INTERROGATING YOUNG SUSPECTS
PREFACE AND ACKNOWLEDGEMENTS

This book is the result of the second part of the European Commission funded research project Protecting young suspects in interrogations: a study on safeguards and best practice. The project consists of a legal comparative study, an empirical study and a merging of legal and empirical findings and its aim is to identify legal and empirical patterns in the procedural protection of juvenile suspects during pre-trial interrogation. The legal study underlying volume I consisted of a comparative research into existing procedural safeguards for juvenile suspects during interrogation in the legal frameworks of five selected Member States: Belgium, England and Wales, Italy, Poland and the Netherlands. The results of the empirical research as well as the merging of the legal and empirical findings resulting in a proposal for European minimum rules and best practice on the protection of juvenile suspects during interrogation are described in this second volume.

The successful completion of this project has been a joint effort of a group composed of many people. First, we would like to thank our academic partners – and in-country researchers – for their dedication to the project and the incredible amount of high quality work they delivered: Claudia Cesari, Deborah Felice, Jackie Hodgson, Vicky Kemp, Justyna Kusztal, Joachim Meese, Vania Patanè and Barbara Stando-Kawecka. Empirical legal research is often extremely challenging because it is not easy to succeed in gathering necessary permissions and collecting relevant data. It was thanks to the knowledge, flexibility, open-mindedness, patience and tenacity of our partners that we only experienced the positive sides of empirical legal research. Working with them has been an incredible opportunity of enrichment not only in legal matters.

The research and project have also benefited enormously from the advice and assistance offered by our supporting partners: we thank PLOT Limburg and Defence for Children for their support in organising project events, employing social media and disseminating research findings.

The project has benefited from the supervision of a Steering Committee, an advisory board of experts composed of leading scholars in the field of juvenile

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No empirical research succeeds without the indispensable effort from policy makers and respondents. We are grateful for the opportunity to conduct this research due to the permissions of the responsible institutions in the five countries who enabled us to organise focus group interviews with professionals and juveniles as well as analyse recorded interrogations and/or written records of interrogations of juvenile suspects. We would like to express our sincere gratitude towards all persons involved in the focus groups and analysis of interrogations.

With regard to the empirical study in Belgium, we first would like to thank all respondents of the focus group interviews (police and lawyers) for their participation and contribution without which we would not have had this rich set of data. Special thanks to the head of the Flemish Juvenile Lawyers Bar Association, mr. van de Mussele, for assisting us in the organisation of the focus group with lawyers. In light of the observations of interrogations, we owe our gratitude to the head of the Prosecutions Department of Antwerp, mr. Yves Liégeois, for the required permissions to gain access to the interrogations of young suspects. We would also like to thank the police chiefs of the local police departments to give their permission as well as the chiefs of the responsible departments for their assistance and support during the observations. Grateful thanks are also due to the police who were always willing to assist us in any way during the observations who took place at their police station. Furthermore we owe our gratitude to the Behavioural Science Unit of the Belgian federal police for their kind invitation to share information and discuss our research.

The empirical research undertaken in England and Wales would not have been possible without the help and support of a wide range of people. Particular thanks are due to key people in a number of Youth Offending Teams in the Midlands who were able to bring together focus group interviews with appropriate adults and young offenders. Thanks are also due to volunteers who provide appropriate adult services and were prepared to engage with us in a focus group interview. We are also indebted to the young people who were prepared to give up their time. Their perspective has been invaluable when examining processes which impact directly on them. Without the support of the County Council, which approved our application to interview young people their engagement would not have been possible. Grateful thanks are also due to a national coordinator who assisted us in making links with appropriate adults and helpfully engaged in the focus group. So far as the police are concerned, there was one police service in
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In Italy, we would like to thank, first of all, the respondents of the focus groups: juveniles, lawyers, police officers, prosecutors and social assistants. They gave us generously and actively their precious contribution to this project. Without them this research would have not be possible. We also owe our special thanks to the heads of prosecution offices for juveniles, departments and institutions, who provided us permissions and helped us organise the focus groups, also hosting the meetings in their facilities. We would like to thank the National bar association for juvenile and family lawyers, that provided their collaboration and contacts to support this initiative. Finally, we would like to thank our colleagues of the University of Rome, La Sapienza, for hosting a focus group in their library and offering us their organisational support.

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Managing and coordinating the project has been the task of the entire Maastricht project team but special gratitude to Marc van Oosterhout for making the project run smoothly and efficiently.

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Miet Vanderhallen
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LIST OF ABBREVIATIONS

ASBOs  Anti-Social Behaviour Orders
CC  Criminal Code
CCP  Code of Criminal Procedure
Cost  Constitution of the Italian Republic
CPA  Child Protection Act
CPS  Crown Prosecution Service
CRC  Convention on the Rights of the Child
CWC  Child Welfare Council
C&YP  Children and Young Persons Act
DTO  Detention and Training Order
EAW  European Arrest Warrant
ECHR  European Convention on Human Rights
ECtHR  European Court of Human Rights
FME  forensic medical examiner
HR  Hoge Raad
JA  Juvenile Act
LASPO  Legal Aid Sentencing and Punishment of Offenders Act
NJ  Nederlandse Jurisprudentie
PACE  Police and Criminal Evidence Act
PNDs  Penalty Notices for Disorder
UN  United Nations
VOM  victim-offender mediation
YJA  Youth Justice Act
YOT  Youth Offending Team
YPA  Youth Protection Act
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CHAPTER 1
INTRODUCTION

Dorris de Vocht, Miet Vanderhallen, Marc van Oosterhout and Michele Panzavolta

1. INTERROGATING YOUNG SUSPECTS: THE LAW IN ACTION

This book represents the second and final part of a larger research project financed by the European Commission under the title *Protecting young suspects in interrogations*.¹ This project – which is a joint effort of several partners (Warwick University, Antwerp University, Jagiellonian University, Macerata University, Defence for Children and PLOT Limburg) and led by Maastricht University – concerns a legal comparative and empirical study that attempts to shed more light on what actually happens when juvenile suspects are interrogated in the investigative stage. The project sprung from the observation that existing knowledge on the level of procedural protection offered to juvenile suspects throughout the EU during this crucial phase of proceedings is limited. This gap in existing knowledge is astonishing to some extent, since the vulnerability of juvenile suspects is probably greatest during these early interrogations. Not only do these interrogations often constitute the juveniles’ first contact with law enforcement authorities but they also confront the juvenile with many difficult questions and decisions. For this reason, the aim of the project has been to fill at least part of the aforementioned gap by gaining insight in existing procedural rights for juveniles during interrogation from a legal as well as an empirical perspective in five selected Member States representing different systems of juvenile justice in Europe (Belgium, England and Wales, Italy, the Netherlands and Poland).²

¹ The full name of the project is Protecting Young Suspects in Interrogations: a study on safeguards and best practice. The project was funded by a Criminal Justice Action Grant of the European Commission (JUST/2011/JPEN/AG2909). See also the project’s website www.youngsuspects.eu.

² For a more extensive introduction to and description of the research project see Panzavolta et al. 2015, chapter 1.
The first part of the project – the legal comparative research addressing the ‘law in the books’ – provided an in-depth analysis of the existing rules and safeguards in the law of the five selected Member States. On the basis of the legal findings laid down in the five country reports a transversal analysis using a cross-national functional approach was carried out resulting in the identification of a number of common patterns with a view to harmonising the systems and improving the protection of juvenile suspects’ safeguards when interrogated. The five country reports discussing the relevant national legal frameworks together with the aforementioned common patterns have been published in a separate volume (volume I).³

The legal study has proven to be a very valuable exercise, identifying many fundamental legal issues concerning the interrogation of juvenile suspects. In a nutshell, it has made clear that the current level of legal protection in the five selected Member States leaves much to be desired and that – to a considerable extent – domestic legislatures seem to disregard the vulnerabilities that the juvenile suspect carries into the interrogation room. It has been clear from the outset of the research project that getting insight in what actually happens when juvenile suspects are being interrogated cannot be done by focusing only on the law in the books. As already stressed in volume I, it goes without saying that the actual effect of all legal rules is highly dependant on whether and how they are applied in practice: the interpretation and application of the law may be heavily influenced by the professional culture and competence of the relevant actors (police, prosecutors, judges et cetera). This seems to be especially true in the complex context of juvenile justice where, in principle, the level of ‘formalism’ will be lower than in adult criminal proceedings which may – at least in theory – increase the willingness of officials to deviate from applicable rules when this is deemed necessary or appropriate in the interest of the juvenile.⁴ The aforementioned complexity of juvenile justice is particularly noticeable during the phase of pre-trial interrogation. As Cleary points out correctly, “police interrogation is a unique social and legal context, particularly for youthful suspects in which the role of suspect subjugated to the police officers role of interrogator is conflated with the developmental role of youth subjugated to the officers role of adult”.⁵ Although it is hard – if not impossible – to capture the complexity of the interrogation of juvenile suspects in a few words, it is clear that it is inextricably linked to the juvenile’s vulnerability due to age and development, the many different proceedings that can be followed when the suspect is a juvenile and the many different actors that can be involved in the procedural activity of the interrogation (police, lawyers, appropriate adults (hereafter: AA), social services

³ Panzavolta et al. 2015.
⁴ Panzavolta et al. 2015, p. 370.
⁵ Cleary 2014, p. 272.
et cetera). Therefore, the project team considered it essential to supplement the first part of the project with an empirical study focusing on ‘the law in action’ and examining actual interrogations in order to fully understand the juveniles’ vulnerabilities and necessary safeguards in the interrogation room.

2. THE EMPIRICAL RESEARCH

Apart from a selected number of field studies conducted in the United States and England and Wales, there is very little existing research on real life interrogations of juvenile suspects. The study underlying this book is unique and ground-breaking in the sense that it is the first European study in which observations of interrogations with juvenile suspects have been conducted in more than one country providing transnational data on the daily practice of interrogating juvenile suspects.

The goal of the empirical study has been twofold: (i) to provide understanding of the extent to which practice lives up to the national legal framework and (ii) to identify existing (good) practices applicable during the interrogation of juvenile suspects.

As discussed in volume I, the choice of the countries involved in this study has been made in connection with the general aim of the project. To allow for meaningful and in-depth fieldwork, the number of countries had to be limited. In addition to this, the selection of countries had to provide for a sufficiently representative sample of the variety of juvenile justice systems existing in Europe. A number of five was considered to be an adequate compromise between these two (partly conflicting) considerations. Despite representing different juvenile justice system, the selection of countries was also made with a view to cover different European areas (south, north-centre, east) and to include members of different legal families (civil and common law). Finally, it was taken into account that – within the selection of five countries – juvenile justice systems had to be included that avoid labelling juvenile punitive proceedings as criminal (in our case: Belgium and Poland).

The empirical study consisted of two parts: first, data have been gathered through focus group interviews with key actors involved in the interrogation of juvenile suspects and juveniles and secondly analysis of recorded interrogations have been conducted. A full and thorough description of the methodology used in both strands of the empirical research will be provided in chapter 2.

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6 See in this respect for example: Feld 2013 and Cleary 2014.
7 See in this respect for example: Evans 1993.
8 See more extensively on the selection of countries involved in the study: Panzavolta et al. 2015, p. 9–10.
3. THE INTEGRATED ANALYSIS AND MINIMUM RULES

The first two parts of the project (the legal study and the empirical research) finally come together in the third part consisting of a merging of the legal and empirical findings. An evaluation of the different legal procedural approaches to the protection of juvenile suspects held for police interrogation enabled us to posit a number of models and approaches against which to set the empirical data gathered during the second phase of the project. As mentioned in volume I, a key objective of this research project was to identify common themes and good practices in the interrogation of juvenile suspects, in order to inform the EU in its work on the draft Directive on procedural safeguards for children suspected or accused in criminal proceedings and propose minimum rules that might guide jurisdictions in implementing good practices. This draft Directive – tabled in November 2013 – covers some of the most significant rights of juvenile suspects and defendants during criminal proceedings ranging from the right to be informed of procedural rights, to the right to be assisted by an AA and a lawyer, from the right to an individual assessment and an appropriate treatment to the protection of privacy, from the right to liberty to the right to be present in person at trial.

In order to contribute to the EU wide implementation of optimal standards for effective protection of juvenile suspects during interrogation, a rich account of the law and practice in a range of different jurisdictions is needed, to understand the various models, strengths and pressure points in the variety of approaches taken to pre-trial juvenile justice and interrogations of juvenile suspects in particular. The integrated (comparative and thematic) analysis of the projects legal and empirical findings provided for this account and identified common themes and trends which enabled the project team to develop a proposal for European minimum rules and good practices on the protection of juvenile suspects during interrogation. With these minimum rules (the guidelines) the project intends to contribute to the EU wide implementation of optimal standards for effective protection of procedural safeguards for juvenile suspects during interrogation. For more information on how the integrated analysis was carried and how the minimum rules were drafted, see chapter 2.

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10 See chapter 1 (of this volume) and Panzavolta et al. 2015, chapter 1.
4. DEFINITIONS

With regard to the terms mostly recurrent in this work, it should be stressed that – similar as in volume I – the terms ‘juvenile’, ‘young person’ and ‘child’ are taken as synonyms to identify all minors, *i.e.* those who have not attained the age of maturity according to the rules in force in each country.

As for the term ‘interrogation’, the projects working definition also applies to this volume, referring to all pre-trial confrontations between a public authority and a juvenile suspect. Words such as ‘interview’, ‘questioning’ or ‘hearing’ are sometimes used as synonyms of the word interrogation. When these words intend to refer to a situation that does not fit within the aforementioned working definition of ‘interrogation’, this is explicitly mentioned.

Finally, it should be mentioned that whenever the word ‘he’ is used in this volume in reference to a person, it is intended to refer to people of both genders.

5. HOW TO READ THIS BOOK

This book roughly consists of three parts: the results of the empirical study, the integrated analysis of the legal and empirical findings and the proposal for European minimum rules and good practices on the protection of juvenile suspects during interrogation (the guidelines). A full account of the research methodology is given in chapter 2. The following chapters (3–7) contain the five country reports providing a detailed discussion of the empirical findings for each of the countries involved in the study. These empirical findings are first discussed from their national perspectives in order to provide a richly textured account of perceptions and practices in the context of each jurisdiction. The integrated analysis based upon the legal and empirical findings is set out in chapter 8 while the guidelines – and their explanatory memorandum – can be found in the final chapter, chapter 9. All relevant measurement instruments are attached to this volume as annexes.

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CHAPTER 2
RESEARCH METHODOLOGY

Miet Vanderhallen and Jackie Hodgson

1. INTRODUCTION

This chapter describes the approach of the empirical study as well as the integrated analysis of the legal and empirical findings, which in turn enabled us to develop a set of proposed minimum rules informed by both law and practice. Providing a minimum level of effective legal protection for juvenile suspects depends not only on a proper legal framework being in place but also on good practices that address the nature of the vulnerability of juvenile suspects. The objective of the empirical study was to gain insight into the extent to which practices live up to the domestic legal frameworks of the five countries which are described in detail in volume I (Belgium, England & Wales, Italy, Netherlands and Poland). Additionally, the empirical study was aimed at identifying good practices in these jurisdictions, with a view to developing improved standards and safeguards which could be implemented across the EU. As discussed in volume I, this objective should be seen against the background of current legislative developments at the EU level which have led to the tabling of a draft Directive on procedural safeguards for children suspected or accused in criminal proceedings. In order to achieve these improved EU wide standards and safeguards, it was necessary to understand how legal actors deal with the interrogation of juvenile suspects, which factors drive their behaviour, and how juvenile suspects are dealt with more generally. In addition to the examination of the practices of legal actors, the study also focused on the experiences of the juvenile suspect who is being interrogated, in order to grasp the interaction between all parties involved, and to understand the behaviour of the young

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1 Panzavolta et al. 2015.
3 Although appropriate adults are often parents or volunteers they are included in this general term, as they are actors with a legally defined role within the criminal procedure of some jurisdictions.
person as a vulnerable suspect. In this way, the empirical study also sought to identify the nature of the possible vulnerability of juvenile suspects when being interrogated and how legal procedural protections might be most effective in providing protection, where necessary.

The empirical study started from the findings of the comparative legal study which suggested a two-stage approach to the empirical study. First, the type of interrogation needed to be selected. The legal study showed that whilst some countries dealt with juvenile suspects simply by way of police interrogation, others adopted different or mixed models, involving prosecutors, judges and the family court, as well as criminal proceedings. Second, the legal analysis showed differences in the legal actors involved in interrogating juvenile suspects Therefore, the relevant key actors per country were selected with regard to the interrogation of juvenile suspects.

2. THE EMPIRICAL STUDY: METHODOLOGY

Whereas most studies on the interrogation of suspects concern adults, this research focused only on the interrogation of juvenile suspects. In order to maximise the comparability of the data produced, the empirical study needed to focus on one type of interrogation which was most common in all five jurisdictions. In consultation with all project partners, it was decided to focus on the police interrogation in which information is collected about possible criminal behaviour that can be used as evidence at trial or in determining other forms of case disposition since it is mostly the police who interrogate juvenile suspects in first instance. Furthermore, it was decided to give special attention to the first police interrogation since juveniles might be most vulnerable when being interrogated for the first time about an alleged offence.

Existing research on the interrogation of juvenile suspects mainly examines the capacity of juveniles to understand their legal rights and to make legal decisions. These studies almost always make use of self-reports or an experimental design. In

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the present study, a mixed-method approach was used consisting of a combination of data collection methods. The first method employed was focus group interviews, which are purely qualitative in nature and are often combined with other qualitative and/or quantitative methods. This study used a qualitative approach in order to obtain a sufficiently rich account of the experiences reported by juveniles and to build a picture of the interrogation of juvenile suspects from various perspectives. These focus group interviews are useful because they are well suited to exploratory research, to obtain insights into the nature of complex behaviour and motivations such as the behaviour and motivations of legal actors and of juveniles involved in the interrogation. Moreover, they provide data at an aggregated rather than an individual level, in order to be able to obtain data from various groups.

The second data collection method is characterised by a combination of a qualitative and a quantitative approach and concerns observations of the records of interrogation of juvenile suspects. The records included audiotapes or videotapes of interrogations, but if tapes were not available, written records of the interrogations with juvenile suspects were analysed. In this case, the observation was replaced by document analysis using a similar measurement instrument. While experimental research provides insights into the possible vulnerabilities of juveniles, analysis of interrogation records enabled to understand better what happens during actual interrogations.

This mixed-method approach resulted in a triangulation of data, which can increase the validity of the findings. Whereas the focus group interviews obtained qualitative data, the observations of audio- or video-recordings of interrogations or their documentary analysis where recordings were not available, gathered both qualitative and quantitative data in order to obtain a fuller perspective on the interrogation of juvenile suspects. Without the aim of being representative these data can provide valuable information on what happens in practice. The integration of these research results mainly focuses on complementarity, namely to add another perspective such as an insider versus outsider (observer) perspective. By doing so, findings can be convergent as well as divergent. Because of the small samples both in the number of focus group interviews as well as the observations, results are of an indicative value rather than a source for firm conclusions. Thus, findings from this empirical study should be used carefully and serve as the basis for critical reflection and raise suggestions for future research.

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8 Morgan 1996, p. 139.
The empirical study started with focus group interviews with (i) key actors and (ii) juveniles (who had been interrogated as juvenile suspects). These focus groups aimed at the development of an inventory of various practices on a national level by means of opinions and experiences. Second, recordings or documentary analysis of interrogations with juvenile suspects were analysed.

Given the sensitivity of the topic and in particular the vulnerability of juveniles who were also actively involved in the focus group interviews, ethical approval from the ad hoc ethical scientific committee of Maastricht University was obtained for all project partners by the Maastricht University project management team. This request for ethical approval entailed general principles as well as specific guarantees for the focus group interviews (see infra paragraph 2.2) and the observations (see infra paragraph 2.3). The general principles encompassed four principles with regard to the empirical research. First, researchers would ensure the anonymity and confidentiality of all respondents and juveniles in particular. Therefore, references to locations are limited to general information and if necessary, coded information. Second, the data will be kept in a secure environment with limited access and will only be stored as long as necessary. The third principle states that the research will be conducted independently, which means that there will be no steer or influence by governmental organisations or other interested parties. The research was also wholly disconnected from the actual investigation concerning the juvenile, if still on-going. Fourth, all respondents will be thoroughly informed about the design and aim of the research. If necessary, permissions will be requested as appropriate.

The committee reviewed the overall design positively on the basis of the following criteria: the research does not cause harm to the respondents, participation is voluntary, anonymity and confidentiality are guaranteed, and the researchers handle the data with great care and store them in a secure environment in such a way that they cannot be accessed by others.

The empirical research combined a top-down approach (legal framework driven) and a bottom-up approach (practice-driven) in order to capture both the application of relevant legal provisions on the one hand and actual practices on the other hand. Hereafter, the methodology of both parts of the empirical study will be discussed followed by a description of the working method for the integrated analysis (chapter 8) and the guidelines (chapter 9).

