided on the strategy adopted in the interrogation room. Furthermore, this issue inevitably ties in with the different way lawyers across jurisdictions perceive their role.¹⁴¹

6.2. INTERROGATION APPROACH AND STYLE

The legal study highlighted that there are few rules on how exactly to conduct an interrogation.¹⁴² It becomes therefore even more interesting to look at what happens during the interrogation, at the dynamics and techniques involved.

A preliminary remark must be made. A more in-depth analysis of interrogations styles could only be carried out in countries where audio- or videotapes of the interviews were available. In *Poland* and *Italy*, where the interrogation is written down, interview techniques adopted by the police could only be (marginally) explored in the focus group interviews.

6.2.1. *Models of adult interrogations*

When examining an interrogation model for juveniles it is important to take into account the current practice of interrogation models. Some countries have in fact developed models for examining adult suspects. This is for instance the

¹⁴⁰ Gross *et al.* 2005.

¹⁴¹ See *supra* 5.2.

¹⁴² Panzavolta *et al.* 2015, p. 405 and further.

case of *England and Wales*, where large use is made of the so called PEACE model. Contrary to the model adopted until the 1990s (which had been based on the accusatory US ‘Reid model’¹⁴³), the assumption underlying the PEACE model is that a suspect who is relaxed, and with whom the interrogator has a rapport, is more likely to cooperate by responding to police questions. While the PEACE model was seen to have the desired effect on interview styles in the 1990s in England,¹⁴⁴ findings from this study show officers adopting approaches more suited to the former Reid model. Examination of the 12 interrogations in *England and Wales*, for instance, found the police using persuasion, accusation and oppressive questioning.

6.2.2. *Absence of uniform model or guidelines*

The first observation is that there seems to be no predefined model of questioning juvenile suspects across the different countries and within each of them. As one Belgian police officer put it: “*There is a flavour for everyone*”. In all countries we could not find a predefined set of guidelines for interrogating juveniles, not even in the form of uniform training modules. This is even more surprising in countries, like *England and Wales* or *Belgium*, where guidelines exist with regard to the questioning of suspects more generally (e.g. PEACE model in England) or the interviewing of children witnesses (e.g. Achieving Best Evidence in Criminal Proceedings’, ABE in England; Tam Training modules in *Belgium*).¹⁴⁵

In *England and Wales*¹⁴⁶ there is in fact detailed guidance for police officers when dealing with special measures involved in interviewing vulnerable victims and witnesses, including juveniles. This guidance has been published as ‘Achieving Best Evidence in Criminal Proceedings’ (‘ABE’).¹⁴⁷ While developed for a different purpose, where the aim in interviewing juvenile victims and witnesses is to get to the ‘truth’, these guidelines could be helpful in developing a model for the interrogation of juvenile suspects. For example, the guidelines comment on interviewers not making assumptions based on the child’s demeanour and that while some children may behave with a degree of bravado they are actually experiencing a good deal of angst at the prospect of giving evidence. The interviewers are also required to ‘pitch the language and concepts used’ to a level that a vulnerable witness can understand. Also relevant here is the comment that

¹⁴³ This model was based on officers searching for the ‘truth’ and could include interrogators using intimidation and coercion during the interrogation. Not surprisingly, such an approach is also seen to encourage false confessions. See Feld 2013.

¹⁴⁴ Medford *et al.* 1993.

¹⁴⁵ See *infra* paragraph 7.3.

¹⁴⁶ See *supra* paragraph 6.2.

¹⁴⁷ Children under 18 years are defined as vulnerable by reason of their age – see Panzavolta *et al.* 2015.

some vulnerable witnesses might try to be helpful by going along with much of what they believe the interviewer ‘wants to hear’ and/or is suggesting to them.

6.2.3. Interrogation techniques

A common trend arising out of the focus group interviews with the police officers in the five jurisdictions seems to be the officers’ willingness to listen to the juvenile, to put them at ease and to understand the juveniles’ background and situation.

In *Poland* the officers in the focus group interview stated that they followed no prearranged strategy but that in any case the questioning of a juvenile would be characterised by questions aimed at understanding their social context (such as ‘What school do you attend?’, ‘What are your living conditions?’, *et cetera*). This ‘social talk’, aimed at gathering contextual and background information on the juvenile, was considered to be important by Dutch police officers (albeit with the exception when dealing with serious offences). Greater informality in the conducting of the interrogation was also reported by some English police officers.

With regard to interrogation methods, English police officers explicitly mentioned one technique they employ with juveniles as “*active listening*”, meaning that officers would be calm and friendly throughout the interrogation and would give preference to listening to the responses made by the juveniles. Prosecutors in *Italy* emphasised that the approach to juveniles should be characterised by understanding the juvenile’s situation, to the extent that one of them commented: “*Perhaps there should never be a desk in the middle* [between juveniles and interviewing officers]”. Belgian officers also emphasised the importance of avoiding putting pressure on the young suspects and the use of leading questions.