2.1. COORDINATION AND PREPARATION

Since the empirical research was carried out in five different jurisdictions, it was important that the process of designing research instruments as well as
carrying out the research itself was managed with the utmost care. Therefore the empirical research was coordinated by the project management team, which set out the rules for the empirical studies and provided all researchers with the necessary documents for seeking access permissions, as well as with basic data collection instruments, including a practice manual. In order to ensure workable procedures, this was done in consultation with project partners, including discussions at meetings held throughout the course of the study. With regard to the data collection instruments, the project management team provided the project partners with basic common instruments, which could be adapted to the national context, i.e. completed with country specific variables. Such a common basis was needed with a view to the subsequent integrated analysis. As mentioned above, the empirical research consisted of two parts: focus group interviews and observations. The focus group interviews were held in all countries, but the respondent groups differed. The observations of audio- or video-recorded interrogations were replaced by document analysis of written records in two of the countries because of differences in practice or the lack of necessary permissions. Central coordination made sure that data were compatible notwithstanding that various data collection methods were required.

2.1.1. Training

Each country employed its own national researcher to conduct the empirical study in order to guarantee that researchers had a good knowledge of the legal system, and of interrogation procedures and practice. Moreover, linguistic issues could be avoided by using native speakers. All the national researchers were specifically trained and/or were experienced in collecting and analysing empirical data. In order to ensure a similar approach in the conduct of the fieldwork, these country researchers received a collective two-day training, which consisted of four components. First, the type of interrogation which would be examined empirically was discussed in order to collect comparable data in the five countries. Second, procedures for obtaining necessary permissions were explained and discussed. Third, the data collection methods (including analysis) were explained. For focus group interviews this consisted of the basic principles for conducting these, as well as the identification of the relevant respondent groups in the respective countries. For the observations the basic principles of both observational research and document analysis were discussed. Finally, the group of researchers developed a list of common topics for data collection in order to ensure a degree of uniformity in the five countries involved.

2.1.2. Development of data collection instruments

The project team devised separate yet common interview schemes for the focus group interviews with various legal actors (police, public prosecutors and
lawyers) as well as with juveniles. In order to ensure that comparable data were collected across the five countries, these interview schemes were accompanied by a manual to guide researchers and to explain the research variables. The interview schemes were drafted in line with the aim of a top-down approach combined with a bottom-up approach to conduct the empirical research. This means that the schemes were based upon a legal psychology literature study on the interrogation of (juvenile) suspects, the topics from the legal framework, and the general patterns coming from the legal analysis. Country researchers subsequently adjusted these common interview schemes with country specific questions under the respective relevant headings. For example, the Belgian focus group interview scheme for police officers included questions on the mandatory provision of legal assistance, which was not part of the common scheme since the other countries allow (some) juvenile suspects to waive the right to a lawyer. The Italian and English project partners drafted a separate interview scheme for the focus group interview with appropriate adults (hereafter: AAs) since this safeguard is only a requirement in these two jurisdictions.

The interview schemes started with a ‘thinking aloud’ exercise on the ‘interrogation of juvenile suspects’. In this exercise respondents were asked to recall first thoughts when talking about ‘the interrogation of juvenile suspects’. This first exercise was followed by the discussion of several topics addressing the chronological order of the judicial proceedings: first contact between police and juvenile; police proceedings from arrest until the point of custody; information on rights legal assistance before and during interrogation; the appropriate adult (hereafter: AA) role; assessment of the juvenile; interrogation practice and the behaviour of the suspect; interrogation recording. The phase of first contact referred to the initial contact between the police and the juvenile. This was followed by the police proceedings which outline the steps taken after arresting a juvenile suspect and before informing him about his rights which entails the third phase. The information on rights concerned all rights that need to be delivered to the juvenile suspect when invited or arrested. Next, legal assistance was focused upon hereby addressing the decisions which need to be made by the juvenile as well as the interpretation of legal assistance by means of the confidential consultation as well as the presence of a lawyer during the interrogation. Next to the legal assistance, the role of an AA in practice was discussed after which the assessment of the juvenile was taken into account. Subsequently, the phase of the interrogations focused upon both the model and techniques used as well as the juvenile suspect’s behaviour. Finally, the recording of the interrogation was examined. In a final part of the focus group interviews,

10 See annex 1.

11 In Poland and the Netherlands a juvenile has the right to be assisted by a trusted person, but a formal scheme of AAs (often social workers) does not exist.
the respondents were asked about their opinion and experiences with juvenile suspects’ vulnerabilities, adequate safeguards and good practices.

For each focus group interview, short questionnaires\(^{12}\) were drafted which were filled in by the respondents to gather their basic biographical information, enabling the researchers to describe the respondent group and note any trends in responses as between different groups – such as those officers who have and have not been trained in interviewing vulnerable people; those AAs with and without social work training.

With a view to the observations, the project management team drafted a common observation scheme\(^{13}\), consisting of four separate modules. These modules were drafted on the basis of the legal frameworks combined with topics derived from a legal psychology literature study. Moreover, observation schemes from earlier research by Walsh and Bull\(^{14}\), which was subsequently used and adapted by Tersago\(^{15}\), were used as a starting point. The first module contained general information which could be derived from the written record: characteristics of the juvenile, the offence, activities prior to the interrogation, people present during the interrogation, and information on the format and content of the written record. The second module focused on information which was predominantly present in audio- and video-recorded interrogations. However, a number of variables could also be assessed from the written records. This module included for example information on proceedings during the interrogation, the behaviour of the interrogators, the juvenile suspect, and – if applicable – the behaviour of the lawyer, AA and interpreter. With regard to the interrogation model, a distinction was made between an information gathering approach and an accusatory approach in which the first refers to a more calm and empathic style aimed at finding the truth while the latter refers to a more dominant style aimed at obtaining a confession.\(^{16}\) Within these models various (manipulative) techniques can be used. Some of these techniques were also explored such as minimisation\(^{17}\) and maximisation\(^{18}\), suggestive questioning\(^{19}\).

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\(^{12}\) See annex 2.
\(^{13}\) See annex 3.
\(^{14}\) Walsh and Bull 2011 and Walsh and Bull 2012.
\(^{15}\) Tersago (forthcoming).
\(^{16}\) Hartwig et al. 2005.
\(^{17}\) The interrogator minimises the seriousness of the crime or consequences in the suspect confesses.
\(^{18}\) Maximisation is a technique in which the interrogator increases anxiety about denial for example by exaggerating the evidence or consequences to the suspect (Gudjonsson 2006, p. 133).
\(^{19}\) Suggestive questioning refers to suggestion included in the question, specific types are leading or misleading questions which entail non-neutral information and imply the answer to the suspect (Milne and Bull 1999, p. 4).
persuasion\textsuperscript{20}, active listening\textsuperscript{21} and empathy.\textsuperscript{22} The third module entailed variables relevant to the video-recording only such as interruptions in recording and camera perspective.\textsuperscript{23} The final module included analysis of identified vulnerabilities, safeguards, and good practices. These served as a basis for the observations of audio-recorded and video-recorded interrogations as well as the documentary analysis of written records. They also included variables on the comparison of tapes and written records where both sources were analysed. As with the interview schemes, all observation schemes were accompanied by a manual, which explained the variables as well as coding procedure, to ensure the collection of comparable data across the five countries and a similar coding process.

2.1.3. Data analysis

For the analysis and processing of the findings, the project management team developed a three part template, which served as the format for each empirical country report. In the first part the respondents in the focus groups and the sample of observed interrogations/written records are described in brief, in order to set out clearly the basis of the findings that follow. The second part entails an in-depth picture of practice on the basis of the topics explored in the focus group interviews, as well as in the observations/document analysis. The third part provides an overview of vulnerabilities, safeguards and good practices reported by the respondents and identified by the researchers. This template was accompanied by a manual to explain the completion of the template. In the analysis, researchers point to similarities as well as differences between (i) the various respondent groups and (ii) between focus groups and observations/document analysis.

Transcribed focus group interviews resulted in qualitative data, which were coded according to the topics in the template. Researchers summarised the findings throughout the various focus group interviews in which a respective topic was discussed. Quotations were used to enliven and illustrate opinions and experiences reported in the focus group interviews.

\textsuperscript{20} Techniques to convince the suspect to confess such as pointing out the futility of denial or telling the suspect that it is in his interest to confess (Bull and Milne 2004, p. 182).

\textsuperscript{21} With active listening the interrogator reinforces the suspect to participate by using non-biasing behavior such as echo probing, summarising and monitoring (Milne and Bull 1999, p. 67).

\textsuperscript{22} Here the interrogator demonstrates understanding of the situation from the suspect’s perspective (Milne and Bull 1999, p. 41).

\textsuperscript{23} Is the camera on the suspect only (suspect focus), the suspect and interrogators (equal focus), and does the perspective include all people in the room?
The analysis of written records of interrogations, and of audio-recorded and video-recorded interrogations, consisted of both a quantitative as well as a qualitative part. For the purpose of statistical analysis, the project team developed a database including all quantitative variables in the observation schemes and information on coding procedures. These databases were filled in by all country researchers and sent to the project team who conducted the statistical analysis by means of SPSS\textsuperscript{24} to ensure a similar approach for all countries. Subsequently, the country researchers integrated the analysed data into the analysis of the focus group interviews in their empirical country report. Quantitative data of the focus group interviews were amplified with qualitative data from the observations/document analysis. These qualitative findings were illustrated by examples of practices from interviews and observations/document analysis. The analysis of the observations/document analysis primarily focused on the identification of (good) practices based upon the observation schemes. Finally, the empirical country reports discussed the country findings in light of existing national research with regard to the interrogation of juvenile suspects.\textsuperscript{25}

2.2. FOCUS GROUP INTERVIEWS

Focus group interviews were held with key legal actors and juveniles in order to obtain a picture of what happens during the interrogation of juvenile suspects from the perspective of the various parties involved. These focus group interviews are not necessarily representative of actual practice but provide valuable information on how interrogations are perceived by the actors involved, including perspectives that might be similar, complementary or even contradictory. Focus group interviews do not strive for consensus and therefore are considered an interesting method to obtain a variety of perceptions on the interrogation of juvenile suspects in practice.

The aim was to conduct focus groups in each jurisdiction with all nationally relevant key legal actors and two focus group interviews with juveniles – one with boys and one with girls. Because of differences in practices and difficulties in obtaining access, the number of focus group interviews between countries varied slightly. If conducting a focus group interview was not feasible, it was – when and where possible – replaced by individual semi-structured interviews. In total 16 focus group interviews were conducted in the period of March until June 2013. Five focus group interviews were held with police officers and one

\textsuperscript{24} Version.22.

\textsuperscript{25} This includes research on adult suspects or juvenile victims and witnesses as well to the extent to which these studies also address juvenile suspects.
additional focus group was organised with prosecutors in Italy since they also interrogate juvenile suspects in similar circumstances as the police. Four focus groups were organised with lawyers (Belgium, England and Wales, Italy and the Netherlands) and two focus group interviews were conducted with AAs – one in each jurisdiction where presence of an AA is a mandatory safeguard (England and Wales, and Italy). The remaining four focus groups were conducted with juveniles (England and Wales, Italy, the Netherlands and Poland). Unfortunately, it did not prove possible to gain access to juvenile respondents in Belgium. In Poland, it was not possible to hold a focus group with lawyers, but this was replaced by semi-structured interviews with two lawyers. The majority of focus group interviews were moderated by two researchers since research shows that the quality of the focus group interview also depends on the moderator who has a demanding and complex role. Having a moderator and an assistant – who focuses on practical matters such as time, recording, et cetera – gives the leading moderator the opportunity to fully focus on the group interview itself.26 For feasibility reasons, location and time was chosen which suited the respondents best. This means that some focus groups were organised at the university and others at a police station or at an external location (such as a business centre). Besides, some focus groups were organised outside working hours in order for respondents (e.g. lawyers) to be able to attend.

Focus groups with key actors consisted of three to ten respondents. Due to several reasons explained below, the ideal number of six to ten respondents was not always achieved. Relevant key actors were identified from the legal study and included police officers, prosecutors, AAs and lawyers. The selection of respondents from each professional group specifically aimed at the realisation of as much variation in opinions and experiences as possible. Therefore, a purposive sample was used. The focus groups with key actors were tape recorded and lasted between two and three hours.

In order to gain insights from a range of perspectives and experiences, it was a prerequisite for all legal actors to have experience with the interrogation of juvenile suspects, and for juveniles to have been interrogated by the police at least once. To enhance differentiation, the composition of the police (and prosecutor) focus group was balanced with regard to the following criteria: gender, years of experience as an interrogator, interrogation training, and function of the police officer. In addition to this, respondents had to come from at least two different police stations. With regard to the lawyer focus group, all lawyers needed to be experienced as a juvenile lawyer. Four additional criteria were used to strive for differentiation in their practices: gender, training, judicial region or bar association, and years of experience.

For practical reasons the focus group interview with AAs consisted of social workers, youth justice workers and volunteers of varying degrees of experience, but not family members (e.g. parents) who acted as an AA. It was not possible to arrange a focus group with such a disparate group of individuals like family members who could not be contacted through any professional grouping or organisation.

This limits the study to a specific group of AAs. However, given the findings from earlier research in which social workers are considered a better option, this choice was acceptable with a view to obtaining examples of good practices. Moreover, the observation sample also included examples of parents acting as AAs.

Additional safeguards were put in place in the process of organising focus groups with juveniles. First, explicit and informed consent to participate was required from the juveniles themselves. Juveniles were invited to sign an informed consent form, which provided them with the necessary information about the research. Second, in order to guarantee their understanding of the research, the moderator explained the goal of the research as well as the interview proceedings mentioned on the form, before the juveniles were invited to sign the form. Third, the researcher explained that participation was fully voluntary and the juvenile could withdraw from the focus group at any time. It was also made clear to those in custody or subject to some form of supervision order, that participation would not interfere with their detention or sentence order in any way. Fourth, the focus group interview was held in a safe and familiar environment and/or under the supervision of a juvenile facility or probation location. If possible, the focus group was conducted in the presence of a trusted person, for example a social worker from the institution. The attendance of social workers of the institution or involved organisations such as youth offending teams, took the juveniles’ welfare into account by providing them with an opportunity to talk about the focus group afterwards, if necessary. Juveniles were also informed that the research is about their opinions and experiences and there are no good or bad answers to the questions. Moreover, juveniles were informed that the interview was not about the content of their case but only about the (circumstances of the) interrogation(s). Finally, if permission from the parent(s) was required by the government or the institution, this permission was also obtained.

Juveniles were recruited through youth care (ambulant or residential) and/or youth detention centres, which means that only convicted juveniles took part in the focus group interviews. In order to facilitate the focus group interviews with juveniles from the perspective of social desirability, group pressure, et

See in this respect for example: Quinn and Jackson 2007, p. 239.
cetera, the preparatory work was conducted in consultation with professionals from the institutions. When possible, focus groups were organised within an institutions existing unit so interviews could benefit from pre-existing familiarity between juveniles.28 Sensitive topics were avoided since the focus group interviews were not intended to discuss their case as such.29 This approach was chosen to enhance the focus group but could also provide a biased picture with regard to the reported experiences and opinions. In order to ensure that the juveniles interviewed were as comfortable as possible in discussing their experiences, the goal was to have boys and girls in separate focus groups if possible. The exception to this rule was England and Wales, where both boys and girls under the supervision of a youth offending team were spoken to together.

Except for Belgium, where it was impossible to interview young people, focus groups were attended by juveniles with a minimum age of 12 years and consisted of five to eight respondents. The duration of the focus group interviews with juveniles was shorter than those with key legal actors, since juveniles might have a shorter concentration span than adults. The approximate length of the juvenile focus groups was between one and a half and two and a half hours (including breaks).

Focus group data were gathered in locations where researchers had contacts or were able to gain permissions, where key legal actors were available to participate, and where language or dialect issues were least problematic.

The following sections set out a more detailed account of the empirical data gathered in each of the five jurisdictions.

2.2.1. Belgium

In Belgium, the empirical data were gathered from one single region. Two focus group interviews were held, one with police officers and one with lawyers, neither requiring any official permission.

2.2.1.1. Police focus group

Two additional criteria were added to comprise the focus group with police officers. The first was that of specialised training for interrogating juvenile witnesses in the sense that police officers with and without this special

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28 With the exception of England and Wales, where focus groups were organized by bringing together juveniles from more than one YOT.

29 This is sometimes referred to as a weakness of focus group interviews (Morgan 1996, p. 140).
training took part. The second criterion was that of federal and local police, both being represented in the focus group. Eight police officers participated in the focus group interview from both federal and the local police, across six different police regions in the area. Table 1 provides an overview of police respondents.

Table 1. Overview of police focus group respondents, Belgium

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Local / Federal</th>
<th>Years exp./interrogation exp.</th>
<th>Special training</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>Local</td>
<td>7/7</td>
<td>Basic</td>
<td>Detective – Intervention</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>Federal</td>
<td>0/0</td>
<td>TAM\textsuperscript{30} TAM-S\textsuperscript{31}</td>
<td>Scientist (civilian) Unit behavioural sciences</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>Federal</td>
<td>30/20</td>
<td>Basic / TAM</td>
<td>Support and coordination (federal) questioning juveniles</td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>Local</td>
<td>11/5</td>
<td>Basic / TAM</td>
<td>Detective / Supervisor juvenile unit</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>Local</td>
<td>14/12</td>
<td>Advanced interrogation techniques / video-recorded interrogation</td>
<td>Detective</td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>Local</td>
<td>30/25</td>
<td>Basic</td>
<td>Commissioner / Supervisor youth and family unit</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>Federal</td>
<td>37/unknown</td>
<td>Advanced interrogation techniques / TAM</td>
<td>Detective general crime unit</td>
</tr>
<tr>
<td>8</td>
<td>M</td>
<td>Local</td>
<td>8/3</td>
<td>Basic</td>
<td>Detective juvenile crime unit</td>
</tr>
<tr>
<td>Total</td>
<td>5 F and 3 M</td>
<td>Local (5) and federal (3)</td>
<td>0/0 – 37/25</td>
<td>Basic (5), TAM (4), TAM-S (1), Video-interrogation (1)</td>
<td>Behavioural sciences (2) / detectives (4) / commissioner (1)</td>
</tr>
</tbody>
</table>

Police officers came from seven different police stations. With one exception, all police officers were experienced in interrogating juvenile suspects. One police officer worked as a behavioural scientist at the behavioural science unit of the federal police and followed a course on the Belgian interrogation model for juvenile suspects, which was the reason for his participation in the focus group. With regard to training, half of the respondents had experienced at least basic interrogation training, combined with specific training for interviewing juvenile witnesses (TAM). Other respondents had received advanced training for interrogation of suspects and one respondent

\textsuperscript{30} Training video-recorded interviewing of Minors (i.e. juvenile witnesses and victims; TAM).

\textsuperscript{31} Training video-recorded interviewing of Minor – Suspects (i.e. juveniles suspects; TAM-S).
had received training on the video-recorded interrogation of adult suspects. Thus, the respondent group varied in terms of both level as well as type of interrogation training.

2.2.1.2. Lawyer focus group

Recruitment of lawyers was organised through the regional bar association. This overarching association contacted the local associations of which one was willing to participate in a focus group interview. Since only lawyers from one local bar association participated, the focus group was homogenous with regard to region or bar association. On the other hand, this local bar association is at the forefront of provision of legal assistance at the police station, as well as assisting juveniles. Therefore, it was considered an excellent opportunity to gather insight into good practices. Moreover, all lawyers came from different law firms. The focus group was attended by nine lawyers who work with juveniles. Table 2 gives an overview of the characteristics of the lawyers who participated in the focus group interviews.

Table 2. Overview of lawyer focus group respondents, Belgium

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Years exp. Lawyer / juvenile lawyer)</th>
<th>Special training</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>22 / 17</td>
<td>Training legal assistance at the police station / special training assisting juveniles</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>22 / 17</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>38 / 30</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>14 / 10</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>22 / 12</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>6</td>
<td>M</td>
<td>19 / 8</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>46 / 17</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>8</td>
<td>F</td>
<td>27 / 17</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>9</td>
<td>F</td>
<td>28 / 24</td>
<td>Training legal assistance at the police station</td>
</tr>
<tr>
<td>Total</td>
<td>5 female / 4 male</td>
<td>14 / 8 up to 46 / 30</td>
<td>Training legal assistance (9) and special training juvenile assistance (1)</td>
</tr>
</tbody>
</table>

All lawyers had received (theoretical and practical) training on juvenile law and were experienced juvenile lawyers with at least seven years of experience in civil and criminal cases, since a Belgian juvenile lawyer needs to deal with both civil and criminal cases. Out of these nine lawyers, three lawyers also represented adults.
2.2.1.3. Juvenile focus group

Organising a focus group with juveniles was not possible due to on-going changes within the national institutions. Official permission was needed for the focus group with juveniles, but this was declined by the federal authorities because of national reforms taking place at that time with regard to juvenile detention centres. Subsequently, a request was sent to the community authority in order to receive permission to conduct a focus group interview at a youth care centre. This request was also declined because of too many requests being made to interview juveniles. The alternative procedure was to organise individual interviews with juveniles who were interrogated. Therefore, a request was sent to the president of the bar association who was involved in the focus group interview and who is a member of the regional bar association. The procedure envisaged was to have lawyers invite their juvenile clients to take part in the research. However, the president said this procedure would be too intrusive for the lawyers’ clients and refused to assist us in recruiting in this way. In consultation with the president it was decided not to proceed in contacting individual lawyers. This resulted in the absence of a focus group interview or individual interviews with juveniles in Belgium.