Nonetheless not all empirical findings entirely confirmed the officers’ self-description.¹⁴⁸ For instance, English AAs noted a change from an old school approach (which used to take a tougher line with juveniles) to a new style of questioning. Although following budget cuts some AAs were noticing differences in police interview styles, particularly as there were fewer officers available to conduct interrogations. It is also important to note that the English juveniles described officers being at times oppressive and using accusatory or persuasive interrogatory techniques (such as the ‘good cop-bad cop’ routine). Young people in the focus group interview in *England and Wales* reported having been placed under pressure to confess by being asked the same questions repeatedly and using techniques such as minimising the seriousness of the offence, designed to encourage admissions. Interestingly, all the tactics mentioned by

¹⁴⁸ It was already observed that self-reports tend to reduce the amount of coercion used in interrogation: Kassin *et al.* 2007, p. 394.

the juveniles were observed when listening to the audio-recordings of police interrogations. A couple of AAs in England and Wales were also noted in the observed interrogations to intervene and challenge the police and to protect the juvenile from unfair and inappropriate police questions. They were successful in changing police behaviour (including in one case where the lawyer did not intervene), but it was clear that a robust intervention from them was required. The Polish girls also reported experiencing oppressive and even threatening styles of police questioning.

The observations also gave a more varied picture than that provided by the police. First of all, observations in *Belgium* and *the Netherlands* showed that it was not always the case that officers tried to establish a positive relationship with the juvenile, an aspect which is in general considered a crucial quality of proper and efficient interviewing.¹⁴⁹ In *England and Wales* officers were hardly empathetic; in *Belgium* and in *the Netherlands* only in few occasions (respectively, four and three times).

The observation indeed evidenced that many interrogators would apply the active listening and empathy techniques in order to gather information.¹⁵⁰ But they also included cases of harsher, more oppressive and misleading forms of questioning. In *Belgium* and in *the Netherlands*, for example, the majority of observed interrogations showed an information gathering style, where juveniles were given an opportunity to tell their story. On some occasions however the officers also used more persuasive techniques. In *England and Wales* the balance between the two styles of interviewing – information gathering on the one hand, persuasive/accusatory on the other – was weighed towards the latter.

English officers used maximisation and minimisation techniques, where the severity of the offence and/or the potential consequences are exaggerated or otherwise played down.¹⁵¹ In *the Netherlands* minimisation was used twice and maximisation four times. In *Belgium* we encountered two cases of maximisation. The observations in *England and Wales* also showed that, when juveniles exercised their right to remain silent by stating ‘no comment’, officers would sometimes draw attention to the adverse inference rule.¹⁵² Several instances of suggestive and leading questioning were observed in all the three countries where audio- or video recordings were examined.

It also happens (with greater frequency in *Belgium* and *England and Wales*) that an interrogation starts out in a more open and friendly way, through the use of an active listening (or information gathering technique) and it then moves towards a more persuasive/accusatory stage, with the condition of suspect prevailing over the vulnerability of the young person.¹⁵³ This combined

¹⁴⁹ Yves and Deslauriers-Varin 2009, p. 9.

¹⁵⁰ A good approach, as proven by Oxburgh *et al.* 2010.

¹⁵¹ Pearse and Gudjonsson 1999.

¹⁵² On the adverse inference rule, see Panzavolta *et al.* 2015.

¹⁵³ For the repercussions on training, see *infra* paragraph 7.2.

approach proved to be particularly popular in *Belgium*, where it was observed in the majority of cases (7 out of 12). The combined approach was also used in *England and Wales* where officers would employ more persuasive techniques alongside ‘active listening’ during the same interrogations. In several instances, however, the interview style used in *England* was one that relied predominantly on persuasion, accusation and oppression.

Finally, at times the greater informality of juvenile questioning overlaps with the paternalism which is typically found in some systems. In *Italy*, for instance, some police officers said that, depending on the juvenile and his behaviour, they would be willing to reprimand them.

6.2.4. *Confrontations with evidence*

With the exception of *Poland*, observation in all countries showed the police confronting suspects with evidence. This is in line with prior studies which showed that confrontations with the evidence is one of the most employed techniques in interrogations.¹⁵⁴ In the large majority of such cases the police confronted the suspects with the statements of witnesses and victims. Although less frequently, young suspects were also confronted with other evidence (statements of co-suspects, real evidence, *et cetera*). Juveniles can also be confronted with discrepancies in their own statements. This was observed in several instances in *Belgium* and *the Netherlands* and in some cases also in *Italy*.

In several of the observed cases the confrontations had a neutral tone, but on other occasions they were used in a rather tactical manner, in combination with the absence of prior disclosure of evidence. For instance, in an English case concerning a sexual offence a juvenile was not informed of the statements of the witness and it was only at the end of the interrogation that he was told she was aged under 12 years, and therefore under the age of being able to consent to sexual activity. In some Belgian cases it was possible to observe the police officers confronting the suspect with evidence in the context of them adopting more accusatory techniques.

An interesting finding in some countries is the practice to confront the young suspect with hypothetical evidence. The juvenile is invited to reply to a question where reference or allusion is made to a piece of evidence, the existence of which is uncertain.¹⁵⁵ It is widely known that this practice should be avoided because it can lead to encouraging false confessions. In *Italy* and *Belgium* confrontations with hypothetical evidence were not observed. Confrontations with hypothetical evidence occurred in one Dutch case and in half of the selected English cases.

¹⁵⁴ Kassir *et al.* 2007, p. 394.

¹⁵⁵ Kassir *et al.* 2010.

6.3. POLICE INTERROGATIONS FROM THE PERSPECTIVE OF JUVENILES

When considering police practices in relation to interrogation techniques it is helpful to consider this from the juvenile's perspective. It was already mentioned that juveniles complained about the treatment received by the police at the time of arrest and how this affected their behaviour.¹⁵⁶ More generally juveniles in all countries but *Belgium* (where it had not been possible to speak to juveniles who had experience of police interrogations) raised concerns over police practices, not only at the time of arrest but also during interrogations. In *the Netherlands*, for example, the juveniles spoke of the police treating them with disrespect. In *Italy* the juveniles complained that during the interrogations the police could misrepresent what was said. The juveniles in *England and Wales* also said that they were frightened when interrogated and because they were nervous they could smile or laugh involuntarily. They accepted that such behaviour could come over as being cocky or disrespectful which could annoy the police and lead to a more antagonistic approach being adopted. Similar issues were raised by the lawyers in *Belgium* when they said that they police did not always treat juveniles in an age-appropriate way because they were '*just a little bit too cheeky*'. Instead of recognising their vulnerability the lawyers commented on the police picking up on such issues aggressively and forgetting that they are dealing with a juvenile.

In *Poland* the juveniles said that they expected ill-treatment from the police, although it was only the girls who admitted to being scared. The boys, on the other hand, said they would not admit to feelings of fear and anxiety but instead, knowing that they were to be ill-treated by the police, it was sufficient for them to show that they were not afraid. This response strikes a chord with comments made in *England and Wales* where the juveniles spoke of playing "*mind games*" with the police. While it was recognised that the police would use certain tactics in order to try and get a confession, one juvenile said that he would try to take them on saying, "*The police try to play you and you can play them ... It's all mind games. If you confuse them they don't know what they're on about and it's a crap interview.*" Another common complaint across the jurisdictions was the police treating the juveniles as if they were guilty from the outset. Not surprisingly, this also feeds in to an antagonistic relationship and if juveniles feel they are treated badly by the police then they can respond with poor behaviour. The juveniles in *the Netherlands* focus group interview said that they responded better to interrogators who were calm and treated them with respect. In coming up with a solution for the problems encountered in the interrogations in *Italy* and *Poland* the juveniles suggested that these should be audio-visually recorded.

¹⁵⁶ See *supra* paragraph 2.1.

Through the adoption of persuasive and aggressive styles of interview the police in some jurisdictions were attempting to scare and intimidate juveniles in order to achieve their goal of seeking the ‘truth’ – or, at least, their version of the truth. It is not only what happens in the interrogation which serves to put pressure on the juvenile to confess, or at least to go along with what the police want them to say. Indeed, as already noted, the key objective of most juveniles arrested and interrogated by the police is to get out of custody as soon as possible. In *Belgium*, it was noted from six cases that the average time from detention to the interrogation was 2 hours and 37 minutes. There was a longer delay in *England and Wales* when ten juveniles were noted to spend an average of nine hours and 25 minutes from detention to being interrogated. Overall, the average length of time spent in custody by eight juveniles¹⁵⁷ was 15 hours. Research has shown how police tactics can use delays to try and instil feelings of fear and anxiety into juveniles which can lead to false confessions, or at least encourage juveniles to go along with what the interrogator has to say in the hope of ingratiating themselves.¹⁵⁸ Contrariwise, the police have been noted in research studies to be polite to juveniles and use incentives to help develop a positive relationship with them.¹⁵⁹ As was noted, this seemed to be a tactic used by the police on repeat offenders in *the Netherlands* by offering chocolate milk instead of the usual tea or coffee.

Juveniles are recognised as being vulnerable due to their age but it has been shown in this study that the police do not always treat them in an age-appropriate way. This was also the finding of a recent HM Inspection of Constabulary in *England and Wales* which examined the welfare of vulnerable people in police custody. While it is accepted by Inspectors that children are vulnerable and potentially at risk by virtue of their age, it was noted that some police officers did not regard all children as vulnerable. Instead they saw the offence first, and the fact that it involved a child as secondary.¹⁶⁰ In addition, Inspectors found that it was particularly challenging for children to be left alone in a confined space with nothing to do for an extended period of time. With some children saying that the experience made them feel as if they were “*losing their mind*”. In addition, it was noted that the children did appreciate when officers were courteous, friendly and responded appropriately to their needs. This included speaking in an age-appropriate way in the interrogation.¹⁶¹ Accordingly, it is useful to consider developing a model of interrogation for juvenile suspects.