2.2.2. England and Wales

There were four focus group interviews conducted in England and Wales with, respectively, police officers, lawyers, AAs and juveniles. In order to arrange the focus group interviews existing contacts within the Midlands region were utilised, which proved to be a successful strategy. Three of the focus group interviews were based in one part of the region and the fourth in another part.

2.2.2.1. Police focus group

The focus group with police officers was organised with an inspector from one police service acting as a facilitator who brought together police officer respondents from five police stations. A research application procedure was required and this was approved by a senior officer. The selection of police officers was based upon the general criteria: gender, experience and police training. Additional selection criteria were: (i) the frequency of interviews with a juvenile suspect and (ii) specialist training. In total nine police officers attended the focus group of which an overview is given in table 3.
Table 3. Overview of police focus group respondents, England and Wales

<table>
<thead>
<tr>
<th>No</th>
<th>Gender</th>
<th>Police station</th>
<th>Average time in interviewing juveniles</th>
<th>Years exp. as officer/interviewer</th>
<th>Training</th>
<th>Specialist training</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>1</td>
<td>2 times / month</td>
<td>11/11</td>
<td>PEACE Tier 2</td>
<td>ABE^32</td>
<td>Basic</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>2</td>
<td>2 times / month</td>
<td>12/12</td>
<td>PEACE Tier 2</td>
<td>ABE</td>
<td>Violence/ serious assaults</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>3</td>
<td>2 times /week</td>
<td>13/13</td>
<td>Interview skills course</td>
<td>Volume crime and priority witness course</td>
<td>Basic – previously a social worker</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>2</td>
<td>3 times /week</td>
<td>10/10</td>
<td>Basic – PEACE Tier 2</td>
<td>ABE</td>
<td>Robbery squad</td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>2</td>
<td>2 times / month</td>
<td>12/12</td>
<td>None</td>
<td>None</td>
<td>Basic</td>
</tr>
<tr>
<td>6</td>
<td>M</td>
<td>4</td>
<td>2 times /week</td>
<td>20/20</td>
<td>PEACE Tier 2 and investigators course</td>
<td>ABE</td>
<td>Robbery, burglary and drugs team</td>
</tr>
<tr>
<td>7</td>
<td>F</td>
<td>5</td>
<td>1 time/week</td>
<td>13/13</td>
<td>Basic</td>
<td>ABE</td>
<td>Robbery squad</td>
</tr>
<tr>
<td>8</td>
<td>M</td>
<td>2</td>
<td>4 times /month</td>
<td>13/13</td>
<td>PEACE Tier 2</td>
<td>ABE</td>
<td>CID – serious crime</td>
</tr>
<tr>
<td>9</td>
<td>M</td>
<td>2</td>
<td>Seldom</td>
<td>11/11</td>
<td>PEACE Tier 2</td>
<td>ABE</td>
<td>CID – acquisitive crime</td>
</tr>
<tr>
<td>Total</td>
<td>3 F and 6 M police stations</td>
<td>2 times / week to 2 times / month</td>
<td>10/10 up to 20/20</td>
<td>PEACE Tier 2 (6) and investigators course (1)</td>
<td>None (1), ABE for juvenile witnesses and victims (7) and volume crime and witness priority course (1)</td>
<td>None (1), ABE for juvenile witnesses and victims (7) and volume crime and witness priority course (1)</td>
<td>None (1), ABE for juvenile witnesses and victims (7) and volume crime and witness priority course (1)</td>
</tr>
</tbody>
</table>

Respondents in the police focus group differed on the general selection criteria. There was a balance between males and females who had received different training and came from various units.

2.2.2.2. Lawyer focus group

For the focus group interview with lawyers no official permission was needed. Several lawyers’ firms were contacted in the Midlands region to invite police station legal advisers to participate in the focus group. The timing of the focus group was unfortunate because it coincided with the government announcement of legal aid reforms which included achieving a two-thirds reduction in the number of solicitors’ firms contracted to provide publicly funded work by early 2015. Despite

[^32]: Achieving Best Evidence – includes training in audiovisual recorded interviewing of juvenile witnesses and victims.
numerous attempts to bring together a group of lawyers in the Midlands, they were too preoccupied with responding to the reforms to be able to participate. Instead a senior lawyer involved in an earlier study was contacted and brought together a group of seven police station legal advisers. Notwithstanding lawyers came from the same region, they worked at three different law firms. Table 4 provides an overview of those respondents, including additional selection criteria: (i) frequency of acting for a juvenile and (ii) duty lawyer or accredited representative.

Table 4. Overview of lawyer focus group respondents, England and Wales

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>No. of years experience as lawyer</th>
<th>Av. times acting for juveniles</th>
<th>Duty lawyer or accredited rep</th>
<th>Training</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>16 years</td>
<td>6 times / month</td>
<td>DL</td>
<td>PSQ(^{33})</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>7 years</td>
<td>8 times / month</td>
<td>DL</td>
<td>PSQ</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>25 years</td>
<td>Unknown(^{34})</td>
<td>DL</td>
<td>PSQ</td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>14 years</td>
<td>8 times / month</td>
<td>DL</td>
<td>PSQ</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>20 years</td>
<td>4 times / month</td>
<td>DL</td>
<td>Solicitor qualifying exams</td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>7 years</td>
<td>Unknown</td>
<td>Accredited rep</td>
<td>Accredited representative exams</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>10 years</td>
<td>Unknown</td>
<td>DL</td>
<td>PSQ</td>
</tr>
<tr>
<td>Total</td>
<td>4 M and 3 F</td>
<td>7 years up to 25 years</td>
<td>4 times/month up to 8 times/month</td>
<td>DL (6) and accredited representative (1)</td>
<td>PSQ (5), Sols exam (1) and accredited representative exams (1)</td>
</tr>
</tbody>
</table>

Because in England and Wales, legal advice can be provided by accredited representatives, as well as duty solicitors/lawyers, this criterion was added to the general selection criteria. This resulted in the presence of six duty solicitors/lawyers and one accredited representative. All lawyers had received training, mainly the Police Station Qualification (PSQ) for providing legal assistance at a police station.

2.2.2.3. Appropriate adult focus group

When arranging the focus group with AAs a local Youth Offending Team (YOT) manager was contacted, who was extremely helpful in encouraging other YOT managers in the Midlands area to engage, resulting in ten respondents attending the focus group. In one of the YOT areas there had recently been set up a ‘Justice Hub’, which brought together police investigators, police custody officers and YOT officers in the same building. The AAs varied by gender, geographic area

\(^{33}\) There is a police station accreditation scheme for non-lawyers and ‘police station qualification’ (PSQ) for lawyers providing police station legal advice. The schemes require applicants to submit a portfolio of cases where they had provided police station legal advice for assessment and also to undertake a ‘critical reasoning test’ based on police interrogations.

\(^{34}\) This information was missing from these questionnaires.
of work, and whether they worked with a volunteer scheme or were employed in youth protection work more broadly. Table 5 gives an overview.

Table 5. Overview of appropriate adult focus group respondents, England and Wales

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Area</th>
<th>Av. times interviewing juveniles</th>
<th>Years exp. as an AA</th>
<th>Details of training</th>
<th>Role as AA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>1</td>
<td>Twice a week</td>
<td>1 year</td>
<td>Police Volunteer</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>2</td>
<td>4 times a week</td>
<td>10 years</td>
<td>YSS35 Volunteer</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>2</td>
<td>Twice a week</td>
<td>10 years</td>
<td>YSS Volunteer</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>3</td>
<td>Twice a month</td>
<td>2.5 years</td>
<td>In-house and PACE training36</td>
<td>YOT worker</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>4</td>
<td>Twice a month</td>
<td>12 years</td>
<td>In-house and PACE training</td>
<td>YOT worker</td>
</tr>
<tr>
<td>6</td>
<td>M</td>
<td>5</td>
<td>Twice a week</td>
<td>8 years</td>
<td>In-house</td>
<td>YOT manager</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>6</td>
<td>Once a month</td>
<td>28 years</td>
<td>Arranges training</td>
<td>YOT manager</td>
</tr>
<tr>
<td>8</td>
<td>M</td>
<td>3</td>
<td>–</td>
<td>10 years</td>
<td>YOT training</td>
<td>Now an academic</td>
</tr>
<tr>
<td>9</td>
<td>M</td>
<td>National</td>
<td>–</td>
<td>–</td>
<td>National training</td>
<td>National AA coordinator</td>
</tr>
<tr>
<td>10</td>
<td>M</td>
<td>1</td>
<td>Once a week</td>
<td>3 years</td>
<td>Police Volunteer</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>4 F and 6 M</td>
<td>6 areas and 1 national repr.</td>
<td>One a month up to 4 times a week</td>
<td>1 year up to 28 years</td>
<td>Training provision varies by institution</td>
<td>YOT AAs (4), volunteers (4) and others (2)</td>
</tr>
</tbody>
</table>

Respondents in the AA focus group came from six different areas and there was a balance of males and females who had been trained in various ways.

2.2.2.4. Juvenile focus group

The focus group with juveniles was more difficult to organise, but in consultation with a YOT manager it was discussed whether it would be possible to bring together a group of juveniles who were reporting to the YOT as a requirement of their sentence. The YOT manager agreed to undertake this work, subject to obtaining permission from the County Council and the agreement of the young people themselves. A research governance form was completed which required a detailed account of the focus group, highlighting any ethical issues that might arise and how these would be addressed. The scheme was submitted for approval to the County Council as part of the application together with a draft of the consent form to be signed by the juveniles. This form stressed that their participation in

35 The YSS is the Youth Support Service.
36 The Police and Criminal Evidence Act 1984 (PACE) and the PACE codes of practice provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing suspects.
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the focus group was on a voluntary basis and they could refuse to participate. The application was successful and two YOT workers volunteered to bring together juveniles for the focus group, taking into account several criteria: age (14–17 year), gender, experience with police. For juvenile welfare reasons it was decided that a YOT worker would attend the focus group interview. The juveniles appeared to enjoy a good relationship with the YOT worker and their responses did not appear to be inhibited by her presence. Of the ten juveniles who agreed to participate in the focus group interview, five were able to attend. An overview is shown in table 6.

Table 6. Overview of juvenile focus group respondents, England and Wales

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Age</th>
<th>How many times arrested</th>
<th>How many convictions</th>
<th>Most serious court order</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>18</td>
<td>More than 4</td>
<td>More than 4</td>
<td>2 year supervision</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>17</td>
<td>More than 4</td>
<td>More than 4</td>
<td>Intensive supervision</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>18</td>
<td>More than 4</td>
<td>Twice</td>
<td>Intensive supervision</td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>16</td>
<td>More than 4</td>
<td>A few</td>
<td>Supervision order</td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>17</td>
<td>Twice</td>
<td>One</td>
<td>Referral Order</td>
</tr>
<tr>
<td>Total</td>
<td>4 M and 1 F</td>
<td>16 up to 18</td>
<td>2 (1) and more than 4 (4)</td>
<td>persistent offenders (2) and less experienced (3)</td>
<td>Referral Order to alternatives to custody</td>
</tr>
</tbody>
</table>

Table 6 shows that the group of juveniles mainly consisted of adolescent male repeat offenders.

2.2.3. Italy

In Italy five focus groups were held. Alongside those with the police, lawyers, AAs and juveniles, an additional focus group was organised with prosecutors since they also conduct interrogations with juvenile suspects in the investigation stage. One focus group was held in mainland Italy because of practical considerations and the other four were held in Sicily. The latter was decided because Sicily is the biggest region of Italy with the highest population density and it has four districts (Catania, Palermo, Messina and Caltanissetta), which enabled the involvement of people from different geographical backgrounds. Moreover, prosecutors in Italy, especially in the juvenile justice system, have high geographical mobility. This means that while representing at that time the experience of the territory in which they operate, there was a high probability that they had experience of working in other regions as well. To some extent, this also applies to police. In this case it meant that those who work in one of the districts of Sicily are likely to have previously worked at the Juvenile Division of the Prosecutor’s Office of other Italian regions (i.e. an administrative part of the country). A second argument to prefer Sicily concerned the nature of juvenile crime with juveniles being involved in organised crime as well.
The National Associations of Lawyers and Magistrates assisted in setting up the focus group of lawyers.

2.2.3.1. Police focus group

The focus group with police officers was held in the region of Sicily and in line with the general selection criteria, the researchers tried to involve the four districts of Sicily. The first contacts with the police concerned the Criminal Investigation Department for Juveniles, in particular an informal contact with the chief of the Juvenile Prosecution Division in one of the districts. After consultation, agreement was reached on which steps needed to be taken to get the officials to participate in the focus group interviews. Subsequently, an official letter was sent and the director of the Prosecutor General approved the request. The same type of procedure was followed to involve respondents from the other two Sicilian districts. One additional criterion (next to gender, experience, training, and function) was used, namely the police force (state police or local police). In total nine police officers participated, of which an overview is given in table 7.

Table 7. Overview of police focus group respondents, Italy

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Police force</th>
<th>Districts</th>
<th>Years exp. officer/ interrogator</th>
<th>Training</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>State Police</td>
<td>1</td>
<td>25/25</td>
<td>None</td>
<td>Commissioner / Supervisor juvenile crime unit</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>State Police</td>
<td>1</td>
<td>17/10</td>
<td>Basic (refresher courses)</td>
<td>Superior detective juvenile crime unit</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>Arma dei Carabinieri</td>
<td>2</td>
<td>13/13</td>
<td>None</td>
<td>Detective juvenile crime unit</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>Arma dei Carabinieri</td>
<td>2</td>
<td>26/23</td>
<td>None</td>
<td>Detective juvenile crime unit</td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>State Police</td>
<td>2</td>
<td>30/30</td>
<td>Degree in Law</td>
<td>Commissioner / Supervisor juvenile crime unit</td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>State Police</td>
<td>2</td>
<td>15/8</td>
<td>None</td>
<td>Assistant Police – juvenile crime unit</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>State Police</td>
<td>3</td>
<td>30/30</td>
<td>None</td>
<td>Commissioner / Supervisor juvenile crime unit</td>
</tr>
<tr>
<td>8</td>
<td>F</td>
<td>State Police</td>
<td>3</td>
<td>13/7</td>
<td>None</td>
<td>Superior detective juvenile crime unit</td>
</tr>
<tr>
<td>9</td>
<td>M</td>
<td>State Police</td>
<td>3</td>
<td>6/3</td>
<td>None</td>
<td>Detective juvenile crime unit</td>
</tr>
<tr>
<td>Total</td>
<td>2 F and 7 M</td>
<td>Arma dei Carabinieri (2) and State Police (6)</td>
<td>3 regions / 1 region</td>
<td>6/3 – 30/30</td>
<td>Basic (1) and None (7)</td>
<td>Commissioner (3) and Detectives (6)</td>
</tr>
</tbody>
</table>

26 Intersentia
The police respondents came from both state police as well as local police across three different districts (and thus at least three different police stations) in Sicily. All respondents were experienced and differed in function. With regard to training, the degree of variation was less since most police officers had not received special training for the interrogation of juveniles.

2.2.3.2. Prosecutor focus group

Since it was not possible to organise a focus group with prosecutors at the national level because of time constraints, with the help of the National Association of Youth Magistrates, a focus group was held in the region of Sicily. First, the director of the Juvenile Prosecutors Division was contacted to test the possibility of organising a focus group with prosecutors from each district. After informal contacts were made, a formal request was sent to the Chief Prosecutor for Juveniles, who authorised deputy prosecutors to participate. The same procedure was followed to ensure the participation of prosecutors operating in other Sicilian districts. Table 8 provides an overview of the prosecutors’ focus group.

Table 8. Overview of prosecutor focus group respondents, Italy

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Districts</th>
<th>Years exp. prosecutor/ juvenile interrogator</th>
<th>Special training(^{37})</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>3</td>
<td>17/4</td>
<td>Interrogation general procedure+ Juvenile victims/witnesses</td>
<td>Public Prosecutor</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>3</td>
<td>18/11</td>
<td>Interrogation general procedure+ Juvenile victims/witnesses</td>
<td>Deputy Public Prosecutor</td>
</tr>
<tr>
<td>3</td>
<td>F</td>
<td>3</td>
<td>15/4</td>
<td>Interrogation general procedure+ Juvenile victims/witnesses</td>
<td>Deputy Public Prosecutor</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>2</td>
<td>10/2</td>
<td>None</td>
<td>Deputy Public Prosecutor</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>2</td>
<td>11/11</td>
<td>None</td>
<td>Public Prosecutor</td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>1</td>
<td>8/8</td>
<td>Interrogation general procedure+ Juvenile victims/witnesses + Juvenile suspects</td>
<td>Deputy Public Prosecutor</td>
</tr>
<tr>
<td>7</td>
<td>F</td>
<td>1</td>
<td>10/10</td>
<td>Interrogation general procedure+ Juvenile victims/witnesses + Juvenile suspects</td>
<td>Deputy Public Prosecutor</td>
</tr>
<tr>
<td>Total</td>
<td>1 M and 6 F</td>
<td>3 districts/1 region</td>
<td>8/2 – 18/11</td>
<td>None (2), Interrogation general procedure (5), Juvenile victims/ witnesses (5) and Juvenile suspects (2)</td>
<td>Public Prosecutor (2) and Deputy Public Prosecutor (5)</td>
</tr>
</tbody>
</table>

\(^{37}\) The training refers to training courses organised by the Higher School for the Judiciary.
In total seven prosecutors, both public prosecutors and deputy public prosecutors from three districts participated in the focus group. They were mostly female and had at least two years of experience in interrogating juvenile suspects. A minority had received no training in interrogation but most had received general interrogation training as well as training in interviewing juvenile victims and witnesses.

2.2.3.3. Lawyer focus group

The first contact for the focus group with lawyers was made at the annual meeting of the national association of lawyers for juveniles (Unione nazionale camere minorili) in order to check the possibility of organising a focus group with lawyers coming from different areas of the country. A member of the national board of the association and coordinator of its criminal area and the former coordinator from the same area were willing to support the research and brought together six lawyers. The focus group with lawyers was organised in mainland Italy because of travel considerations. The constellation of the group of six respondents was balanced according to the general selection criteria (gender, region/bar association, training). Enrolment in the duty scheme was an additional criterion, which is shown in table 9.

Table 9. Overview of lawyer focus group respondents, Italy

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Years exp. (Lawyer / juvenile lawyer)</th>
<th>Enrolment in the duty lawyer scheme</th>
<th>Special training</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>13/9</td>
<td>No</td>
<td>Juvenile proceedings</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>14/13</td>
<td>Yes</td>
<td>Juvenile proceedings / Juvenile interrogations</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>22/17</td>
<td>Yes</td>
<td>Juvenile proceedings / Juvenile interrogations</td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>17/12</td>
<td>Yes</td>
<td>Juvenile proceedings</td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>9/8</td>
<td>Yes</td>
<td>Juvenile proceedings / Juvenile interrogations</td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>22/17</td>
<td>Yes</td>
<td>Juvenile proceedings / Juvenile interrogations</td>
</tr>
<tr>
<td>Total</td>
<td>2 F and 4 M</td>
<td>9/8 – 22/17</td>
<td>1 no / 5 yes</td>
<td>Juvenile proceedings (2), Juvenile proceedings and interrogations (3)</td>
</tr>
</tbody>
</table>

The focus group with lawyers covered five regions of Italy (representing the regions of the north, centre and south of the country) and these lawyers were all experienced juvenile lawyers. Most of them were enrolled in the duty scheme and received training in juvenile proceedings.
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2.2.3.4. Appropriate adult focus group

The focus group with AAs consisted of social workers. In order to receive permission, a request was put to the authority, namely the regional Centre for Juvenile Justice in Palermo. The Regional Centre for Juvenile Justice gave permission and sent a letter to the four offices, requiring them to authorise two social workers from each office to take part.

Subsequently, the directors of these four offices in Sicily were contacted to organise the focus group, which was attended by seven experienced AAs. Table 10 provides an overview of the respondents in the focus group with AAs.

Table 10. Overview of appropriate adult focus group respondents, Italy

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Department of Juvenile Social Services</th>
<th>Years exp. / Juvenile operator</th>
<th>Special training</th>
<th>Annual frequency of social assistance in interrogations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>3</td>
<td>24/14</td>
<td>Criminal proceedings</td>
<td>Participation in 5 interrogations /year</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>2</td>
<td>25/21</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>3</td>
<td>F</td>
<td>2</td>
<td>23/15</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>1</td>
<td>24/23</td>
<td>Criminal proceedings + Interrogations</td>
<td>Participation in 10 interrogation /year</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>1</td>
<td>23/14</td>
<td>Criminal proceedings</td>
<td>Participation in 10–15 interrogation /year</td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>1</td>
<td>29/14</td>
<td>Criminal proceedings + Penal mediation</td>
<td>Participation in 10–13 interrogation /year</td>
</tr>
<tr>
<td>7</td>
<td>F</td>
<td>1</td>
<td>38/37</td>
<td>Criminal proceeding</td>
<td>None actually (management role)</td>
</tr>
<tr>
<td>Total</td>
<td>F</td>
<td>3 districts / 1 region</td>
<td>23/13 – 38/37</td>
<td>None (2), Penal Mediation (1), Interrogations (1), Criminal proceeding (5)</td>
<td>None (3), 5–10 (2), 10–15 (2)</td>
</tr>
</tbody>
</table>

AAs were all social workers from three districts in Sicily who were very experienced with a minimum of 13 years as a juvenile operator. Respondents differed with regard to training, ranging from no training in criminal proceedings or interrogation to training in both criminal proceedings and interrogation. Three respondents had no recent experience in assisting juvenile suspects in interrogations but were valuable respondents in light of their experience as a social worker.

36 The first number is the years of experience as social worker and the second number the years of experience as USSM operator (Department of Juvenile Justice).

39 Modalities identified are: 1) Job training on assistance to juveniles in criminal proceedings (Criminal proceedings); 2) Job training on juvenile assistance in interrogations (Interrogations); 3) Criminal mediation; 4) None.
2.2.3.5. Juvenile focus group

The focus group with juveniles was the most difficult to organise since permissions were required at the regional as well as the national level. The first contact was with the director of the Juvenile Detention Centre in Catania, who was willing to cooperate. Then, a formal request was submitted to the Director of this institution, which was then forwarded, with her approval, to the Head of the regional Centre for Juvenile Justice in Palermo, and to the Head of the Department of Juvenile Justice at the Ministry of Justice in Rome. All required permissions were obtained after providing the required explanations about the research, its goals and the final outcome. Only a focus group with juvenile boys was held since there is only one juvenile detention centre left in Sicily after the closing down of the centre for female juveniles some months before the empirical research, due to a too low number of residents. The other three (out of 19) juvenile institutions in Italy which, at that time, hosted girls, also each had too limited a number of girls to organise a focus group of an acceptable size. The focus group was attended by eight juvenile boys. Table 11 provides an overview of characteristics of respondents in the juvenile focus group.

Table 11. Overview of juvenile focus group respondents, Italy

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>No. contact with police</th>
<th>Crime type</th>
<th>Previous detention in institution</th>
<th>No. interrogation for this event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>2</td>
<td>Theft and drug dealing</td>
<td>No</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>1</td>
<td>Murder</td>
<td>No</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>5</td>
<td>Drug dealing</td>
<td>Yes</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>3</td>
<td>Drug dealing</td>
<td>Yes</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>3</td>
<td>Robbery</td>
<td>Yes</td>
<td>3</td>
</tr>
<tr>
<td>6</td>
<td>M</td>
<td>9</td>
<td>Attempted robbery and burglary</td>
<td>Yes</td>
<td>1</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>4</td>
<td>Theft and extortion</td>
<td>Yes</td>
<td>10</td>
</tr>
<tr>
<td>8</td>
<td>M</td>
<td>1</td>
<td>Robbery</td>
<td>No</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>8 males</td>
<td>1 time (2), 2–5 times (4), 9 (1) Various crime types</td>
<td>First detention(3), earlier detection (5)</td>
<td>1 time (3), 2–5 times (4), 10 times (1)</td>
<td></td>
</tr>
</tbody>
</table>

Under Italian privacy law, it was not possible to know the age of these juveniles who varied in the number of contacts with the police. A slight majority had been in detention before. The reason for their actual detention also varied and included various types of crimes such as drugs, robbery/theft and murder. These juveniles were mostly interviewed more than once for the most recent crime. Table 11 shows that the juvenile respondents had relevant experience with the police to draw on in their responses.
2.2.4. The Netherlands

In the Netherlands a total of three focus groups were conducted. One with police officers, one with lawyers, and one with juveniles. No focus group with AAs was organised since the involvement of an AA is not guaranteed by statutory law and no formal scheme with professionals exists. The focus group with juveniles only consisted of a focus group with only boys since it was impossible for the juvenile institutions to obtain permission with girls within the time frame of the empirical research.

2.2.4.1. Police focus group

Police officers were contacted through the chiefs of police and an existing contact person who is the coordinator of one of the special interrogation rooms for children. After receiving the permission of the national police department responsible for research and the permission of the chiefs of police, this coordinator suggested respondents who satisfied the general selection criteria. The size of the focus group was small because, due to unforeseen circumstances, five of the ten respondents had to cancel at the very last minute. Accordingly, an additional semi-structured interview was organised with an expert in interviewing juvenile victims and witnesses. This expert is involved in designing and providing training for the interrogation of juveniles as well as vulnerable suspects. The focus group was balanced based on the general selection criteria of gender, police station, experience and training as is shown in table 12. One additional criterion was added, namely special training since special training exists on interrogating juvenile victims and witnesses in the Netherlands.

Table 12. Overview of police focus group respondents, the Netherlands

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Police station</th>
<th>Years exp. Officer / interrogator</th>
<th>Training</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>1</td>
<td>4 / 4</td>
<td>Basic interrogation</td>
<td>Detective in training</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>2</td>
<td>29 / 14</td>
<td>Questioning juvenile victims/witnesses</td>
<td>Detective / interrogator / assistant Public Prosecutor</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>1</td>
<td>57 / 25</td>
<td>Basic training youth</td>
<td>Detective / supervisor youth</td>
</tr>
<tr>
<td>4</td>
<td>F</td>
<td>3</td>
<td>19 / 11</td>
<td>Unknown</td>
<td>Detective</td>
</tr>
<tr>
<td>5</td>
<td>F</td>
<td>3</td>
<td>32 / 28</td>
<td>VUG(^{40})</td>
<td>Detective</td>
</tr>
<tr>
<td>Total</td>
<td>4 F and 1 M</td>
<td>3 police stations</td>
<td>4 / 4 – 37 / 28</td>
<td>Basic (3), VUG (1) and questioning juvenile witnesses (1)</td>
<td>4 detectives / 1 in training</td>
</tr>
</tbody>
</table>

\(^{40}\) Training to question vulnerable people.
Most respondents were female and were from three different police stations. Respondents differed in experience with a minimum of at least four years of experience as an officer. At least one of the respondents had experienced special training for interrogating juvenile victims and witnesses.

2.2.4.2. Lawyer focus group

For the focus group with lawyers, no official permission was required. Recruitment of lawyers was organised through existing contacts and the website of the association of juvenile lawyers in the Netherlands.\(^\text{41}\) When inviting lawyers to participate, a balanced composition on the basis of the general selection criteria was strived for. The focus group with lawyers depicted a similar pattern as the one with police officers. Out of the seven lawyers who subscribed to the focus group, four cancelled on the day itself because of other last minute obligations. This resulted in a small focus group interview with three respondents consisting of one female and two male respondents from two regions who all received training to become a juvenile lawyer.

### Table 13. Overview of lawyers focus group respondents, the Netherlands

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Region</th>
<th>Years exp. (Lawyer / juvenile lawyer)</th>
<th>Special training</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>1</td>
<td>13 / 10</td>
<td>Courses juvenile law</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>2</td>
<td>11 / 9</td>
<td>Course juvenile criminal law</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>2</td>
<td>18 / 15</td>
<td>Courses juvenile law</td>
</tr>
<tr>
<td>Total</td>
<td>1 F and 2 M</td>
<td>2 regions</td>
<td>11 / 9 – 18 / 15</td>
<td>Course juvenile (criminal) law</td>
</tr>
</tbody>
</table>

Table 13 shows that the three respondents had at least nine years of experience as a juvenile lawyer and 11 years as a lawyer in general. They came from two different regions and all had experienced a course in juvenile law or juvenile criminal law.

2.2.4.3. Juvenile focus group

For the focus group with juveniles, permission was requested from the overarching governmental organisation as well as the board of the juvenile institutions who were contacted with a request to participate after receiving the necessary permission. Only one institution gave permission within the time frame of the project. The juveniles who participated in the focus group all came from one and the same unit within this institution for boys. In total four juveniles participated in the focus group in which one of the social workers of

\(^{41}\) www.vnja.nl.
the institution was present. The juveniles seemed to have a good relationship with the social worker whose presence did not seem to inhibit the responses of juveniles. An overview is provided in table 14.

Table 14. Overview of juvenile focus group respondents, the Netherlands

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Age</th>
<th>Crime type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>18</td>
<td>Criminal offence</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>17</td>
<td>Street-robbery</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>21</td>
<td>Violence</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>19</td>
<td>Unknown</td>
</tr>
<tr>
<td>Total</td>
<td>4 M</td>
<td>Between 17 and 21</td>
<td>Various offences</td>
</tr>
</tbody>
</table>

Notwithstanding the fact that the focus group aimed at interviewing juveniles and respondents who were residents of a juvenile institution, respondents were in fact – with the exception of one 17 year old – young adults (18–22 years). However, it was nonetheless valuable to interview these young adults who were serving sentences which were imposed on them when they were still juveniles enabling them to speak about their experiences with the police as a juvenile. They had been convicted for a range of different crimes.

2.2.5. Poland

In Poland three focus groups were conducted with police officers, juvenile boys, and juvenile girls. Additionally, individual semi-structured interviews with two lawyers were conducted since it turned out to be impossible to organise a focus group with lawyers. There is no legal rule or requirement for social workers or others to act as AAs in Poland, thus no focus group interview was held with these individuals. Interrogations are often conducted in the presence of a parent, guardian or teacher, but as was the case in England and Wales, it was not possible to arrange a focus group with such a disparate group of individuals who could not be contacted through any professional grouping or organisation.

2.2.5.1. Police focus group

The focus group with the police consisted of officers working in the unit for juveniles who had experience in questioning juveniles, including the interrogation of juvenile suspects. The organisation of this focus group was quite difficult since a formal procedure was required to obtain permission. A written request for permission was sent to the Municipal Police in Kraków which was then transferred to the office of legal advisors of the Municipal Police in Kraków.
and permission was received. Subsequently, individual police officers working in units for juveniles were invited according to the general selection criteria. Because police officers work in shifts, it was difficult to bring together a group. Finally, the focus group was only allowed to take place in the free time of police officers, which hampered recruitment. In total, four police officers took part in the focus group, which can be seen in table 15.

Table 15. Overview of police focus group respondents, Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Police station</th>
<th>Years exp./interrogator exp.</th>
<th>Training in interrogation</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>F</td>
<td>Kraków</td>
<td>5/1.5</td>
<td>Basic</td>
<td>Employed in unit for juveniles (referent)</td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>Kraków</td>
<td>12/10</td>
<td>Basic</td>
<td>Employed in unit for juveniles (specjalista)</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>Kraków</td>
<td>16/5</td>
<td>Basic</td>
<td>The chief of the unit for juveniles (kierownik referatu)</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>Kraków</td>
<td>8/5</td>
<td>Basic</td>
<td>Employed in unit for juveniles (asystent)</td>
</tr>
<tr>
<td>Total</td>
<td>1 F and 3 M</td>
<td>Kraków (4)</td>
<td>5/1.5 up to 16/10</td>
<td>Basic training (4)</td>
<td>Unit for juveniles (4)</td>
</tr>
</tbody>
</table>

Although all respondents were experienced in interrogating juvenile suspects, none of them had received specialised training in the interrogation of juvenile suspects or juvenile witnesses and victims. Both males and females participated and they all came from a specialised unit.

2.2.5.2. Juvenile focus group

The organisation of a focus group with juveniles was first discussed with probation officers in the Kraków region. Although juveniles placed in institutions constitute a special group of juvenile offenders, it was decided to organise a focus group within an institution since this would be the most practical way of organising things. This meant that the focus group were juveniles placed in an educational or correctional institution who usually had several convictions or at least experiences with the police. They had come into conflict with the law at a very early stage of their childhood, displayed many other problematic behaviours, were said to be brought up in dysfunctional families, and had many contacts with the police for different reasons. A written request for permission was sent to the director of a youth educational centre for boys located in the southern part of Poland, including the relevant forms relating to the consent of the juveniles. After receiving official permission, the director forwarded the relevant informed consent forms to the parents. The institution received permissions from ten juveniles and their parent(s) to
participate in the focus group. Finally, eight juvenile boys took part, as can be seen in Table 16.

Table 16. Overview of juvenile boys focus group respondents, Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Number of events of contact with the police</th>
<th>Type of crime</th>
<th>Previous detention in institution</th>
<th>Number of interrogations (including interrogations for other cases)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>13–20</td>
<td>Truancy and different punishable acts(^{42})</td>
<td>no</td>
<td>13</td>
</tr>
<tr>
<td>2</td>
<td>15–20</td>
<td>Punishable acts</td>
<td>yes</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>12</td>
<td>Truancy and punishable acts</td>
<td>yes</td>
<td>12</td>
</tr>
<tr>
<td>4</td>
<td>30</td>
<td>Robbery</td>
<td>no</td>
<td>30</td>
</tr>
<tr>
<td>5</td>
<td>35</td>
<td>Robbery, truancy and using alcohol</td>
<td>no</td>
<td>35</td>
</tr>
<tr>
<td>6</td>
<td>12–19</td>
<td>No answer</td>
<td>no</td>
<td>8</td>
</tr>
<tr>
<td>7</td>
<td>10</td>
<td>Battery, burglary</td>
<td>no</td>
<td>8</td>
</tr>
<tr>
<td>8</td>
<td>5</td>
<td>Truancy and punishable acts</td>
<td>no</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>5 up to 35</td>
<td>Property crimes, punishable acts, truancy and alcohol.</td>
<td>Earlier detention (2) and first detention (6)</td>
<td>4 up to 35</td>
</tr>
</tbody>
</table>

The juvenile boys had experience of coming into contact with the police on a number of occasions – ranging from five to 35. With regard to the number of interrogations, a similar diversity was found. Most juvenile boys had been detained for the first time with the exception of two boys. Additional general information was provided by the institution. First, the age of the juvenile boys, though not provided in an individualised way, ranged from 15 to 17 years. Second, the juveniles were said to be behind at school due to a variety of reasons, such as truancy and coming from dysfunctional families.

The focus group with girls was organised at a correctional institution for girls also situated in the southern part of Poland. A written request for permission was sent to the director of this institution. The researchers were aware that juvenile girls placed in institutions were almost continuously being invited to take part in research by scholars and students writing their master or PhD thesis, which obviously resulted in a high level of reluctance shown by both the girls and the administration of the institution. Therefore, the researchers visited the institution in order to ask the director of the centre for permission.

\(^{42}\) Punishable acts mean acts prohibited by criminal law as offences, fiscal offences and certain petty crimes (contraventions). In 1982 the legislator chose a different terminology in order to stress that it was no longer the subject of proceedings in juvenile cases to establish the culpability of a juvenile.
in person and to personally invite girls to participate in the focus group. The necessary informed consent forms for the girls as well as their parents were sent to the director of the institution after receiving permission. It turned out that only one juvenile girl (aged 17) was willing to participate but seven girls aged 18 or 19 also agreed. The 17 year old had obtained the consent of her parent.

Table 17. Overview of juvenile girls focus group respondents, Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Number of events of contact with the police</th>
<th>Type of crime</th>
<th>Previous detention in institution</th>
<th>Number of interrogations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>12</td>
<td>Robbery, battery, theft</td>
<td>yes</td>
<td>11</td>
</tr>
<tr>
<td>2</td>
<td>Aprr. 40</td>
<td>Many offences of different types</td>
<td>yes</td>
<td>30</td>
</tr>
<tr>
<td>3</td>
<td>10</td>
<td>Robbery, theft</td>
<td>no</td>
<td>2–3</td>
</tr>
<tr>
<td>4</td>
<td>30–35</td>
<td>Robbery</td>
<td>yes</td>
<td>3</td>
</tr>
<tr>
<td>5</td>
<td>25</td>
<td>Battery, burglary</td>
<td>yes</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>50</td>
<td>Drug offences, robbery, burglary</td>
<td>yes</td>
<td>30</td>
</tr>
<tr>
<td>7</td>
<td>15</td>
<td>Battery</td>
<td>yes</td>
<td>10</td>
</tr>
<tr>
<td>8</td>
<td>10</td>
<td>Battery</td>
<td>yes</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>10 up to 40</td>
<td>Various crime types</td>
<td>First detention (1), earlier detention (7)</td>
<td>2 up to 30</td>
</tr>
</tbody>
</table>

Table 17 shows that juvenile girls had several contacts with the police ranging from ten up to 50. Again, the number of interrogations varied between two up to 30. The type of crime for which the juvenile girls were in the institution mainly concerned robbery and assaults. All juvenile girls received a correctional measure and stayed at one of the three correctional institutions for girls in Poland. One of the legal criteria for the application of correctional measures is the fact that educational measures were found to be ineffective. For this reason girls interviewed in the correctional institution constituted a specific sub-group of all juvenile girls adjudicated due to punishable acts.

2.2.5.3. Lawyer focus group – semi-structured interviews

Preparatory enquiries revealed that a focus group with lawyers would not be feasible to organise as lawyers very rarely take part in juvenile proceedings. Moreover, when they do take part it is at the later stages of proceedings, namely after the case is referred to a family court by the police. This was also confirmed by the regional bar association in Kraków. In the area of this regional bar association there are over 1,200 lawyers of which the Dean of the regional bar association reported that no lawyer practicing in this region had indicated juvenile proceedings as their specialisation. In order to find a lawyer with experience in juvenile proceedings at the interrogation stage, the researchers
contacted about 100 lawyers personally, with the help of (former) students and PhD students working in law firms, but without success. Lawyers stated that they had little or no experience in such proceedings and were unwilling to participate. Finally, two lawyers were found to be willing to participate. The group interview was replaced by individual semi-structured interviews because it was not possible to find a suitable date for both lawyers within the timeframe of the research. Both lawyers had some experience in juvenile cases, however only one of them had been present during interrogations of juvenile suspects by the police several times a year. The other participated in juvenile cases exclusively at later stages of proceedings and had never been present during an interrogation of a juvenile by the police. Because of this lack of experience she could not answer questions concerning the interrogation of juveniles by the police, and therefore she could only give second-hand information on some matters.

2.3. OBSERVATIONS OF INTERROGATIONS

The observations of interrogations of juvenile suspects aimed to provide a complementary and more objective picture of what happens in practice. In particular, whilst all juvenile respondents in the focus groups were aged over 12 years of age and had been convicted, this approach made it possible to include interrogations with suspects under the age of 12 (non-obtrusive approach) since in some countries the age of criminal liability is below 12 years (for example in England and Wales where the age of criminal liability is set at ten years). In Poland, the age of criminal liability is 17 years. This means that juveniles of 11 years old, for example, will be criminally responsible in some countries, but not in others. However, they can be interrogated in Poland, yet not be convicted. Therefore, these interrogations of juveniles below the age of 12 are useful to incorporate in the observation sample. Moreover this approach allowed us to include convicted as well as acquitted juveniles supplementing the experiences of juveniles addressed in the focus groups which only involved juveniles who are convicted or had been subject to some form of criminal measure.

The nature of these observations depended on how interrogations of juvenile suspects were recorded in the five countries. A preparatory screening indicated that analysis of video-recorded interrogations was only possible in Belgium and the Netherlands. In England and Wales, interrogations need to be audio-recorded, which allowed for observations of such audiotapes. In these three countries it was also decided to analyse the written records in order to discover the extent to which they reflected the full verbatim interview. This is important, as there are circumstances where the written record is relied upon, for example,
in magistrates’ courts without recourse to the full interview recording. For example, lawyers and courts in England and Wales are unlikely to listen to the full recording unless the interrogation is in dispute. In Poland and Italy there is no system of audio- or video-recording. Therefore, the researchers could only conduct an analysis of written records, which often represented a formalised or abbreviated account of the interrogation.

The preference for observations of recorded interrogations, rather than having researchers be present in real time rested on two arguments. The first argument has to do with the extent of obtrusion. Real time observations might influence the findings because the observer’s presence could produce an effect on the respondents (known in experiments as the ‘Hawthorne-effect’). This refers to the knowledge of respondents that they are being studied, which may lead to adjusted behaviour. Secondly, given the fact that in some countries many people are present (e.g. interrogator, lawyer, AA, juvenile) the presence of an observer might add to an already crowded interrogation room and overwhelming experience for the juvenile.

In order to protect the interrogated juveniles involved in the observation study, additional measures next to the abovementioned anonymity and confidentiality were implemented. First, if required by the government, researchers were screened by the police in accordance with the respective country’s policy. Analysis of the observations, i.e. audiotapes and videotapes, was conducted at the police station in order to secure the material and avoid transporting sensitive materials. This meant that material which was stored at the police station was only analysed within that secure environment. An exception was made with regard to the written records provided by lawyers.

In total 16 audiotapes (12 in England and Wales and four in the Netherlands), 18 videotapes (ten in Belgium and eight in the Netherlands) and 73 written records (ten in Belgium, nine in England and Wales, 25 in Italy, 11 in the Netherlands and 20 in Poland) were analysed in the period May to July 2014. This selection aimed at capturing as much differentiation in practice as possible in order to grasp a good snapshot of interrogation practice. The selection of interrogations for the observations was based upon five general criteria: gender, age, nationality, first or repeat offender, and type of crime. If possible, an interrogation in the presence of an interpreter would be incorporated in the sample. Next to the selection criteria, interrogation recordings came from at least two different police stations. If feasible, first interrogations in a case were requested in order to examine the vulnerability of a juvenile suspect from the very beginning.
When gathering records from the police, records of all interrogations in the period 2012 and/or 2013 were collected if possible. This large sample was requested to enable a random selection by the researchers. In this way the researchers tried to obtain a mixed sample taking into account the selection criteria. This procedure was chosen in order to avoid bias in the selection of interrogations as well as increasing the heterogeneity of the sample and the variety of practices.

In the following part the procedure for the five jurisdictions with regard to the observations/document analysis will be discussed.