¹⁵⁷ In two cases the juveniles had been remanded in police custody and so their time spent in detention was not included.

¹⁵⁸ Feld 2013a.

¹⁵⁹ Feld 2013a, p. 78.

¹⁶⁰ HMIC 2015, p. 18.

¹⁶¹ HMIC 2015, p. 203.

6.4. FACILITIES AND RECORDING

6.4.1. Facilities

Interrogations in the five jurisdictions were mostly conducted in ordinary police interview rooms. Only in a few cases in *Belgium* and in *the Netherlands* are interviews held in child-friendly rooms.

In *the Netherlands* there are two types of special facilities available: child-friendly interrogation studios used for younger suspects (below the age of 12)¹⁶² or suspects suffering from mental health problems; and the ‘living-room’ interrogation room which has a couch and is intended to provide a more informal setting. Both locations are meant to encourage juveniles to feel more at ease and to reduce the stress they are under. In *Belgium* there are child-friendly rooms designed for the interview of child witnesses (who can be very young) but which can at times be used also for the questioning of juvenile suspects.

Overall, practitioners in the focus groups, and even juveniles, did not seem too concerned with the facilities used to conduct interrogations. The only form of criticism was raised by Belgian lawyers concerning the confidentiality of consultation rooms, which would hamper the effectiveness of legal assistance.

6.4.2. Interrogation recording

It was apparent from the legal study that only in two countries audio- or video recording is mandatory (*England and Wales* and *the Netherlands*). In the other countries audio – or video recording is left to the decision of the interviewing authorities, and in *Italy* and *Poland* interrogations are not normally recorded and instead written transcripts are prepared.¹⁶³

In all three countries where tapes were available it was possible to compare these with the written records and some problematic knots emerged. For instance, the study shows discrepancies in some written transcripts between the information documented in written records of an interrogation and what actually transpired. Another relevant aspect concerns the function of the audio or video recording. If this is to merely serve as a back-up and it is hardly ever used in court, more emphasis should be placed on providing an accurate written document. If the audio or video recording serves as the basis for the court judge’s decision, this should be done in the best possible way.

Overall quality of the recordings in the three aforementioned countries was good. Except for the audio on a few recordings in one region in *Belgium*,

¹⁶² Below the age of 12, juveniles can be interrogated in *the Netherlands*, but cannot be prosecuted.

¹⁶³ Panzavolta *et al.* 2015, p. 406.

audio in all tapes and video in *Belgium* and *the Netherlands* was of excellent quality. Because tapes of a lesser quality serve as internal back-up (they were not recorded on official title as mandatory in some cases in *Belgium*), this was mostly problematic for the study and not particularly in the course of the criminal cases the recordings were conducted in. As for the quality of the written documents, the research has tried to code the way in which written documents were drafted and to what extent they reflect what happened in practice (*i.e.* what was seen/heard on the analysed tapes). The research in *England and Wales* showed that a written record of the interrogation is made in cases proceeding to trial. Although the written records were not a verbatim account, the details provided were a fair reflection of what was said, but details about interventions by lawyers or AAs were not included. As for the recordings, in *England and Wales* they are mainly audio only. In cases where very serious offences are involved the interrogation in some areas can be audio-visually recorded. When asked, practitioners expressed different opinions, but some found video evidence helpful as an added protection for juveniles and to show the “*non-verbal stuff*” that goes on during an interrogation.

In *the Netherlands* most interrogations are still recorded in writing. The ones we examined were audio-visually recorded because they involved a juvenile suspect. Because this is standard procedure, facilities for doing so are generally good. The quality of written records varied, although this increased when lawyers were able to check and make amendments. In order to best reflect what is said, the ideal format for the written record would have to be a literal translation of the questions and answers, although this would need to be complemented with information on proceedings, who attended and other relevant information. However, the difficulty with this is that unless the suspect and/or their lawyer take the time to thoroughly examine the written record produced by the police it is not always clear if this is an accurate representation.

The findings of the research show that practical aspects connected to audio and video recording can be of great importance for ensuring the effectiveness of some of the suspect’s safeguards. The recording should start before people enter the room, to make sure the recording is not interrupted¹⁶⁴ and the recording ends after all people have left the room. In short: when recording serves as a fundamental basis for trial, it should be of certain quality, best audio-visually recorded and show/document everything that happened. If the written format is the official document at trial, it should provide the judge with a full picture of content and proceedings of the interrogation.

¹⁶⁴ On the other hand, if the interrogators leave the room and a lawyer starts to consult with a client, it is best to do this off-camera or to stop the recording (this happened in *Belgium* in one case: the consultation was on tape).

6.5. CONCLUDING REMARKS ON CONDUCTING INTERROGATIONS

The first overall point to make indeed concerns the awareness of the large majority of practitioners of the vulnerability of juveniles which requires a different type of questioning to that of adults. In principle the focus should be on the juvenile as a vulnerable person rather than as a suspect. Nevertheless, uncooperative juveniles, recidivists and suspects interviewed for more serious offences tend to be judged by these factors rather than on the basis of their age.