2.3.1. Belgium

For the observations in Belgium the prosecutor-general granted permission to observe videotapes of interrogations with juvenile suspects in the period 2012–2013 from three police stations where all suspect interrogations are recorded. All three police stations were contacted and gave permission to randomly select three or four interrogations in the period 2012–2013. The police stations provided all first interrogations with juveniles within this period. In total ten video-recorded interrogations were selected and observed. Selection was based upon the general selection criteria as well as the duration of the interrogation, and resulted in a mixed sample as shown in table 17.

Table 18. Video recording sample, Belgium

<table>
<thead>
<tr>
<th>No.</th>
<th>Police station</th>
<th>Gender</th>
<th>Age</th>
<th>Nationality*</th>
<th>Repeat offender</th>
<th>Crime type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>F</td>
<td>10</td>
<td>Bulgarian43</td>
<td>No</td>
<td>Theft/robbery</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>F</td>
<td>14</td>
<td>Belgian</td>
<td>Unknown</td>
<td>Unwillingness</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>M</td>
<td>15</td>
<td>Belgian</td>
<td>Yes</td>
<td>Violent theft</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>M</td>
<td>17</td>
<td>Belgian</td>
<td>No</td>
<td>Rape</td>
</tr>
<tr>
<td>5</td>
<td>2</td>
<td>M</td>
<td>16</td>
<td>Belgian</td>
<td>No</td>
<td>Rape</td>
</tr>
<tr>
<td>6</td>
<td>2</td>
<td>M</td>
<td>12</td>
<td>Belgian</td>
<td>No</td>
<td>Arson</td>
</tr>
<tr>
<td>7</td>
<td>3</td>
<td>M</td>
<td>15</td>
<td>Belgian</td>
<td>No</td>
<td>Drugs</td>
</tr>
<tr>
<td>8</td>
<td>3</td>
<td>F</td>
<td>13</td>
<td>Belgian</td>
<td>Yes</td>
<td>Threats and violence</td>
</tr>
<tr>
<td>9</td>
<td>3</td>
<td>M</td>
<td>14</td>
<td>Albanian</td>
<td>No</td>
<td>Theft/robbery</td>
</tr>
<tr>
<td>10</td>
<td>3</td>
<td>M</td>
<td>16</td>
<td>Belgian</td>
<td>No</td>
<td>Drugs</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
<td>M (7) and F (3)</td>
<td>Between 10 and 17.</td>
<td>Bulgarian (7), Albanian (1), Recidivist (2), first offender (7) and unknown (1)</td>
<td>Crime types: theft/robbery (3), rape (2), drugs (2), violence/threats (2), arson (1) and unwillingness (1)</td>
<td></td>
</tr>
</tbody>
</table>

* Nationality refers to the official nationality, not to the ethnic background.

43 In this case an interpreter was present.
As table 18 shows, juveniles were mostly males (N=7) and a minority of females (N=3), aged ten to 17 years old with an average of 14.2 years. In Belgium the age of criminal liability is 12 years. Children under the age of the criminal liability, such as the 10 year old in the sample, can be interrogated. In this case this juvenile suspect was treated according to the existing procedures for a juvenile suspect. With an exception of one Albanian and one Bulgarian, all juveniles were of Belgian nationality. Two of the ten were recidivists and in both cases the current crime type concerned a violent crime. Most crimes were crimes against persons (N=6) in addition to crimes against property (N=2) and other crimes (N=2). The duration of the interrogation varied between 13 and 84 minutes with an average of 44.4 minutes. In one interrogation, there was an interpreter present.

Besides these criterion characteristics, the observed interrogations concerned eight arrested juveniles. One juvenile was invited to the police station for interrogation as a ‘volunteer’ and in one case it was not clear whether the juvenile was arrested or not.

2.3.2. England and Wales

A police service in the Midlands was asked to provide a sample of around 20 recorded interrogations with juveniles. From that sample 12 cases were selected which included a mix of male and female suspects, different types of offences, and with some being of good character and others recidivists. Within the 22 interrogations there was just one with a female, one with an interpreter and two undertaken on a voluntary basis. These were included in the sample of 12 cases. A wide range of offence types were captured including property, violence and drug offences. The task of identifying a sample of recorded interrogations was allocated by the police to the criminal justice unit (hereafter: CJU). Over a period of three months the CJU was able to set to one side a sufficient number of interrogations involving juvenile suspects. The CJU is responsible for preparing cases for trial, which includes making a transcript, or detailed summary of the interrogation available for the court. This means that all the interrogations examined involved cases where the juveniles were charged or summoned to appear in court and in which the juvenile denied having committed the offence.

Set out in Table 19 are details of the 12 recorded interrogations, which were all first interrogations, including some of the characteristics of the juveniles involved, the type of offence and whether or not a lawyer was involved.
Table 19. Audio-recording sample, England and Wales

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Police station</th>
<th>Gender</th>
<th>Age</th>
<th>Ethnicity</th>
<th>Repeat offender</th>
<th>Crime type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>F</td>
<td>15</td>
<td>White British</td>
<td>Good character</td>
<td>Burglary</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>M</td>
<td>16</td>
<td>Black British</td>
<td>Good character</td>
<td>Assault</td>
</tr>
<tr>
<td>3</td>
<td>3</td>
<td>M</td>
<td>17</td>
<td>Black British</td>
<td>Good character</td>
<td>Robbery</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>M</td>
<td>16</td>
<td>White British</td>
<td>1 reprimand</td>
<td>Criminal damage</td>
</tr>
<tr>
<td>5</td>
<td>2</td>
<td>M</td>
<td>16</td>
<td>White British</td>
<td>Recidivist</td>
<td>Theft of vehicle</td>
</tr>
<tr>
<td>6</td>
<td>3</td>
<td>M</td>
<td>14</td>
<td>Black British</td>
<td>1 conviction</td>
<td>Robbery</td>
</tr>
<tr>
<td>7</td>
<td>2</td>
<td>M</td>
<td>13</td>
<td>White British</td>
<td>Recidivist</td>
<td>Assault with intent to rob</td>
</tr>
<tr>
<td>8</td>
<td>2</td>
<td>M</td>
<td>14</td>
<td>White British</td>
<td>1 conviction</td>
<td>Rape</td>
</tr>
<tr>
<td>9</td>
<td>2</td>
<td>M</td>
<td>17</td>
<td>Black British</td>
<td>Recidivist</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>3</td>
<td>M</td>
<td>16</td>
<td>Chinese</td>
<td>Good character</td>
<td>Supply Class B drugs</td>
</tr>
<tr>
<td>11</td>
<td>3</td>
<td>M</td>
<td>16</td>
<td>Black British</td>
<td>Good character</td>
<td>Assault</td>
</tr>
<tr>
<td>12</td>
<td>3</td>
<td>M</td>
<td>16</td>
<td>Not known</td>
<td>Not known</td>
<td>Assault</td>
</tr>
</tbody>
</table>

Total: 3 police stations (11 M and 1 F) and 1 F, between 13 and 17 years old, with an average of 15.4 years. About half of them were first offenders. With regard to nationality, in one case there was an interpreter present. In the first ten cases the juveniles had been arrested and detained by the police and the last two were dealt with by way of a ‘Voluntary Interview’. The majority of AAs were a family member, on eight occasions the mother and twice the father with the remaining two AAs being a YOT member and a volunteer. The duration of the interrogations varied from 14 to 56 minutes, with an average of 26 minutes.

2.3.3. Italy

In Italy interrogations of juvenile suspects are neither audio- nor video-recorded. The interrogation is transcribed in a written record according to a general outline in which the juvenile suspect answers questions. The written records were collected from different regions of Italy to capture any variations among them. Specifically, there are three cases from Emilia Romagna Region, one case from Piedmont, two cases from Apulia, five from Calabria and fourteen from Sicily (because Sicily has the peculiarity already mentioned in the analysis of the focus groups). Geographical variability also reflects a difference between large and small towns (provincial capitals versus municipalities) with four out of 25 transcripts from small towns. In total there are nine different municipalities included, which are different in spatial extent and population density: from
a small town in Apulia, which has only 5,000 inhabitants, to an important economic plexus of the country, with more than 900,000 inhabitants only in the city center.

In order to obtain access to these written records, a formal request was submitted to the Juvenile Division of the Public Prosecutor’s Office in one region of Sicily. The selection criteria were set out in the request. The public prosecutor provided written records of 11 interrogations which met the criteria. A second request was also sent to the Bar Council of a second region to obtain written records from that district. Finally, the Council of that district was also asked to invite lawyers specialised in juvenile law from other regions of Italy to provide written records. This second approach led to an additional 11 written records. A third approach was to invite the lawyers who participated in the focus group to deliver written records, which resulted in another 22 written records. In total, 45 written records were obtained from five regions in Italy, which resulted in the selection of 25 written records balanced with regard to the five general selection criteria.

The written records concerned interrogations conducted between 2012 and 2014, of which there were ten interrogations in 2012, 11 in 2013 and four in 2014. From the written records it was not possible to know whether the interrogations concerned first interrogations or subsequent interrogations.

Table 20 provides an overview of the sample.

Table 20. Transcripts sample, Italy

<table>
<thead>
<tr>
<th>Case no.</th>
<th>Gender</th>
<th>Interrogation by Prosecutor/Interrogation instructed by Prosecutor to police</th>
<th>Repeat offender</th>
<th>Crime type</th>
<th>Appointed or trusted lawyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>Police NO Possession of stolen good</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>M</td>
<td>Police Unknown Extortion</td>
<td>Appointed Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>Police NO Robbery</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>Police NO Robbery</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>Police M.I. Interrogation interrupted</td>
<td>Unknown</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>because of mental disturbance of interviewed</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>suspect</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>F</td>
<td>Police NO Battery</td>
<td>Unknown</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>F</td>
<td>Police NO Battery</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>M</td>
<td>Police NO Burglary</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>M</td>
<td>Police NO Battery</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>M</td>
<td>Police Unknown Burglary</td>
<td>Appointed Lawyer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>M</td>
<td>Police NO Theft</td>
<td>Trusted Lawyer</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This was the largest district of Sicily. The focus groups with police and prosecutors were held at the Juvenile Prosecutor’s Office Division here.
Interrogations were carried out by police officers or prosecutors. The written records did entail information on the age of the juveniles but dates of birth were deleted because of privacy reasons (next to the names of the juveniles). The crime types consisted of crimes against persons (harassment, assault and sexual abuse), crimes against property (possession of stolen goods, extortion, theft, property damage, vandalism, shoplifting, burglary) and three ‘other crimes’ (possession and drug trafficking). Three out of 25 young suspects were female. All interrogations were conducted in the presence of a lawyer. Two additional criteria were added since there is a mandatory right to legal assistance in Italy. The first criterion referred to the type of lawyer: appointed or trusted. Six cases concerned an appointed lawyer in comparison with 18 cases in which a lawyer was a trusted lawyer. The final criterion concerned the presence of an AA (parent or other such as legal guardian, social worker or educator). In 20 cases a parent
or both parents were present and in four cases another AA was present. In one case there was no AA present during the interrogation, although they were present at the police station. The interrogations were mostly carried out at the juvenile court (19), followed by the police office (4), one at the juvenile detention centre, and one took place at the police headquarters.

2.3.4. The Netherlands

In the Netherlands, permission to analyse videotapes was requested from the research department of the national police as well as from the regional chief of police. After receiving this permission, the coordinator of a regional special interrogation room for children was contacted to collect the sample from which the selection could be derived according to the general selection criteria for his police region. A second sample, based on similar criteria, was also provided by the police in a second region. In total 12 interrogations were analysed of which eight were video-recorded interrogations and four were audio-recorded interrogations. Accompanying written records of these interrogations were available for 11 of the 12 interrogations observed. Two out of 12 interrogations were first interrogations.

Table 21. Audio- and video recording sample, the Netherlands

<table>
<thead>
<tr>
<th>Case no.</th>
<th>Police station</th>
<th>Gender</th>
<th>Age</th>
<th>Nationality*</th>
<th>Crime type</th>
<th>Repeat offender</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>F</td>
<td>15</td>
<td>French/Dutch</td>
<td>Street robbery</td>
<td>Unknown</td>
</tr>
<tr>
<td>2</td>
<td>1</td>
<td>M</td>
<td>11</td>
<td>Dutch</td>
<td>Aggravated robbery</td>
<td>Unknown</td>
</tr>
<tr>
<td>3</td>
<td>1</td>
<td>F</td>
<td>15</td>
<td>Dutch</td>
<td>Street robbery</td>
<td>Unknown</td>
</tr>
<tr>
<td>4</td>
<td>1</td>
<td>M</td>
<td>16</td>
<td>Dutch</td>
<td>Physical assault</td>
<td>Unknown</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>M</td>
<td>14</td>
<td>Dutch</td>
<td>Rape</td>
<td>Unknown</td>
</tr>
<tr>
<td>6</td>
<td>1</td>
<td>M</td>
<td>11</td>
<td>Dutch</td>
<td>Molestation</td>
<td>No</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>F</td>
<td>15</td>
<td>French/Dutch</td>
<td>Street robbery</td>
<td>Yes</td>
</tr>
<tr>
<td>8</td>
<td>2</td>
<td>M</td>
<td>15</td>
<td>Dutch</td>
<td>Sexual assault</td>
<td>Unknown</td>
</tr>
<tr>
<td>9</td>
<td>2</td>
<td>M</td>
<td>14</td>
<td>Dutch</td>
<td>Attempted assault on police officer</td>
<td>Unknown</td>
</tr>
<tr>
<td>10</td>
<td>2</td>
<td>M</td>
<td>17</td>
<td>Dutch</td>
<td>Theft/robbery</td>
<td>Yes</td>
</tr>
<tr>
<td>11</td>
<td>2</td>
<td>M</td>
<td>14</td>
<td>Dutch</td>
<td>Sexual assault</td>
<td>Unknown</td>
</tr>
<tr>
<td>12</td>
<td>2</td>
<td>F</td>
<td>15</td>
<td>Dutch</td>
<td>Attempted manslaughter</td>
<td>Unknown</td>
</tr>
<tr>
<td>Total</td>
<td>2 police stations</td>
<td>4 F and 8 M</td>
<td>Between 11 and 17</td>
<td>Dutch (10) and Dutch/French (2)</td>
<td>Robbery (5), assault (2), sexual assault (2), attempted manslaughter (1), rape (1) and molestation (1)</td>
<td></td>
</tr>
</tbody>
</table>

* Nationality refers to the official nationality, not to the ethnic background.

Juvenile suspects were mostly male (8) and a minority female suspects (4) whose ages ranged from 11 to 17 years old with an average of 14.3 years. The age of
criminal liability in the Netherlands is 12 years which means the 11-year old boys in the sample can be interrogated but not convicted for the offence. The nationality of all juveniles was Dutch, among whom two had double nationality (French-Dutch). Half of the juveniles were arrested whereas the other half were invited for the interrogation as volunteers. The type of crime varied, with mostly crimes against persons (robbery, physical assault, attempted assault on a police officer, sexual offence, and murder/manslaughter). Whether or not the juvenile was a recidivist, is not consistently documented in the Netherlands. This was clear in only three cases, of which two juveniles were repeat offenders. In nine cases it was unknown.

Since neither legal assistance nor the presence of a trusted person is mandatory in the Netherlands, this was added as an additional criterion. In six cases a lawyer provided legal assistance and in four cases there was a trusted person present. In two cases the juvenile suspect was assisted by both a lawyer and a trusted person. Interrogations ranged from 17 to 153 minutes with an average duration of 72.4 minutes.

2.3.5. Poland

In Poland the vast majority of interrogations of juvenile suspects by the police are neither audio- nor video-recorded. In the vast majority of cases only a written record of the interrogation exists. Written records of interrogations are not available at police stations, because they are included in juvenile files, which are sent to the family court and thus are part of the court files. In Kraków there are four family courts dealing with family and juvenile cases of which one (randomly selected) was asked for permission to conduct the analysis of the written records. The President of the District Court consented to the research but specified the condition that the research study should not impede the work of the court’s secretariat. As a result, court files were only accessible during limited hours, once a week.

In 2013 there were 186 criminal cases (juvenile cases due to ‘punishable acts’) registered in this court. In order to select the cases for analysis it was necessary to first check how many criminal cases of juveniles in 2013 were available from the court secretariat. Some court files relating to juveniles adjudicated in 2013 were not available from the court secretariat at the time of the research (for example they were attached to files concerning the enforcement of adjudicated measures in districts of another court). It was found that there were over 80 cases available in which the family court imposed on juveniles educational or correctional measures due to punishable acts in 2013. A pilot research study of several court files indicated that in some cases there were no written records of interrogations of juveniles by the police included in the files and thus they were excluded. Given the size of the court files it was not feasible to analyse which...
court files involved written records. Therefore, it was decided to randomly select 20 court files of which 18 involved a written record of a first interrogation by the police. As a result, two additional files were randomly selected in order to analyse 20 written records in total.

Table 22. Observation sample, Poland

<table>
<thead>
<tr>
<th>No.</th>
<th>Gender</th>
<th>Age</th>
<th>Nationality*</th>
<th>Repeat offender</th>
<th>Crime type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Offence of battery</td>
</tr>
<tr>
<td>2</td>
<td>F</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Drugs offences</td>
</tr>
<tr>
<td>3</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Offences of battery</td>
</tr>
<tr>
<td>4</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Robbery</td>
</tr>
<tr>
<td>5</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>Yes</td>
<td>Theft</td>
</tr>
<tr>
<td>6</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>Yes</td>
<td>Burglary</td>
</tr>
<tr>
<td>7</td>
<td>M</td>
<td>15</td>
<td>Poland</td>
<td>No</td>
<td>Theft</td>
</tr>
<tr>
<td>8</td>
<td>F</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Counterfeit documents</td>
</tr>
<tr>
<td>9</td>
<td>F</td>
<td>14</td>
<td>Poland</td>
<td>No</td>
<td>Theft</td>
</tr>
<tr>
<td>10</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Against the security of communication</td>
</tr>
<tr>
<td>11</td>
<td>M</td>
<td>15</td>
<td>Poland</td>
<td>No</td>
<td>Punishable threat</td>
</tr>
<tr>
<td>12</td>
<td>M</td>
<td>13</td>
<td>Poland</td>
<td>No</td>
<td>Drugs offence +robbery</td>
</tr>
<tr>
<td>13</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Drugs offence</td>
</tr>
<tr>
<td>14</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Theft</td>
</tr>
<tr>
<td>15</td>
<td>M</td>
<td>15</td>
<td>Poland</td>
<td>No</td>
<td>Drugs offence</td>
</tr>
<tr>
<td>16</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Drugs offence</td>
</tr>
<tr>
<td>17</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Theft</td>
</tr>
<tr>
<td>18</td>
<td>M</td>
<td>15</td>
<td>Poland</td>
<td>No</td>
<td>Punishable threat</td>
</tr>
<tr>
<td>19</td>
<td>F</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Document theft</td>
</tr>
<tr>
<td>20</td>
<td>M</td>
<td>16</td>
<td>Poland</td>
<td>No</td>
<td>Against security of communication</td>
</tr>
</tbody>
</table>

Total: 4 F and 16 M Between 13–16 All from Poland First offender 18 and 2 recidivist Drugs offence (4), against security of com. (2), theft (5), offence of battery (2), robbery (1), counterfeit of documents (1), punishable threat (2), document theft (1), drugs offences+robbery (1)

* Nationality refers to the official nationality, not to the ethnic background.

Juvenile suspects were mostly male first offenders between 13 and 16 years old. In Poland juveniles below the age of 17 are not criminally liable but they can be interrogated in order to decide upon the best possible measure. The
interrogations were conducted at five different police stations in Kraków and
two interrogations came from two police stations located outside Kraków. The
juveniles were suspected of various types of crimes mostly drug-related and
theft.

3. INTEGRATED ANALYSIS

In the following chapters a detailed discussion of the empirical findings for
each of the five countries involved in our study will be set out. As mentioned
before, a key objective of this research project was to identify common themes
and good practices in the interrogation of juvenile suspects, in order to inform
the EU in its work on the draft Directive on procedural safeguards for children
suspected or accused in criminal proceedings and propose minimum rules
that might guide jurisdictions in implementing good practices. This draft
Directive – tabled in November 2013 – covers some of the most significant rights
of juvenile suspects and defendants during criminal proceedings ranging from
the right to be informed of procedural rights, to the right to be assisted by an
AA and a lawyer, from the right to an individual assessment and to be treated
appropriately, to the protection of privacy, from the right to liberty to the right to
be present in person at trial.

In order to contribute to the EU wide implementation of optimal standards for
effective protection of juvenile suspects during interrogation, a rich account of
the law and practice in a range of different jurisdictions is needed, to understand
the various models, strengths and pressure points in the variety of approaches
taken to pre-trial juvenile justice and interrogations of juvenile suspects in
particular. However, the development of minimum rules and safeguards requires
us to go beyond this and to engage in a comparative and thematic analysis in
order to identify common themes and trends.

The empirical findings of each country are first discussed in order to provide
a richly textured account of perceptions and practices in the context of each
jurisdiction. In chapter 8 an integrated analysis of the themes that have
emerged in both the legal and the empirical parts of the study are set out.
This thematic approach actively compares the experiences and findings of the
five jurisdictions, identifying similarities and differences in the treatment of

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safeguards for children suspected or accused in criminal proceedings (COM(2013) 822/2).
46 See chapter 1 (of this volume) and Panzavolta et al. 2015, chapter 1.
47 See for a more extensive discussion of the draft Directive: De Vocht et al. 2014 and Panzavolta
et al. 2015, p. 32–38.
juveniles, the provisions available to safeguard their interests, and the drivers and constraints on practice. These findings are linked to and framed within the general patterns deriving from the legal study set out in volume I, but they also consider financial and human resources (implications and constraints), legal and occupational cultures, and the differences between safeguards that are assured by professionals and those that rely on legal procedures.

The first step for the integrated analysis was to develop a common framework of analysis that could be used across all country studies and which would facilitate the final integrated analysis in chapter 8. The general patterns from the legal study, set out in volume I, served as a starting point. The themes and general patterns identified throughout this comparative legal analysis, complemented by topics found in the research literature, served as the basis for the empirical study, and the organisation of the analysis and writing up of each country chapter.

Once the analysis per jurisdiction was complete common themes were identified upon which the integrated analysis was to be conducted. This reflected in large part the topics pre-defined for the study, but also included additional themes that emerged both from the empirical and the legal study. Whereas the country reports were prepared by the researchers from those jurisdictions, the authors of chapter eight worked across jurisdictions, analysing the results of the empirical research – in light of the findings of the legal study – thematically. For example, the role played by the lawyer in each country, the role played by the AA, and the implications for training of key legal actors. A fundamental concern of the project team was to understand the nature of juvenile suspects’ vulnerability and the ways in which legal procedural safeguards, professional ideologies and broader legal cultures mapped (or not) onto these vulnerabilities. For example, a range of factors that functioned to undercut the juvenile person’s status as vulnerable in the eyes of the police and even lawyers and AAs were identified. The presence of these factors (for example, the gravity of the offence) had an important impact on the treatment of the juvenile and the interrogation strategy.

While conducting the integrated analysis, an overview of our findings was presented at the final project conference, held in Maastricht in January 2015. This conference enabled us to discuss key themes that were identified within and across jurisdictions, with a range of different practitioners from a variety of countries, as well as with academics. In this way, the conference provided us with an opportunity not only to disseminate the preliminary results of the research but also to discuss them with other researchers and key legal actors, including those from countries not included in our study.

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48 Panzavolta et al. 2015, chapter 7.
With a view to the contextualisation of the project’s findings, a literature review was conducted which was used as a theoretical framework to discuss the findings of the integrated general patterns. This entailed a legal and legal psychology literature survey using the browsing for evidence strategy in which all studies that address the relevant topics are collected and analysed using a basic methodology to synthesize the results of earlier studies. For each of the topics of the integrated analysis an inventory was made of relevant literature to help contextualise the findings. The literature review focused on the interrogation of juvenile suspects, but recent European studies on adult suspects were also used to make relevant comparisons and – where appropriate – comparisons were made with findings on juvenile victims and witnesses as well. More general literature from developmental psychology was also taken into account to contextualise the findings in the integrated analysis.

The integrated analysis was drafted by a selection of six researchers from different countries. The working method entailed a first draft of a certain topic developed by one of the researchers, which was discussed with the other researchers involved in the integrated analysis. Thorough discussions on the various patterns led to a draft of the integrated analysis which was reviewed by all partners involved in the project to guarantee an accurate and complete analysis of the agreed patterns. Furthermore, this approach ensured consistencies and patterns of harmonisation that would fit all countries involved and could serve as a basis for the set of minimum rules.

4. MINIMUM RULES

The integrated analysis also served as a basis for the development of a set of minimum rules (guidelines) that could be applicable EU-wide. This set of minimum rules also encompasses recommendations for good practices to put the rules into practice with a view to optimal standards for effective protection of juvenile suspects in interrogation. These recommendations for good practices can also serve as a practical tool, which can be used as a basis for training.

The set of minimum rules was discussed during the final project partners meeting, which resulted in a framework consisting of ten guidelines. For each of these rules an outline was developed during the meeting. Each recommendation is complemented with an explanatory memorandum, to clarify its exact meaning in more detail. This exploratory memorandum was also based upon the discussions and decisions taken when preparing for the legal analysis and – in a

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49 Kleemans et al. 2007, p. 494–496.
later stage – for the empirical analysis and was presented and discussed during the final conference in January 2015.

The first draft of the developed minimum rules and practical tools for good practices and training was reviewed by all partners involved in the project in order to secure completeness and accuracy as well as consensus about these rules. Moreover, these minimum rules were derived in light of the extent to which it would be feasible to implement them in the various countries and EU-wide.

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CHAPTER 3
BELGIUM: EMPIRICAL FINDINGS

Miet Vanderhallen and Marc van Oosterhout

1. INTRODUCTION

In Belgium little is known about the practice of interrogating young suspects. Recently, the implementation of the Salduz Act\(^1\) has led to an evaluation study of legal assistance in general but the practice with juveniles remained rather under exposed.\(^2\) That evaluation combined a quantitative and qualitative approach, the latter consisting of interviews with 24 juvenile suspects who were institutionalised in youth detention centres.

The aforementioned ‘Salduz’ motion also gave rise to a study on the expected changes concerning the value of the interrogation of suspects in various European countries.\(^3\) That study was funded by the Dutch Research and Documentation Centre (WODC) and – as the research underlying this volume – also involved Belgium, the Netherlands and England and Wales, the latter representing a judicial system with a large tradition in legal advice at the police station. An extended literature study was completed as were focus group interviews with police officers and lawyers. One of the research topics concerned the interrogation of juveniles.

Earlier research focusing specifically on the interrogation of young suspects in Belgium is rather limited, with the exception of a master’s thesis in 2009 in which an interrogation model for young suspects was analysed in two interrogations.\(^4\)

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\(^1\) Law of 13 August 2011 (B.S. 5 September 2011) tot wijziging van het Wetboek van Strafvordering en van de wet van 20 juli 1990 betreffende de voorlopige hechtenis, om aan elkaar die wordt verhoord en aan elkaar wiens vrijheid wordt benomen rechten te verlenen, waaronder het recht om een advocaat te raadplegen en door hem te worden bijgestaan.

\(^2\) That evaluation combined a quantitative and qualitative approach, the latter consisting of interviews with 24 juvenile suspects who were institutionalised in youth detention centers.

\(^3\) Vanderhallen et al. 2014, p. 18–19.

\(^4\) Tholen 2009, p. 7–8.
Hence, the present study aims to shed more light on what happens in practice when young suspects are being interrogated in Belgium. The first objective is to explore to what extent the practice lives up to the legislation or guidelines. Is there a gap between law in the books and law in action and if so, what does it comprise? The second objective is to look at possible examples of good practice.

These objectives were achieved via focus groups and video-recorded interrogations. Focus groups were held with police officers and lawyers. Unfortunately, the perspective of juveniles who were interrogated as suspects is lacking since a focus group with juveniles could not be arranged due to organisational reform within the institutions. Thus, the findings of the focus groups are not placed against juveniles’ experiences and thus only reflect a partial, legal actor’s perspective. The focus group with police officers was attended by eight police officers from six different police stations from federal and local police. Respondents differed with regard to the training they received on interrogation. The focus group with lawyers consisted of nine lawyers coming from different firms all within one region. All lawyers were juvenile lawyers with at least eight years of experience and had received training on ‘providing legal assistance at the police station’.

In addition to the focus groups, observations of ten video-recorded interrogations of young suspects coming from three police stations were conducted. These served as to gain a more in-depth view of interrogation practice by adding an observer’s point of view. All of the ten video-recorded interrogations were compared with the corresponding written records to see to what extent the written record reflected the practice. Juvenile suspects were between 10 and 17 years old, mostly male with Belgian nationality who were arrested. A minority of these juveniles was recidivist. Interrogations were conducted dealing with various types of (alleged) criminal offences with an average duration of 44.4 minutes.

1.1. GENERAL OUTLINE

The findings reflect insights from both the focus groups and the interrogations. The focus group with police officers revealed a wide variety of opinions and experiences whereby some respondents took a more rule-based framework as a starting point and others reflected a more crime-fighting perspective. The former looked at the possibilities within the rules in order to define or describe their tasks. For example, that the prosecutor finally decides what happens with the results of an investigation, by which they express a clear delineation of their responsibilities in the criminal procedure. The crime-fighting perspective respondents were less bound by rules and expressed frustration about not being
informed after the closure of the criminal investigation. According to the police officers other variability came from differences between practices in (larger) city forces and the more rural forces resulting from differences in crime types committed by juveniles plus other differences between juveniles who commit crimes in these two types of locations. As with the police officers, the focus group with lawyers – albeit from the same judicial region – showed variety with regard to the role of the lawyer. Whereas some lawyers stressed their role as being the guardian of legal proceedings, others upheld a more social assistance view alongside this judicial safekeeping.

The analysis of the recorded interrogations served as amplification of the findings and illustrated practices reported by practitioners. Video-recording in Belgium only happens in a minority of police stations, however, the selection of recorded interrogations from three different police stations allowed possible variation in police practice. The analysis not only found differences between regions but also within a region, which indicates that diversity can be found even in a small sample.

2. A LOOK AT THE PRACTICE

Both lawyers and police officers consider the interrogation of juveniles a challenge and both are confronted with difficulties regarding the Salduz proceedings in practice, notwithstanding that practices may differ between police stations and police officers. This variety was also revealed by the analysis of recorded interrogations.

2.1. FIRST CONTACT

The notion that the first contact between the police and a juvenile is of importance, was shared by both groups of practitioners who agree that juveniles might spontaneously talk to the police at the first contact. However, it seems that there is more divergence in perception and encountered practice between these practitioner groups when it comes to the frequency and the nature of this spontaneous conversation started by the juvenile. Lawyers mostly mentioned cases where juveniles are encouraged to confess by the police during transport to the station. Police only mentioned this spontaneous talk about facts only

\[\text{Video-recording of ordinary interrogations (i.e. no video interrogations following art. 112 ter Code of Criminal Procedure according to which the interrogation is carried out in a special equipped interrogation room and related to a monitoring room) is not mandatory in Belgium. One of the often-heard reasons (when delivering interrogation training) for this practice is a lack of finances or a lack of interest with police chiefs.}\]
happens occasionally but then juveniles are being informed that they have to wait and things will be discussed later. According to the lawyer respondents, when such conversations occur, this is only rarely mentioned in the written record.

The point of agreement, i.e. that juveniles spontaneously talk to the police at first contact, is indeed confirmed in the observed interrogations. These interrogations at least show that juveniles do provide information to the police prior to the interrogation. Unfortunately, it is not always known where this information originates from because (i) police and juvenile suspect don't mention this during the interrogation and (ii) the written record entails little information about it. Table 1 provides an overview of the frequency that earlier information is referred to by either the juvenile or the police during the interrogation.

Table 1. information gathered prior to the interrogation

<table>
<thead>
<tr>
<th>Information gathered</th>
<th>Reference by juvenile</th>
<th>Reference by interrogator</th>
</tr>
</thead>
<tbody>
<tr>
<td>From earlier interrogation</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>From other then earlier interrogation</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Unknown where information comes from</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
<td>8</td>
</tr>
</tbody>
</table>

Table 1 shows that only in a minority of cases (N=2) the interrogator did not refer to information gathered earlier and juveniles apparently refer to earlier information in all cases. When looking at the type of information police officers refer to, it is mainly information about the identity of the juvenile (name, age, et cetera) and background information (school, family, et cetera). Interrogators also often referred to the procedure, in particular the rights of the juvenile, which were explained before the interrogation. With regard to the latter, in one region interrogators and juveniles referred to the explanation of rights which reflected a local practice where police officers show the juvenile suspect around in the interrogation room and monitoring room while explaining procedures and rights to the juvenile. At the start of the interrogation, the interrogator refers to this tour when coming back to the explanation of rights again. This supports the hypothesis that juveniles are informed about their rights on multiple occasions (see infra paragraph 2.3).

In one occasion, the interrogator and the juvenile referred to a conversation prior to the interrogation in which it seemed they discussed the strategy of the juvenile:

“Interrogator: Before you said, you were going to tell me everything...
Juvenile: I don't know that anymore
Chapter 3. Belgium: Empirical Findings

Interrogator: *Come on, it is not that long ago*  
Juvenile: *Whatever...*  
Interrogator: *Well [name other suspect] and the girl, you still remember that?*  
Juvenile: *Yes, I remember*”

This suggests juveniles might talk to the police beforehand about the facts, even before the lawyer arrives. In this interrogation, the juvenile was assisted by a lawyer. It might be that information was gathered at arrest, which also seemed the case in another interrogation where the interrogator referred to specific characteristics of the victim known to the juvenile. Conversation prior to the interrogation was also suggested in another case where the interrogator referred to earlier statements by the juvenile:

“Earlier you said that [name co-suspect 1] and [name co-suspect 2] also used marihuana”.

The concern of lawyers that some police officers might elicit information from the juvenile before the actual interrogation might be confirmed by the observed interrogations but the written records do not provide sufficient information on this. Therefore, more research is needed on this topic.

In the focus group interview, police mentioned that repeat juvenile offenders start to negotiate from the start or immediately refer to their rights.

In the observed interrogations, one juvenile who was arrested for being violent and unwilling to come with the police, refers to being handcuffed at the arrest and complained that the handcuffs were too tight. In no other interrogation there was a reference to (a threat of) violence.

2.2. POLICE PROCEEDINGS

Police proceedings concern police activities after the first contact up to the interrogation. From the moment a juvenile arrives at the police station, several actions can be undertaken such as a body search, check of a cell phone et cetera. In Belgium, written records differ in the amount of information they entail with regard to the actions undertaken between the arrival at the police station and the start of the interrogation, ranging from minimal information up to a detailed account of what happens during this time. Table 2 provides an overview of actions undertaken that were represented in the written records.
Table 2. Overview of police activities between arrival and interrogation

<table>
<thead>
<tr>
<th>Police activities</th>
<th>Yes</th>
<th>No</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Body search</td>
<td>2</td>
<td>1</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Mobile phone analysis</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Check priors</td>
<td>1</td>
<td>2</td>
<td>7</td>
<td>10</td>
</tr>
<tr>
<td>Judicial identification</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Other activities</td>
<td>2</td>
<td>1</td>
<td>7</td>
<td>10</td>
</tr>
</tbody>
</table>

Table 2 shows that most written records do not provide much information on the police activities in the time interval between arrival and interrogation. However, some written records do show that judicial identification is one of the most common activities or is most commonly mentioned. Other activities involved information on the right to inform a trusted person (see infra paragraph 2.3.2) and the right to legal assistance, more in particular the procedure for contacting a lawyer (see infra paragraph 2.4.2). In one case the written record also made a statement on medical assistance after arrival at the police station. However, no further information on this was provided. Thus, written records clearly differ in the transparency of proceedings after arrival at the police station.

2.3. INFORMATION ON RIGHTS

Focus groups and interrogations showed that juvenile suspects are informed about their rights upon multiple occasions: before the interrogation as well as at the beginning of the interrogation. Unfortunately, it is not always clear which information is given when and thus, whether it is about sole repetition, i.e. whether similar rights are delivered in a similar way more than once, or not. Juveniles – who cannot waive their right to legal assistance in Belgium – are additionally informed about their rights during the confidential consultation, according to the lawyers in the focus groups. The information on rights is largely oral, but legislation prescribes all suspects (juveniles as well as adults) should receive a written version of rights as well. This letter of rights is handed to them by the police. Despite the formal obligation to hand over such a letter of rights to the juvenile, it was found that only in four cases the written records explicitly mentioned that the juvenile had received it. In one case that the letter was not handed over and in five cases it was unknown on the basis of the written record whether this happened or not. Lawyers emphasised the importance of this letter of rights and some stated they sometimes use this letter of rights to go through the rights together with the juvenile and explain

\*This being no different from adults.
the rights at the level of the juvenile. One possible problem in this respect concerns the language level since adults and juveniles receive a similar version. This confirms the earlier criticism found in the Salduz evaluation study where some juvenile suspects mentioned difficult language which is not sufficiently adjusted to the level of juveniles.\footnote{Penne et al. 2013, p. 65.}

2.3.1. Criticism on multiple occasion approach

According to one of the police officers, the multiple occasions on which juvenile suspects are informed of their rights both orally and in writing, is a guarantee that juvenile suspects are well-informed about their rights. However, the focus groups also gave rise to some comments on this so-called ‘multiple occasion approach’. Before going into the rights, the way in which the information on rights is delivered and whether the understanding of these rights is checked, will be discussed.

2.3.1.1. An ‘over-information’ effect?

A first concern about this multiple occasion approach was touched upon in both focus groups stating a potential risk of ‘over informing’ the juvenile suspect. According to the respondents, providing too much information might hamper the juvenile to register all necessary information. In one of the observed interrogations almost all information (both rights as well as other relevant information) was delivered at the beginning of the interrogation with referral to an earlier occasion of information. This concern is in line with the Salduz evaluation study in which it was found that some police officers, prosecutors and lawyers reported that suspects (both adults and juveniles) received too much information.\footnote{Penne et al. 2013, p. 117–118.} The local police stated that there is not too much information given, but recommended to avoid repetition.

Whether in practice there is sole repetition, did not become clear from the focus groups nor the interrogations. Police officers at the beginning of the interrogation often referred to earlier information given on rights before the interrogation which at least partly verifies repetition. To what extent there is (too much) repetition is difficult to determine, since police officers differ in the type of information provided at the beginning of the interrogation. The recorded interrogations show that police officers not only address information on rights at the beginning of the interrogation but other relevant information as well, irrespective of whether they are obliged to deliver this information. Table 3 provides an overview of the different types of information provided at the start.
Table 3. Overview of information provided at the start of the interrogation

<table>
<thead>
<tr>
<th>Information on:</th>
<th>Yes</th>
<th>No</th>
<th>Unknown</th>
<th>Not applicable</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason interrogation</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>–</td>
<td>10</td>
</tr>
<tr>
<td>Goal interrogation</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>–</td>
<td>10</td>
</tr>
<tr>
<td>Being a suspect</td>
<td>4</td>
<td>2</td>
<td>4</td>
<td>–</td>
<td>10</td>
</tr>
<tr>
<td>Interrogation proceedings</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>–</td>
<td>10</td>
</tr>
<tr>
<td>Video-recording</td>
<td>–</td>
<td>1</td>
<td>4</td>
<td>–</td>
<td>10</td>
</tr>
<tr>
<td>Role lawyer</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Role appropriate adult</td>
<td>–</td>
<td>–</td>
<td>1</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Role interpreter</td>
<td>–</td>
<td>1</td>
<td>–</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Interrogators</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>–</td>
<td>10</td>
</tr>
</tbody>
</table>

* Not applicable: in nine cases there was no interpreter present.

Table 7 shows the lack of transparency in almost half of the interrogations. This is because such information was not on tape or it was not mentioned on tape. Information on whether it was mentioned before was lacking. In some cases the interrogator referred to information given before the interrogation. However, it still remains unclear which information was given to the juvenile.

When looking at the information that was provided, three issues attract attention since they are most often mentioned to the juvenile. The first is the reason for the interrogation which in practice refers to the legal obligation to inform the juvenile suspect about the facts of the alleged offence. From the focus groups it was learnt that the reason for the interrogation is already known to the juvenile before the interrogation starts. This is due to (i) police officers often informing the juvenile and (ii) police officers having to provide this information when contacting a lawyer. When interrogators mention the reason for the interrogation at the start of the interrogation in the focus group, they referred to the ‘short announcement of facts’. However, interrogations revealed that most police officers at the beginning of the interrogation stick to the letter of the law and (i.e. the legal qualification) whether or not followed by an explanation. The Salduz evaluation study showed the announcement of such facts is not always understood by juvenile suspects⁹, which suggest this announcement might need explanation. Moreover, some of the legal qualifications concern serious offences such as rape or deliberate arson. Some of the interrogations which were chosen because of the seriousness of the crime turned out to be less serious than expected based upon the written record. For example, one of the cases was arson (followed by ‘undeliberate attempt to kill’ but the latter was not

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⁹ Penne et al. 2013, p. 72.
mentioned in the interrogation) which was about two boys who kindled a small fire in the basement of an apartment building. Another example was about the legal qualification of rape which refers to each type of penetration with a body part into a body crook for example including French kissing. The explanation is actually not given, so juveniles might be confused with the usual meaning of the word rape. In the case of the interrogation it was about a French kiss without permission. One might wonder whether this rule-compliant behaviour to use the legal qualification in order to be ‘safe’ can be considered a possible safeguard.

The second issue concerns the video-recording. Police officers systematically provide the information in a structured way explaining and pointing at the camera and microphone. In one region, interrogations were conducted in an interrogation room connected to a monitoring room. In these cases the police officer showed the monitoring room and explained that a colleague was following the interrogation in that room which was an example of transparency about proceedings as well as the video-recording of the interrogation.

The third issue is about the interrogation proceedings. In the recorded interrogation one police officer said:

“I will ask you some questions. More in particular about what happened with [name victim]. You can then tell me what you want to tell about this. That is your statement.”

It must be noted that not all interrogators explain what will happen during the interrogation and if so, police hardly ever mention why they will be asking questions. One interrogation immediately started by asking a question about the suspect without explaining rights or proceedings. Since the juvenile suspect did not speak the interrogator’s language (interrogation with interpreter), one could question when and how information was delivered beforehand at all.

Some other aspects were not addressed by the majority of interrogators such as the goal of the interrogation and the role of the lawyer. Also, the role of the interpreter was not explained to the juvenile.