As for the interrogation styles, it seems that what is most lacking is the need for empathy and the attempt to establish a positive and relaxed atmosphere with the juvenile in the interrogation room. It is only to a limited extent that interviewing officers are moved to understand the juvenile and show some emotional proximity to them. In this respect it is still hard to capture the development of a child-friendly approach toward the interrogation.

Several accusatory and aggressive practices arise out of this study, including the reprehensible tactic of confronting the suspects with hypothetical evidence. They show the traditional tendency of interviewing officers of focusing – mostly or exclusively – on getting a confession or otherwise ‘the truth’ out of the juvenile suspect rather than a fair account.

7. TRAINING AND SPECIALISATION OF PRACTITIONERS

There is a general acceptance that all practitioners should be adequately prepared when dealing with juveniles. Nonetheless, as was already observed in the legal study, specialisation and training of defence lawyers dealing with juvenile suspects is guaranteed only to a limited extent.¹⁶⁵ Furthermore, States often give preference to specialisation of prosecuting and judicial authorities (police, prosecutors, judges) through experience (*i.e.* empowering them to deal exclusively with juveniles) than through training. The legal study found that the legal basis for training in all countries is very limited and fragmented.¹⁶⁶ The empirical findings point out that the practice is not able to fill in for the lack of adequate legislation.

7.1. POLICE OFFICERS

It was recognised by most practitioners in the focus group interviews in the five jurisdictions that those involved in the interrogation of juveniles needed to be

¹⁶⁵ Panzavolta *et al.* 2015, p. 400.

¹⁶⁶ *Id.*, p. 401.

specialists but there were differences of opinion as to what this required. A youth justice worker in *England and Wales*, for example, pointed out that: “*Anyone routinely working with young people needs some training because otherwise they don’t switch their mind to deal with the case in a child-focused world.*” In his view mere experience would not be sufficient to adequately deal with juvenile suspects.

Police officers were at times more hesitant, although for different reasons. In *Belgium*, all police officers considered training positively, but not all were in favour of specialisation in the sense that there should be personnel dealing exclusively with juveniles. The officers reasoned that such a solution would be too extreme and could even be detrimental to the best handling of the juvenile suspects.

On a different note, in *Italy* and *Poland* the police emphasised that some specialisation already exists and the Polish police officers stated that it is not necessary to have a specialised training in order to interrogate juveniles.¹⁶⁷ English officers observed that several colleagues are just not “*interested in the touchy feely sort of approach*” that is normally administered at training sessions.

Some officers (particularly in *the Netherlands*) took the view that an adequate degree of specialisation could simply come from experience rather than training. Nevertheless, the finding of the study show that the police involved do not always have an adequate experience. The problem highlighted for instance in *the Netherlands*, where many of those involved in the interrogation of juveniles were inexperienced and young themselves. In *Belgium*, capacity issues were reported to the extent that the interrogation is in the end conducted by whichever officers are available regardless of their experience. Furthermore, in several instances the police officers were often seen to adopt an adult-oriented approach toward juveniles, which shows that the experience matured on the field is per se not always sufficient.

7.2. POLICE TRAINING

Overall, police officers regularly involved in the interrogation of suspects receive training concerning their police functions (which training is already very different from country to country) but there is no additional training required for dealing with juveniles. In some cases training is provided to police officers dealing with children victims and witnesses (such as the TAM training in *Belgium* and achieving best evidence in *England and Wales*).

As for what concerns training for officers on police functions, in some jurisdictions (*Belgium, England and Wales* and *the Netherlands*) officers often

¹⁶⁷ The hesitancy is even more remarkable in light of the fact that *Poland* was not the jurisdiction where the best practices were always identified, nor the one with the strongest and most effective safeguards.

receive specific training on interrogations, while it would seem that no similar training is done (nor required) in *Italy* and *Poland*. However, this might only give a false impression of adequate preparation.

It was seen that in some of the jurisdictions where officers are trained on interrogation techniques, there was still a tendency to use psychological persuasive techniques and overall to treat the juvenile as an adult suspect. Previous studies have also shown that “*prior training and experience are associated with a propensity to make judgements of deception and guilt*”, something which more easily leads to the use of psychologically manipulative and confrontational techniques.¹⁶⁸

These findings show that the real issue at stake is not just whether training is required, which is certainly the case, but more specifically what kind of training is needed. Undoubtedly, for training to be adequate it must be explicitly juvenile oriented. Police officers must be trained to deal with the juvenile in a way which respects the vulnerability of the suspect, avoids recourse to any forms of persuasion or manipulation. It appears likewise important that also the effects on training be constantly monitored in order to measure its effectiveness and to detect forms of potential drawbacks in the training delivered.

7.3. LAWYERS’ SPECIALISATION AND TRAINING

Specialisation of lawyers in the field of juveniles is present only to a limited extent.

Lawyers and prosecutors in *Italy* agreed that specialisation for lawyers would be desirable. As previously mentioned, this is not always an easy goal to achieve for several practical reasons.¹⁶⁹ Polish lawyers candidly admitted that it is not worth their while to specialise in juvenile proceedings. The English lawyers believed that the accreditation scheme for police station work was sufficient, although it does not currently include training on how to deal with juveniles. The Carlile review¹⁷⁰ disagreed and recommended that training for lawyers dealing with juveniles should be implemented without delay.

There is also no training for lawyers required on child-related issues.

7.4. TRAINING MODULES

In *Belgium* there is training required for police officers interviewing juvenile victims and witnesses (hereafter: TAM trained)¹⁷¹ and there were differences

¹⁶⁸ Kassin *et al.* 2007, p. 395.

¹⁶⁹ See *supra* paragraph 5.6.

¹⁷⁰ Carlile 2014.

¹⁷¹ Dommicent 2008.

noted in interrogation styles when comparing TAM trained and non-trained officers. In the police focus group interview, for example, it was noted that non-trained officers were more likely to describe the treatment of juveniles as ‘adult-like’ suspects, with the attitude that if they are capable of committing an offence then they are also capable of being interrogated. TAM trained officers, on the other hand, were trained to recognise the vulnerability of juveniles based on their cognitive and emotional abilities and this was articulated in their responses.

In practice, when interrogating juveniles TAM trained officers commented on using a ‘combined approach’,¹⁷² which first involves empathy and rapport building, intended to put juveniles at their ease. In later seeking to get to the ‘truth’ of what happened, the interview style becomes more persuasive. As one officer explained: “*You can combine the two. You start with TAM and when you start introducing evidence you switch to another technique.*” This combined style of interrogation was observed in all but one of the ten interrogations in *Belgium*. In the nine cases the police are noted to use ‘active listening’ or an ‘empathic approach’ alongside persuasion, accusation or maximisation. There was noted to be a similar combined approach in *England and Wales* in three out of the 12 interrogations.¹⁷³

What emerges is thus that training modules which are not specifically designed for questioning juvenile suspects might fall short of ensuring the adequate attention to the vulnerability of the suspect throughout the entire interrogation process. At first, the juvenile is perceived as a person, but he later switches into a suspect from whom to extract a confession.

7.5. TRAINING NEEDS

The findings from this study also help to highlight the need for training and specialisation of those involved in the interrogation of juveniles. It is helpful to consider some of the issues arising out of current practice examined in this study and to then examine activities which could usefully address some of the training needs.

7.5.1. *Information on rights*

There are implications for training those who are responsible for delivering to juveniles their legal rights to make sure that these are understood. As already observed, in several countries, police officers were at times noted to administer rights in a wrong manner.¹⁷⁴ For instance, in *England and Wales*, it was noted

¹⁷² See *supra* paragraph 6.2.

¹⁷³ *Id.*

¹⁷⁴ See *supra* paragraph 3.1.

that some officers stated that adverse inferences *would* be drawn instead of advising juveniles that if they remain silent but later rely on information which was not mentioned during the interrogation that a court *might* draw adverse inferences.

Training certainly assumes a significant importance in ensuring that officers develop adequate skills to communicate rights and charges in a way that is both child-friendly and not misleading. While the empirical findings underscore the importance of this, there is little evidence of adequate training being offered in this respect in all the countries.

7.5.2. *Dealing with juveniles*

It seems from this study that the needs of juveniles with specific mental health problems are not always taken into account during the interrogation unless so severe that it is not possible to continue questioning. In *the Netherlands*, for example, the police used the phrase “*light mental disability story*” when explaining that such problems can come to light during the interrogation¹⁷⁵ and, if so, it was accepted that they would generally continue questioning the juvenile. It was already noted, when examining the need for an assessment of juveniles, that a not insignificant proportion of suspects experience mental health problems.¹⁷⁶ Research has also shown how mental vulnerabilities, such as ADHD, can make juveniles more prone than adults to giving ‘don’t know’ responses in the interrogation which can annoy the police and lead to more persuasive tactics being adopted, increasing the risk of false confessions.¹⁷⁷

While there is a mandatory requirement for an AA to be involved in cases involving juvenile suspects in some jurisdictions, it would be helpful to consider a requirement that where there are mental health problems a youth justice practitioner trained in mental health issues should be involved. In addition, it would assist if practitioners involved with juvenile suspects were required to have training on child development and child psychology so that they can better understand issues arising from the cognitive, emotional and mental ability of juveniles.

7.6. DEVELOPING A MODEL FOR THE INTERROGATION OF JUVENILE SUSPECTS

As was mentioned, in *England and Wales* and *Belgium* there are guidelines and training provided for those involved in the interviewing of juvenile victims

¹⁷⁵ See *supra* paragraph 4.4.

¹⁷⁶ See *supra* paragraph 4.1.