Finally, police officers in the focus group made a distinction between first offenders and repeat offenders when talking about providing information on rights. The multiple occasion approach could be problematic with repeat offenders. Police respondents stated that repeat offenders will not listen to the information conveyed by the police. According to them repeat juvenile offenders often respond ‘they already know this’ which could reflect them being bored with these rights. In line with this, some police officers also gave an example of a repeat juvenile offender giving evidence of a good knowledge of rights when caught by the police: “You are not allowed to handcuff me”.

"I will ask you some questions. More in particular about what happened with [name victim]. You can then tell me what you want to tell about this. That is your statement.”
In a minority of interrogations, additional information on proceedings was provided at the early stage of interrogation. This, for example, concerns the procedure of arrest. In the focus group, one of the lawyers cautioned about the delivery of information on proceedings since juveniles often don’t understand. Moreover, according to this lawyer, police officers are sometimes mistaken as well:

“Police sometimes say that the juvenile can be brought before the investigative judge and I have to explain that that’s not true because it is a juvenile and then they’ll say "ah well, but that is printed in the list standardly."

In one of the recorded interrogations a similar mistake was made when the police officer used the standardised police form (pre-printed form for the written record) which was meant for adults instead of the form for juveniles. Thus, the use of standardised forms might be helpful as a memory aid but seems to stimulate reading out information (in a wrongful manner).

2.3.1.2. A lawyer to safeguard the information on rights

Although police informed the juveniles on their rights on several occasions, police officers in the focus group admitted they still rely on lawyers when it comes to providing adequate information on rights. Especially when it comes to situations in which the juvenile suspect might not sufficiently be informed by the police (i.e. because police might lapse into routine behaviour characterised by a sole and quick reading out of the rights) the lawyer can compensate for this, according to some police officers. Thus, lawyers serve as a safeguard for informing juvenile suspects. Lawyers acknowledged in the focus groups that they serve as a safeguard for the information on rights. According to the lawyers, police officers place the burden of correctly informing the juvenile on them. One lawyer stressed the importance of having a lawyer inform the juvenile as well, since the information has to be given at the level of the juvenile. In his opinion, a juvenile lawyer was better equipped to do so. Notwithstanding this viewpoint, police opinions support the idea that police officers only live up to the letter of the law, ignoring the underlying necessity that juveniles should know and understand their rights in order to make a legitimate decision. With lawyers entering the police station, police officers seem to share with them the responsibility with regard to the information on rights. When it comes to information on rights at the beginning of the interrogation, the recorded interrogations contradict partly this shared responsibility as police officers provide more often information on rights when a lawyer is present (more in particular the right to remain silent, the right to legal assistance and the rights not to incriminate oneself).10 Moreover, when a juvenile is assisted by a lawyer,

10 Note that this point must be considered with care, since it is based on a small sample.
police officers also provide more often information on the juvenile being a suspect, the proceedings during the interrogation, the video-recording and about the interrogators (function, role, et cetera). These findings support the hypothesis that the presence of a lawyer influences the interrogator’s behaviour when it comes to informing the juvenile.

2.3.1.3. Arrest a juvenile in order to effectively inform him on his rights?

The provision of information on rights on multiple occasions primarily seems to apply to arrested juveniles, according to the findings of both focus groups. The interrogations also mostly concerned arrested juveniles. One lawyer as well as one police officer from the focus group noticed there was an important distinction between juveniles who are invited and juveniles who are arrested. Those invited receive an invitation which states the facts about which they will be interrogated as well that they have the right to consult a lawyer before the interrogation. This implies juveniles should consult a lawyer using their own resources. This is in contradiction with the juvenile who is arrested who will be informed on several occasions instead of one written statement about the right to legal assistance. The lawyer as well as the police officer agreed that invited juvenile suspects (as well as adults) are less informed about their rights than are arrested juveniles. When talking about informing juvenile suspects of their rights, this distinction should thus be kept in mind. Moreover, this raises the question about the decision to either invite a juvenile or to arrest (see infra paragraph 2.4).

2.3.2. Which rights?

The focus groups provided a varied picture of the information on rights at the start of the interrogation, in the sense that different rights were put forward by different respondents in each focus group which therefore did not allow insights concerning which rights are systematically informed about. A similar picture, however, was presented by the recorded interrogations. These findings reflect there is no fixed set of rights police officers will always deliver. Nonetheless, the most common rights are the rights newly introduced by the Salduz Act: the right to remain silent, the right not to incriminate oneself, the right to legal assistance and the right to have someone informed about the arrest. Furthermore, the obliged rights introduced in the so-called Franchimont Act in 199811 are often encountered: the right to ask that all questions and answers are literally noted in the written record. In addition to these rights implemented in 1998, police also address the fact that the suspect’s statement can be used as evidence in court.

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Other rights interrogators mentioned at the beginning of the interrogation concerned the right to medical assistance, the right to choose own language and the right to use and add some documents to the police file.\footnote{This right was also implemented in 1998 but police officers are not obliged to inform the suspect about this right.}

As with the number of rights, the order in which the rights are delivered, differs among police officers in the interrogations. One police officer tried to relate different types of information and rights, as the following example shows:

“You know what you are questioned about, namely what happened yesterday when you were with your brother and being difficult, yes… I also told you that you don’t have to incriminate yourself and you have the right to be silent…”

Police officers did not always present the notification of rights in a logical order, although it seemed from the interrogations that doing so might be helpful for the juvenile.

Below, the new Salduz rights – which are most commonly delivered – will be discussed in more detail.

\subsection*{2.3.2.1. Right to legal assistance}

According to the Salduz Act juvenile suspects need to be informed about their right to legal assistance before the interrogation. When a juvenile is invited, this is mentioned on the invitation, however, not explained to the juvenile. Moreover, it is not clear whether the juvenile receives the invitation since research shows there is discussion among police and magistrates to whom the invitation should be sent: to the parents or the juvenile.\footnote{Penne et al. 2013, p. 145.}

A second piece of information (on the right to legal assistance, which is obviously most urgent before the interrogation) is sometimes provided at the start of the interrogation as found in three recorded interrogations. In one of them the interrogator did this to refer to the confidential consultation the juvenile suspect had with his lawyer and the interrogator also informed the juvenile and his lawyer about the role of the lawyer during the interrogation. In another interrogation the right to legal assistance was introduced again whereby the interrogator informed the juvenile that there was no lawyer available. Notwithstanding that juveniles cannot waive their right to legal assistance, in practice interrogations sometimes are conducted in the absence of a lawyer (see \textit{infra} paragraph 2.4.1).
In short, the information on legal assistance is controversial when it comes to the distinction between invited and arrested juvenile suspects.

2.3.2.2. Right to remain silent

In both focus groups, information on the right to remain silent was not spontaneously brought up for discussion. When mentioned as one of the rights to inform the juvenile about, the police respondents simultaneously cited the right not to incriminate oneself. The interrelationship between both rights is supported by the findings of the recorded interrogations. Although the juvenile was informed about the right to remain silent only in four recorded interrogations, it was always paired with the right not to incriminate himself. In the remaining interrogations it was unknown whether the juvenile was informed of this right because these did not start at the beginning of the interrogation or the right could have been explained prior to the interrogation. Nevertheless, the extent to which the juvenile is informed about the right to remain silent, could be improved. When police officers do explain this right, they often combine the letter of the law with an explanation in their own words:

“You have the right to remain silent. This means you don’t have to answer the question.”

In contradiction with the right to remain silent, the related right not to incriminate oneself is not always explained in own wording supporting the opinion expressed by police officers in the focus group about the complexity of this right (see infra paragraph 2.3.3).

2.3.2.3. Right to have someone informed about detention

Focus groups and recorded interrogations demonstrated variations in practice concerning the right to have someone informed about the detention, as provided for in the Salduz Act. First of all, there is no consensus on the interpretation of this right which – not surprisingly – leads to differences in practice. Whereas one police officer stated that the right only entails a notification of the right, another police officer was of the opinion “that you at least have to get the parents to come to the station”. The latter probably refers to Article 48bis of the Youth Protection Act, which states that when the person deprived of their liberty is juvenile, the parents have to be informed of the detention.

The different opinions of police officers are also reflected in how this right is represented in the written records. In two regions the written records mention whether a parent was informed and if so, who was informed and how, in contradiction with the third region in which the written record did not

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14 Youth Protection Act, 8 April 1965.
entail such information. In the two regions the procedure is well documented in the written record stating also when the parents were informed, which was in these cases before the interrogation. In the interrogation itself a minority of interrogators did not only refer to the right to inform a trusted person but also informed the juvenile whether this has happened:

"Interrogator: We informed your parents. We called them, you know that, don’t you?"

The findings from the interrogations also point in the direction of informing the parents ex officio, not as a result of the juvenile suspect’s request. This is in line with the results from the Salduz evaluation study in which most juvenile suspects confirmed that the police informed their parents. Juveniles reported they rarely asked for someone else to be informed. However, it must be noted that one of the juveniles admitted he did not really understand the word 'trusted person'.

Like in the Salduz evaluation study, police officers did not always mention the right to have someone informed. In some cases, they did mention that the parents were informed but the juvenile was not asked whether someone else should be informed. This might be a consequence of the differences in interpretation.

Hence, varying practices exist not only in relation to informing during the interrogation as such but also to the representation about this information in the written record. Possibly, the differences in police interpretation of the right affect the way in which the right is delivered.

2.3.3. How is the information on rights delivered?

In the interrogations many variations exist among police officers in how they inform juvenile suspects of their rights. Table 4 provides an overview of how juvenile suspects are informed at the beginning of the interrogation.

Table 4. How is the juvenile suspect informed of his rights?

<table>
<thead>
<tr>
<th>How</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Literally</td>
<td>1</td>
</tr>
<tr>
<td>Own wording</td>
<td>3</td>
</tr>
<tr>
<td>Literally and own wording</td>
<td>2</td>
</tr>
<tr>
<td>Unknown</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
</tr>
</tbody>
</table>

15 Penne et al. 2013, p. 67.
16 Penne et al. 2013, p. 68.
Chapter 3. Belgium: Empirical Findings

It appears that police officers differ widely in the way they inform juvenile suspects of their rights. The majority opt for using their own wording whether or not combined with the text of the law first. In almost half of the cases it is unclear how the police officer delivered the rights because it was not on tape but the police officer explicitly referred to having the juvenile suspect previously informed in three of these cases. When police officers inform juveniles of their rights literally (whether or not combined with their own words) they often start the notification with: “we/I have to inform you that” which does not really give the impression police officers see the importance of the rights for the juvenile suspect. Moreover, it suggests mere compliance from police officers to the rule. In one case, however, it is unclear whether the police officer did inform the juvenile suspect of his rights.17

Given this diversity in how juvenile suspects are informed on their rights, differences in understanding might occur as well. Hence, it is recommended to check whether juveniles understood their rights.

2.3.4. Check for understanding

Lawyers and police officers in the focus groups agreed about the often unsatisfactory level of understanding of rights by juvenile suspects. Police officers in the focus group admitted that sometimes juveniles appear blank and seem not to understand the information provided. This is, according to these police officers, understandable for example when talking about the right not to incriminate yourself. As one police officer stated:

“Sometimes even adults struggle to understand”.

Police officers acknowledge it is important to check whether juvenile suspects understood their rights. With regard to their method, focus groups and recorded interrogations point in a similar direction: police officers differ in whether and how they check whether juveniles understood their rights. When asked how they checked the juvenile’s understanding, one police officer replied:

“We just ask: ‘did you understand it all?’ With juveniles you change it a bit [reformulate] and give examples”.

Two out of five interrogators who check the understanding, do this by just asking the juvenile whether he understood. In three cases the interrogator goes beyond this approach by asking the juvenile to explain his rights or other information in

17 It concerns the case in which an interpreter was present.
his own words. Hereby the interrogator referred to the explanation he gave about the rights before or at the start of the interrogation:

"Interrogator: I told you earlier that other people can look at this video. Do you remember?
Juvenile suspect: Yes
Interrogator: Can you explain who can watch the video?"

"Interrogator: When the interrogation started, I told you what this was about, didn't I?
Juvenile suspect: Yes
Interrogator: You know what it is about, don't you? It is about..."

In short, when interrogators check the juvenile's understanding they most often just ask the juvenile whether he understood or they ask the juvenile to explain his rights.

In light of the understanding of rights, one police officer again refers to the unbalanced situation between invited and arrested suspects. Although juveniles do not often indicate that they do not understand, it is not clear whether an invited juvenile suspect reads the invitation and displayed rights thoroughly and according to this police officer this is not often checked. In the sole case within the observed sample that the juvenile suspect was invited to the police station, the right to legal advice was not explained at the beginning of the interrogation, nor was it checked whether the juvenile understood the right to legal assistance on the invitation or whether he consulted a lawyer.

2.4. LEGAL ASSISTANCE

Legal assistance at the police station has only recently been implemented in Belgium. From the 1st of January 2012 onwards, arrested juvenile suspects have the right to legal assistance both prior to the interrogation (confidential consultation) as well as during the interrogation. Police officers reported in the focus group that this has complicated the proceedings, and causes them to take longer. On the other hand they consider it a good evolution that the juvenile is given more support during the interrogation. An officer said:

"Personally, I approve of the Salduz-legislation. It's a safeguard that the interrogation is conducted properly. It does take more time. The goal of the interrogation is not to get a confession. [...] the police have a duty to uncover the truth and the goal is to give the suspect the opportunity to give his version of events... and possibly confront him with evidence".
Another officer stressed that it causes the proceedings to become more complicated and time-consuming, something she wishes to circumvent:

“When it involves a juvenile, we know that it makes the situation more problematic. We prefer waivers because that speeds up the proceedings. You can immediately start with an interrogation”.

This remark is controversial since juveniles are not allowed to waive their right to legal assistance since it is a mandatory safeguard for all juvenile suspects (below 18 years). One lawyer in the focus group indeed reported that some police officers are not aware of this mandatory right and they think juveniles can waive.

Some lawyers in the focus group claim that the police try to circumvent the presence of a lawyer at the police station by inviting juvenile suspects for the interrogation. By doing so, they deny a juvenile the right to have a lawyer present at the police station. Then, it is up to the juvenile to ask for advice from a lawyer at their own initiative which means, according to the lawyers, that first-time ‘offenders’ can be in a less safeguarded situation when invited for interrogation because they might not always consult a lawyer. Another circumvention strategy, as one lawyer reported, refers to a juvenile suspect who is first invited as a witness or as a suspect but might be arrested later after arrival at the police station. Such a situation seemed to be identified in the interrogations as one written record reported:

“Suspect is picked up at home at 9:34 and goes along voluntarily to the police station.”

“Arrest: suspect is arrested at 9:35”

“At 10:28 the prosecutor is contacted who confirms the arrest. At 10:30 the juvenile is informed about the arrest”

These excerpts suggest the juvenile was arrested when he was invited (in person) to come to the police station. At that time, the police decided to arrest the juvenile who is actually only informed about this an hour later at the police station. It is unclear whether this is a case of circumvention but the practice does not live up to the relevant legal provision.

Although police officers in the focus group refute this viewpoint, they also criticise the decision process on inviting or arresting the juvenile suspect. In addition to that police respondents disapprove of the differences in the decision strategy, often most tangible with prosecutors. One of the focus group police officers gave an example of a controversial decision:

“If we send and invite, we know they will not come. After two times, the person will be arrested. It is decided by the public prosecutions department.”
Police officers in the focus group reacted to this illustration by stating that – in comparison to adults – juveniles are less likely to respond to this invitation, in particular when they are repeat offenders. Although eight out of then juvenile suspects in the recorded interrogations were arrested, the WODC research showed that according to the interviewed police officers, juveniles are more often invited in comparison with adults. The reason for this, as the police participants admitted, was to avoid having to organise legal assistance at the police station. The latter is contradicted by police officers in the present study. Nor could the opposite reasoning from the WODC research – police officers admitted to arrest juveniles precisely to secure with them the most protection of rights- be found. Regardless of the arguments behind the decision, the Salduz evaluation study as well found differences in the decision strategy\textsuperscript{18} and provided figures which show that juveniles are less often invited (9.5 per cent) in comparison with their arrested counterparts (app. 13.5 per cent).\textsuperscript{19} Police officers in the focus group refer to variations across police stations with regard to the policy of inviting versus arresting juvenile suspects (which according to them is a similar problem with adults), which comes from differences in policy between prosecution services.

This suggests that the problem is not solved yet and the decision strategy to invite or arrest remains unclear and varies between regions or prosecutors. This results in an unequal situation regarding the information about rights and whether the juvenile’s understanding of rights is checked.

With regard to the procedure of legal assistance, written records in two regions represented information about the contact with the lawyer through the Salduz web application.\textsuperscript{20} In the same two regions the written records are quite substantive on this matter and mention time of application, time of response, type of response, name of lawyer and so on. This working method provides a good reflection of what can happen in interrogation practice.

2.4.1. Mandatory legal assistance

The most fundamental issue with regard to the right to legal assistance for juvenile suspects concerns its mandatory character. All lawyers in the focus group unanimously agreed that juveniles should not be able to waive their right to legal assistance. Notwithstanding the mandatory assistance for arrested juvenile suspects in Belgium, recorded interrogations point out that lawyers are not always present during these interrogations. Only in five out of eight cases in

\textsuperscript{18} Penne et al. 2013, p. 18–19.

\textsuperscript{19} The figures are derived from different sources (federal registration and local registration), all around 13.5 per cent. Penne et al. 2013, p. 54.

\textsuperscript{20} This is a web application used to contact an available lawyer.
which a juvenile was arrested, there was a lawyer present.\textsuperscript{21} This means that in the three remaining cases there was no lawyer consulted or present during the interrogation.\textsuperscript{22} The reason mentioned in the written record is the unavailability of lawyers. If the lawyer responsible according to the duty scheme and/or the magistrate agree to go on without a lawyer present, police officers in the focus group consider this sufficient reason to start with the interrogation. This rule-compliant behaviour from police officers seems to serve as a form of self-protection that predominates safeguard. Then again, also the decision of lawyers and magistrates should be questioned in this regard.

If a lawyer was present during the interrogation there is always a consultation and the lawyer is present during the whole interrogation.

Police respondents do acknowledge that juvenile suspects cannot waive the right to legal assistance although there was one controversial exception (see \textit{supra} paragraph 2.4). However, police officers reported they are familiar with situations in which the juvenile does not want legal assistance which is in line with what some juvenile suspects reported in the Salduz evaluation study.\textsuperscript{23} Police officers replied that in these cases juveniles are simply informed that they cannot waive the right:

“We explain that it is procedure and someone is going to come”.

“You will be assisted because I explained you cannot waive it”.

When asked why juveniles don’t want legal assistance, police respondents said that some juveniles are afraid that everybody (lawyer, parents) will know what the juvenile is suspected of. Another reason, according to the police officers in the focus group, is because juveniles fear they will have to wait long for the lawyer to arrive and they are expected back home. This refers to the so-called short term reasoning of juveniles (see \textit{infra} paragraph 3.1.1).

Absence of a lawyer might be due to various reasons. The written records of the observed interrogations support the explanation put forward in the Salduz evaluation study\textsuperscript{24} that the absence of lawyers in the interrogation room is mainly because the police are not able to find a lawyer available within the two-hour time frame. The Salduz evaluation study pointed out this is because of the

\textsuperscript{21} In one of the interrogations in which a lawyer was present, it was unknown whether a consultation had taken place.

\textsuperscript{22} In one of the interrogations in which a lawyer was present, there was no consult either; in another case it was unknown whether there was a consult prior to the interrogation in which no lawyer was present. In the third case where there was no lawyer available to come to the police station and attend the interrogation, a (telephone) consultation was carried out.

\textsuperscript{23} Penne \textit{et al.} 2013, p. 81.

\textsuperscript{24} Penne \textit{et al.} 2013, p. 213.
lack of lawyers volunteering for the duty scheme. Lawyers in the focus group mentioned that their colleagues enrolled in the duty scheme do not always show up but they did not understand why since they have a two-hour time span to get to the police station. Hence, this situation undermines the mandatory character of legal assistance for juvenile suspects. It should be mentioned though that one written record explicitly mentioned that the juvenile had a telephone consultation with a lawyer from the duty scheme since there was no lawyer available to provide legal assistance at the police station.

The mandatory character is also nuanced when talking about invited juvenile suspects. Art. 47bis par. 2, under 4e Code of Criminal Procedure (hereafter: CCP) states that in case of invited suspects a confidential consultation is presumed to have taken place. Nevertheless, police respondents spontaneously addressed a difficulty about this presumption, which – for that matter – is not considered a waiver. Police officers mentioned they have to check whether a juvenile suspect has contacted a lawyer. However, not all police officers fully believe the juvenile's response, which is illustrated by the following citation:

“Sometimes they say ‘yes, I have contacted him’, but you think they did not”

One police officer addressed the problematic situation in which a juvenile confirms they have not contacted a lawyer but says ‘it is OK’, because then they have to start over although the COL 12/2011 states that there is an exception on this presumption when a juvenile suspect explicitly asks for a confidential consultation. This seems to reveal a protection approach towards juvenile suspects rather than a sole rule-compliance approach. In the Salduz evaluation study, lawyers even suggested to go one step further and also guarantee that the juvenile suspect actually consulted a lawyer.