¹⁷⁷ Young *et al.* 2013, Feld 2013a.

and witnesses but not for juvenile suspects.¹⁷⁸ The Belgian police are currently working on developing a model for the interrogation of juvenile suspects which, because of a higher suggestibility avoids the potential risks of encouraging false confessions. At present, however, there are only guidelines concerning the hearing of child witnesses. In *Poland*, juvenile victims and witnesses are recognised as a special category who require protection due to their vulnerability of being hurt, abused or becoming a victim.¹⁷⁹ This has led to practical measures being required which seek to address such issues when juvenile witnesses are interviewed by the police.¹⁸⁰ For juvenile suspects, on the other hand, there are currently no special measures and their vulnerability is not recognised in the psychological and legal literature.¹⁸¹ Without a model of interrogation based on juvenile suspects it is not surprising that the police adopt individualised approaches.¹⁸² These can range from more adult-oriented interview styles which include suggestion, persuasion and oppression and, at the other end, a more juvenile-oriented approach based on active listening, empathy and rapport building.

The development of a uniform model would naturally increase the requirement for (specialised) training. It would also require training to be specifically structured along the need to protect the juveniles in the interrogations.

7.7. SPECIALISATION/TRAINING OF LAWYERS IN THE INTERROGATION

When developing a model of interrogation it is also important to consider the role for lawyers. As mentioned above, although there is large consensus on the need for specialised subjects not all lawyers were in favour of specialising.¹⁸³

Furthermore jurisdictions have different experiences with lawyers present at police stations. In *Italy* and *England* the requirement that lawyers attend interrogations at police stations dates back to several decades, but the same is not true in other countries (like *Belgium*, *the Netherlands* and even more *Poland*) where it is only recently that such a requirement has been imposed.

There were issues raised in this study concerning the quality of legal advice and the role of the lawyer during interrogations. There is a requirement for lawyers

¹⁷⁸ See *supra* paragraph 6.2.

¹⁷⁹ This includes violating his human rights or of being abused by other people, institutions and the organs of public authority – see Wójcik 1999, p. 49–80.

¹⁸⁰ The ‘Nobody’s Children Foundation’, for example, is an organisation which seeks to protect children from abuse and providing help to abused children and their families.

¹⁸¹ There are indications that this is changing as publication of Guidelines of the committee of Ministers of the Council of Europe on Child-Friendly Justice in 2010 has been seen to be a step towards ‘awakening social awareness’ regarding children’s rights in the justice system.

¹⁸² *Supra*, paragraph 6.2.

¹⁸³ *Supra* in this section and paragraph 5.6.

dealing with juveniles in *the Netherlands* (or *Belgium*) to be on a rota but this has been criticised by lawyers for being too open and not having a requirement for lawyers to be trained and experienced in dealing with police station legal advice. Without such requirements the lawyers are concerned that those acting as the duty lawyer could be passive and fail to safeguard their clients' interests during the interrogation.¹⁸⁴ In *Belgium* it is thought that the passive approach adopted by the lawyers is due to some confusion arising out of the Salduz Act over their role in the interrogation. This meant that the lawyers tended to depend on the police interpretation of the rules.

Similar issues related to the quality of legal advice and the role of the lawyer were to be found shortly following implementation of the PACE Act in *England and Wales*. This led to the setting up of an accreditation scheme for lawyers and non-lawyers. In *England and Wales* the lawyers felt that this was sufficient training and that no additional training was required in relation to juvenile suspects. A recent review of the youth justice system does not hold this opinion and instead it is recommended that regulators of criminal defence service introduce a requirement for all legal practitioners representing children at the police station should be accredited to do so.¹⁸⁵

In *England and Wales* there is currently no requirement for lawyers to be accredited youth justice specialists in order to deal with juveniles in the criminal process but this is not the case in the family justice system. On the contrary, lawyers working with juveniles have to be a member of the Children Law Accreditation Scheme, also known as the Children Panel. Accreditation comprises applicants completing a set questionnaire and then being interviewed by two experienced children's practitioners. This involves examining not only an applicant's experience in representing children but also in their ability to apply the law and practice in relation to four case studies, thereby demonstrating their understanding of the work involved. Members have to be recredited every five years if they wish to continue as members.¹⁸⁶ In the Carlile report, which involved a review of the youth justice system in *England and Wales*, it was recommended that 'without delay' the regulators of those providing criminal legal services should require accreditation. It is suggested that the training should include elements on the needs of children, including mental health issues, speech, language and communication needs, welfare issues and child development.¹⁸⁷

¹⁸⁴ See Blackstock *et al.* 2014, Cape and Hodgson 2014 for discussion of the use of non-criminal lawyers to staff rotas in France and the Netherlands.

¹⁸⁵ Carlile Report 2014.

¹⁸⁶ See Law Society 2015.

¹⁸⁷ Carlile 2014, p. 61.

7.8. DEVELOPING A TRAINING FRAMEWORK

Training needs for the police and lawyers were identified in a comparative study of recent changes to procedural rights for suspects in police custody.¹⁸⁸ Within a changing legal environment a number of activities needing to be addressed are set out in a ‘Training Framework’. These include the disclosure of information, the lawyer-client consultation, the right to silence and the role of the lawyer in police interrogations.¹⁸⁹ While an obvious training requirement is for practitioners to be kept up-to-date with legal changes, procedures and protocols, it is also stated that training is important in helping practitioners to understand the purpose of the rights, which “helps to develop the skills necessary to effectively deliver and facilitate them”.¹⁹⁰ This section has explored issues arising out of this study which highlight some of the training needs for practitioners involved in the interrogation of juvenile suspects and highlighted some additional activities which could usefully be brought into the Training Framework.

7.9. CONCLUDING REMARKS ON TRAINING

The findings show that the specialisation of actors is not always welcomed by practitioners, but there are few doubts that adequate training is crucial when dealing with juveniles.

However, the legal framework and the empirical study show that there is little training provided, while there is some specialisation of some actors across the jurisdictions.

Training for police officers seem particularly required in order to allow them to develop the adequate sensitivity toward the factors of vulnerability of juveniles and the skills on how to properly deal with them. The study shows that mere experience and general training on interrogation techniques for adults are not sufficient to develop the adequate competence. In this respect, the findings of this research confirm the result of previous studies according to which training which is not specifically juvenile-oriented does not suffice to develop adequate attention and sensitiveness toward problems of developmental maturity.¹⁹¹

Furthermore, it is commonly accepted in various fields, including the field of investigative interviewing, that training alone is not satisfactory in order to be successful. Skills, acquired during training, do not last or decrease over

¹⁸⁸ Blackstock *et al.* 2014.

¹⁸⁹ Blackstock *et al.* 2014, p. 475–515.

¹⁹⁰ Blackstock *et al.* 2014, p. 476.

¹⁹¹ Kostelnik–Dickon Reppucci 2009, 374.

time. Based on research findings, intensive and continuous training followed by supervision (including feedback by experts) has been put forward as one of the solutions to improve individual performance.¹⁹² Furthermore, joint training between different figures of practitioners can enhance the overall quality of the justice system.

8. CONCLUDING REMARKS

It would not be possible to summarise here all the findings of the study which have been detailed in the previous sections. A couple of general remarks can however be made.

First, the empirical findings show that there is no direct correspondence between the legal paradigms of a system (welfare systems, justice systems, *et cetera*) and the practical implementation. The legal typology of the juvenile system does not necessarily inform the practice and the legal culture. The countries where the law in books shows (and declares) a greater welfare aspiration (*Poland* and *Belgium*) show a significant disparity in the way juveniles are treated and practitioners perceive their role. For instance, the Polish police seemed much rougher than the Belgian police in dealing with suspects. The Polish police seem to treat juveniles more like adults, as it happens more often in *England* than in *Belgium*. A system that is less welfaristic, like the Italian one, seems in many respects closer to the Belgian one in the way juveniles are treated. In both *Belgium* and *Italy* the tendency of lawyers to undertake a more paternalistic role seemed higher than in any other systems. Sometimes a more direct correlation between legal paradigm and practical implementation can of course be visible, as it is in *England* where police officers and lawyers have an approach that is more consonant to the adversarial and punitive approach of the juvenile justice systems.

Second, when looking specifically at the practice, it appears that there are two big 'enemies' of a child-friendly justice. The first enemy is the 'adultification' of juvenile justice, with the tendency to treat juvenile as adults, in more aggressive and accusatory tones. The second 'enemy' is the tokenistic bureaucratic approach, where the treatment of juveniles is impersonal and thus indifferent toward the needs of the juvenile justice. Unlike adult justice, juvenile justice requires all practitioners to be actively and constantly involved in ensuring that the well-being of the young person is protected insofar as possible.

In this respect, it appears that the crucial feature of juvenile justice should be the individualisation of the response not only at the level of punishment, but also at the level of judicial proceedings. Proceedings should be insofar as possible tailored to the needs of the juvenile vulnerable defendant. Nevertheless, this does not mean that all uniformity should be avoided. A proper individualised response requires

¹⁹² E.g. Clarke *et al.* 2011, Crawshaw *et al.* 1998 and Powell *et al.* 2005.

clear standards and guidelines. The law is not always the best tool, being a very rigid form of regulation. At the same time the law, as it stands today, often refrains too much from giving clear indications and the practice is not always able to fill the gaps that are left. For instance, not only does the law of all five countries not define vulnerability, but neither does it require that guidelines for the assessment of vulnerability are given to the authorities. In all five jurisdiction the law provides no rules on how to conduct an interrogation, nor does it require that uniform guidelines (or uniform training modules) are developed. The individualisation of the response should not be left to the discretion of the single operating officers.

The last observation is that the individualisation of the response should never be to the detriment of the safeguards. To give an illustrative example, informing juveniles of their rights in a child-friendly manner which does not convey the proper and entire meaning of the rights is not a proper practice. The crucial difficulty of the juvenile justice of the future is to find a balance between the individualisation of the response and the standardisation of fundamental rights.

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