These findings again prompt the crucial question about mandatory legal assistance for juvenile suspects as discussed, in the Salduz evaluation study in which some police officers and magistrates suggested to limit this waiver to specific juveniles for example below 14 or 16 years and only with regard to the police interrogation. This was not the only problem that was mentioned in the Salduz evaluation study. Another problem that could be solved, according to the practitioners in that evaluation, was the fact that not enough (juvenile) lawyers register in the duty scheme to provide legal assistance at police stations. This represents a major deviation from the legal rule and one might ask the question whether it is a safe and sound practice to continue without having a
lawyer present as was reported in the Salduz evaluation study. Therefore, it is important to consider why lawyers are not present and how this might be advanced.

2.4.2. The lawyer: chosen or appointed?

Since arrested juveniles cannot decide whether or not they want a lawyer, the decision on legal assistance concerns the decision on which lawyer: a duty scheme lawyer or a chosen lawyer.

In the five cases where a lawyer was present, it was unknown whether the juvenile suspect first chose a lawyer at first instance. It is only known from the written records that in three cases a duty lawyer was present. This suggests lawyers are mostly appointed in cases with juvenile suspects. This practice contradicts the preference mentioned by the lawyers in the focus group. All lawyers were in favour of a procedure in which juveniles have their own juvenile lawyer who assists in all cases: civil, administrative and criminal. This means, the first lawyer to be appointed (for a civil or criminal case) becomes the titular of the juvenile. Lawyer respondents emphasise this should be a juvenile lawyer, i.e. someone with specialised training (accredited). By doing so, the juvenile lawyer becomes the person juveniles can rely upon in the legal field. Lawyer respondents were of the opinion that juveniles should know who their chosen lawyer is:

"We should come to a situation where a juvenile, when arrested by the police, has the reflex to call his lawyer".

This attitude was also expressed by lawyers in the Salduz evaluation study.

2.4.3. Pre-interview disclosure and lawyer’s advice

When talking about pre-interview disclosure in the focus groups, a similar picture as in the WODC research emerged. Lawyers agree about the need of pre-interview disclosure but complain about insufficient information with police showing different opinions about whether or not (and what) to disclose, though they agree about the practice of ‘lawyers who try to acquire disclosure of information’. Nevertheless, both professional groups agree that this situation is not juvenile specific but also exists for adults.

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29 Penne et al. 2013, p. 148. In the evaluation study not only cases with juveniles but also case with adults who did not waive their right to legal assistance were incorporated.
30 The juvenile’s own, permanent lawyer.
How important pre-interview disclosure is for lawyers was also shown by the present study and is illustrated by the following experience of one of the lawyers in the focus group:

“I find it unbelievably difficult to advise as a lawyer when I don’t have information. The only advice I can give, is to remain silent”.

Nevertheless, some lawyers also critically reflected upon pre-interview disclosure by which their views ranged from “understanding the police’s position in light of a search for the truth” to “a dangerous situation since the police can play bluff poker” the latter representing distrust of the police.

As with lawyers, police officers varied regarding their own disclosure behaviour and about the lawyers response. One police officer reported to providing not all information in serious cases but in bagatelle cases he might do so. Another police officer said that “lawyers advice silence anyway”. Police opinions varied particularly about the pre-interview disclosure and if police hold much evidence it is better to “guard your weapons” because it might also turn against you:

“If a lawyer is informed about the effects of, for instance, an assault, the juvenile might deny having to do something with those effects (a ruptured spleen for instance)”.

This excerpt also demonstrates some degree of distrust towards lawyers.

According to the findings of the WODC research, these different views between lawyers and police officers, in particular the mutual distrust, might be the utterance of a relationship ‘in evolution’. The WODC findings did suggest a dynamic evolution characterised with a first ‘phase of defence’. With time, this defence decreases and moves over to a re-positioning and more strategic arrangement.

2.4.4. Consultation

Since the consultation is confidential most information was gathered in the focus group with lawyers. This was complemented with information from the police focus group and the interrogations. The main topics concerned the context of the consultation (consultation room and duration of the consultation) and the content of the consultation (what is the role of the lawyer and what is discussed)? All lawyers confirmed that the consultation is always in person and agreed it should be like that and not by means of a telephone consultation. However, in one of the observed cases a telephone consultation was conducted because

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there was no lawyer available for legal assistance at the police station (see supra paragraph 2.4.1).

2.4.4.1. Context of the consultation

The ‘thinking out loud’ exercise in the lawyer focus group immediately touched upon the confidential consultations; lawyers commented on the sometimes ‘non-confidential’ character of the consultation rooms, for example because of glass separations between them (for so-called safety reasons) which cause the lawyer and juvenile to shout, resulting in people on the outside overhearing the conversation. One lawyer even said that “ear prints can be found on the walls/doors, because the police eavesdrops and want to hear everything”. Another lawyer presented some results from a survey conducted amongst juvenile lawyers in Flanders which showed that there are issues with confidentiality: (active) camera, glass walls, no separate – soundproof – rooms, et cetera.

The main issue with these consultation rooms when talking about juvenile suspects, is according to one of the lawyers that “you want to talk normal to a juvenile”. Although the quality of the consultations rooms according to some lawyers is often beyond par, they do agree that the quality is even worse at the courts.

When asked what the ideal consultation room would look like, lawyers responded:

“A table and two chairs, separate and soundproof, no separation. Glass in the door is okay (like in prison). No camera, no sound-installation, no mirror. If, in the future a video-consultation is allowed, then they should guarantee that the line is protected.”

This above mentioned distrust about confidentiality was not an issue in the focus group with police officers who firmly stated they do not have any insight into what happens during consultation. Police respondents also mention they have to warrant the lawyer’s safety in the consultation room, but this – according to some lawyers in the focus group – is a non-argument.

The context of the consultation also refers to the duration of the consultation. Lawyers in the focus group mentioned a 30 minutes consultation is insufficient to discuss all necessary topics, which was also found in the WODC study where lawyers added that the consultation is even more complicated when it is with suspects they do not know.34 The WODC study also shows that this opinion does not differ when dealing with juveniles or adults.

With regard to the actual duration of the consultation four written records mention the duration of the consultation, resulting in an average duration of

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34 Vanderhallen et al. 2014, p. 113.
16.7 minutes (a minimum of 7 minutes and a maximum of 25 minutes). This suggests consultations with juveniles are still largely within the legal limit and not fully taken advantage of. More research on this topic would be worthwhile given the small number of cases and the contradictions between perceptions of legal actors and the current observed durations.

2.4.4.2. The role of the lawyer in consultation

The role of the lawyer is subjected to two main interpretations. On the one hand, some lawyers consider it only their job to defend the juvenile suspect. On the other hand, expressed by the majority of lawyers in the focus group, the lawyer’s role goes beyond this defence since a lawyer also acts as a social worker which is also reflected in the following citation:

“Oft en we are the third, fourth or fifth unknown person in a row, sometimes in the middle of the night. Then it is important to set the juvenile at ease and build trust.”

Building trust could indeed be a challenge since interrogations show that juvenile suspects are mostly assisted by appointed lawyers which contradicts the preference of the lawyers in the focus group in favour of a titular; see supra paragraph 2.4.1.

This social worker’s role also implies the lawyer should inform the juvenile about the possible measures which can be ordered by the juvenile judge, for example the placement in an institution. One of the lawyers mentioned an additional aspect of the social worker’s role of the lawyer namely to educate the juvenile suspect:

“You’re operating on the edge of social work and also have to educate your juvenile a little.”

This educational role was taken up by other lawyers for example by stating that it is the lawyer’s task to tell the juvenile suspect they have crossed a line by committing the offence.

The difference in interpretation of the role of the lawyer was also expressed with regard to the decision on strategy, more in particular as to how to advise the juvenile suspect. Whereas the defence role was related to a more independent advice strategy (i.e. explain the options and possible consequences of the juvenile suspects’ decisions), the combined role related to a supported advice strategy (i.e. inform the juvenile suspects on the different possible strategies.

35 In three out of five cases when a lawyer is present, it is an appointed lawyer. In two cases, it is unknown whether the lawyer is chosen or appointed.
Regardless of the difference in interpretation of the role of a lawyer, some lawyers did agree that when it comes to the decision on strategy, juveniles with experience in the juvenile justice system are able to handle this decision. One of the lawyers 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”.

Thus, lawyers do differentiate when it comes to the decision on strategy whether it concerns a first offender or a repeat offender.

Finally, one lawyer mentioned it is important that the juvenile shows regret when being interrogated and this was also mentioned by some police officers during the interrogation.

2.4.4.3. What is discussed?

What is discussed during the consultation is related to the interpretation of the lawyer’s role. The discussion distinguishes two activities: providing information and gathering information.

With regard to providing information, in line with the diversity in the interpretation, there only seems to be one common theme, namely the information on rights. Lawyers reported going through the rights of the juvenile during the consultation. According to them it is important because juveniles often don’t understand. Therefore a lawyer is needed to explain the legal implications on a juvenile level:

“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. I am sure only a lawyer can do this because we had this Salduz training.”

Police respondents acknowledge that lawyers explain the juvenile suspect’s rights and that police might even rely upon that (see supra paragraph 2.3), although they normally don’t check whether the lawyer actually did this.

Lawyers in the focus group added several themes which they address during consultation. These themes are, among others, the explanation on the procedure as well as on the role of the lawyer. The latter also includes stressing that the lawyer is there for the juvenile. Some lawyers also reported that they have to inform the juvenile about possible measures and what these involve.

When it comes to gathering information from the juvenile suspects, lawyers in the focus group more or less agreed that it is important to discuss the facts.
Lawyers point at various aspects when it comes to discussing the facts. They agree that it is important that they know what they are dealing with. Lawyers did realise that juvenile suspects might lie to them but differed in their response to this. Some lawyers did not think it is really important or thought juveniles even have the right to lie to them as well. Other lawyers found the truth important to be able to help the juvenile better or mentioned that it is important to have a juvenile cooperating:

“We are ‘first judge’ in a case and we can’t help anybody that doesn’t want to cooperate”.

Possible ‘lying behaviour’ as a sign of distrust from a juvenile towards a lawyer was also discussed by the police in the focus group:

“Suspects gamble on the fact that we have nothing to confront them with. During the consultation he can say everything to his lawyer. Those stolen goods, he knows that he had them, but he will say that he had nothing to do with it. It is up to him to utilize that confidential consultation. But, it is a lawyer who is drummed up to arrive and they don’t know him, so they might not tell him everything.”

This supports the viewpoint that it is important to build trust with the juvenile, as mentioned by one of the lawyers in the focus group. Moreover, it also puts police and lawyers in line with each other since both of them often don’t know the juvenile and need to stimulate conversation.

In addition to gathering information upon what happened, lawyers in the focus group acknowledge another important task for which they need to gather information, namely the assessment of the juvenile (see infra paragraph 2.7).

2.4.5. Assistance during interrogation

Police officers in the focus group agreed that having a lawyer present during the interrogation is not only a safeguard for the juvenile but for the police as well. One police officer formulated it like this:

“I prefer to have a lawyer present. Simply as evidence. I don’t see a difference with the past. I want the lawyer there as a safeguard. Also for us, because the juvenile can change quite fast. They then claim that we pressured them or put words in their mouths. They are much more articulate then 15 years ago...”

Thus, the lawyer is there to make sure that there is someone present to ‘vouch’ for the police should the juvenile make claims about their behaviour during the interrogation. Nevertheless, police officers in the focus group also discussed another side to this matter namely the possibility that the role of the police, which is truth finding, can be obstructed by a lawyer especially when a
confession is the truth and lawyers advise to use the right to silence. In short, legal assistance is an important safeguard for the juvenile suspect (as well) and is of an added value as long as it does not interfere with the search for the truth; police work must remain feasible. Hence, police are in favour of a rather passive role. This is supported by the position of the lawyer which is regulated in the guidelines for police (COL 12/2011) stating that the lawyer should be placed nearly behind the suspect. The regulation was applied in a flexible manner by police officers in the observed interrogations with the lawyer sitting next to or close to (within two meters of) the juvenile suspect.

2.4.6. Interventions: why and how?

How legal assistance should be realised, can hold different interpretations between police and lawyers, the more so since various types of interventions can be distinguished, ranging from making a remark to the request for a half-term consultation. The latter refers to the one-off opportunity provided by the Salduz Act, the so-called 'one-off interruption for an additional confidential consultation'.

2.4.6.1. One-off additional consultation

Lawyers in the focus group interview reported two reasons for interrupting the interrogation for an additional consultation. The first is when the lawyer can distil from the police’s questions what the police already know about the case. Then it might be necessary to interrupt and consult again. The second is when the lawyer assumes the juvenile suspect is lying because it disables the lawyer to properly assist the juvenile. It appears from the focus group with police officers that police like this practice with lying juveniles because when they come back, the story is altered.

Although lawyers in the focus groups claimed that they ask for an additional consultation if necessary, there were no interruptions in the five cases of recorded interrogations where a lawyer was present. This might be due to the fact that there was no necessity in these cases or that lawyers are rather passive when being present during the interrogation.

2.4.6.2. Other interventions

Police and lawyers in the focus groups held different opinions on the interventions by the lawyer. According to one police officer:

“Lawyers already intervene. It is not because we violate rights or pressurise, but on content they try to steer the interrogation. [...] When it is not about the rights, I feel they shouldn’t intervene. They always have the opportunity to make remarks at the end.”
This shows that the lawyer safeguards the rights of a juvenile but he should not bother about the content of the interrogation and his juvenile client’s statements. This viewpoint reflects a rather passive interpretation in which the lawyer should not intervene unless the juvenile suspect’s rights are violated. Lawyers in the focus group adhered to another and more active interpretation:

“I intervene when the police asks the same question several times because they feel they have not gotten the answer they want to hear”.

Other reasons to intervene mentioned by the lawyers had to do with incorrect recording, namely when the juvenile’s story is not recorded accurately. Second, a reason to intervene is when the juvenile is pressured by for instance stating that the juvenile might not go home. Furthermore, when a person enters the room and starts confronting the juvenile, this is considered a reason to intervene.

Despite these examples, interrogations show that lawyers – when present – only intervened in one of the five cases. When intervening, the number of interventions was also rather limited with three to five interventions. The lawyer in this particular interrogation specifically provided the police with additional information which was beneficial to the juvenile by asking a question to the juvenile himself, such as:

“Lawyer: Was [name co-suspect] with you then?”

This is an example of what was reported by one of the juvenile lawyers in the WODC research who stated that a lawyer might ask an additional question which is relevant to the judge.36

A specific type of intervention that goes beyond making comments or remarks concerns advising the juvenile suspect during the interrogation, which might be considered a quite active interpretation. A hesitant response by the lawyers in the focus group when asked about giving advice during the interrogation, came from their concern about the confidentiality they have to uphold, the lack of disclosure and the fact that interrupting is not allowed according to the Salduz Act. However, the exact meaning of the law was under discussion. Lawyers in the focus group disagreed about whether a lawyer is allowed to advise a suspect to remain silent. Some lawyers thought it is not in accordance with the law. Few lawyer interventions were found in the interrogations but one showed a rather concealed ‘comment’ to a juvenile where the lawyer starts coughing and making eye-contact with the juvenile when the police confronted the juvenile suspect. This ‘concealed’ intervention might have occurred because the lawyer lives up to his belief of not being allowed to advise. Nonetheless, some lawyers reported they do advise to remain silent anyway, when necessary. For example when a

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juvenile suspect is not treated age-appropriately, one lawyer indicated that he would advise to remain silent.

2.4.7. Active versus passive role

Police and lawyers differ on the activeness of the lawyer’s role, which is in line with the findings of the WODC focus groups.\(^{37}\)

In contradiction with lawyers’ in the interrogation and police officers’ preference for this in the focus group, lawyers in the focus group all thought the role of a lawyer should become more active during the interrogation: to freely interrupt and to have more possibilities to stop the interrogation. It must be noted that the lawyer respondents received training as juvenile lawyers and the majority received a specific training on providing legal assistance at the police station which is not common practice in Belgium and might also explain the differences between the focus group and the interrogations where it was not clear whether the present lawyers were juvenile lawyers or not.

The lack of an active role in interrogations might have several explanations. First it could be based upon a ‘passive’ interpretation of their role and subsequent rule-compliant behaviour. Another explanation was put forward in the WODC study following the English experience in which lawyers in the early years after the implementation of legal assistance at the police station were also mostly passive. The turning point in England and Wales was the mandatory accreditation (and training) of lawyers which conceded the lack of skills and knowledge about rules to effectively fulfil the role of the lawyer at the police station as well as the necessary skills. In Belgium as well, this meant that lawyers were depending on the police’s interpretation of rules as was found in the focus group with lawyers in the WODC study. In the present study, the police respondents varied in their attitudes towards a more or less active role by lawyers and their interventions. Still, lawyers remain passive even when police officers mention they are allowed to intervene and make remarks, as shown in the interrogations. A third explanation could be found in the opinion expressed by a few lawyers in the focus group who reported that the interventions are not primarily meant to serve as a safeguard but the fact that a lawyer is present means the juvenile is not alone. This viewpoint relates to the lawyer’s role as both a defender as well as a social worker (see supra paragraph 2.4.3). A final explanation is reported by another lawyer in the focus group when talking about advising and assisting the juvenile in general. In his view, the lack of having the case file at the lawyer’s disposal before the start of the consultation hampers lawyers to fulfil their role.

The present findings do not support the view expressed by some juvenile suspects in the Salduz evaluation study who stated that the presence of a lawyer

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serves as a safeguard for the juvenile who can check whether a juvenile is not ill-treated and whether threats or pressure are used by the police. The lack of active interventions does question the extent to which a passive lawyer ought to be considered a safeguard for juvenile suspects. In one of the interrogations, the police officer involves the lawyer in the interrogation:

“I am listening to your nonsense for almost an hour. You lawyer here has heard that as well. Both your lawyer and I have better things to do, so just continue telling what happened afterwards”.

Thus, even when the police officer joins with the juvenile’s lawyer, the lawyer does not intervene reflecting a passive attitude.

As a result of the small number of intervening lawyers and of interventions in the recorded interrogations, the response of the police officers to the lawyer’s interventions could not be examined. The only thing that was noticed was that some lawyers (they were not all recorded by the camera) took notes, and the police allowed this. Such note-taking was considered a good practice in the focus group with lawyers.

In short, findings from the recorded interrogations contradict the active role lawyers take up during the interrogation according to lawyers and police in the focus groups. Thus, lawyers actually behave more in line with what police prefer, hereby joining the English experience in the first years after implementing legal assistance at the police station. Nevertheless, the interrogations suggest a more passive approach (see infra paragraph 2.8.2), which questions the current effectiveness of legal assistance as a safeguard.

2.5. APPROPRIATE ADULT

In contradiction with the possibility of having an appropriate adult (hereafter: AA) present during the interrogation of juvenile victims and witnesses, there are no legal rules about the presence of AAs in the interrogation of juvenile suspects in Belgium. Police and lawyers in the focus group had a major consensus about the (non-)usefulness of an AA. Both police and lawyers do not feel an added value of the AA attending the interrogation. Police officers in the focus group perceived another person such as an AA as a possible barrier to finding the truth. Especially parents are not really welcomed since, according to one of the police officers, they might put words in the juvenile’s mouth. Nevertheless, in the focus group with police officers as well as in the recorded interrogations it was found

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that police officers sometimes inform the parents before the interrogation. This might happen by telephone but also face to face at the police station. Police then explain the situation and procedures to the parents in the absence of the juvenile. In one of the interrogations, the parents were allowed to wait for the juvenile in a separate room.

Lawyers in the focus group reasoned in a similar way and stated that someone from the juvenile’s environment might hamper the juvenile’s willingness to make a statement, meaning the presence can be ‘delicate’. Moreover, some lawyers were of the opinion that they can also act as a trusted person on some occasions:

“If I know the juvenile for a while I am also a trusted person. I prefer no other person, but I want to hear afterwards who I can call for him to help him afterwards.”

Police officers do see exceptions in which it might be useful to have someone else then a lawyer step in and attend the interrogation:

“I am not in favour but I do see a difference when a juvenile is suffering for instance from autism”.

“It can facilitate communication for instance when the juvenile is mentally disabled.”

“Moderator: Do you see a role for an expert when additional problems (mental/ psychological) are established? Police officer: Yes, beforehand. To give tips.”

These examples clearly demonstrate that the presence of AAs is mainly to comfort the police, instead of safeguarding the juveniles suspect. All lawyers in the focus group disapproved of having such a person present to facilitate communication between police and/or lawyers, but are in favour of special training for police and lawyers to deal with this difficulty.

Notwithstanding this resistance towards the AA, the interrogations reveal that in one region – according to the information in the written records – police officers systematically ask juveniles whether they want to have an AA present. In none of these cases the juvenile asked for it. This practice is not prescribed by law but police officers all followed the TAM training (training on interrogating juvenile victims and suspects) in which to do so is a prerequisite before the interrogation starts. In another region there was an AA present during the interrogation. However, the AA did not serve as an expert as suggested in the focus group by police officers. Moreover, in this case, the AA turned out to be the parent of the juvenile, although this was not mentioned in the written record (the written record did not represent any information on the AA whose presence was only known because of
Thus, the written record did not reflect the actual practice since none of the interventions by the AA were taking into account by the police officers. Notwithstanding the AA sometimes intervened both verbally and non-verbally, the police officers just went on with their interrogation. It must be noted that some of the non-verbal interventions (nodding) might not be registered by the police officers since the AA was sitting in the corner of the interrogation room, behind the juvenile suspect. This is in line with the position of a lawyer as mentioned in the relevant guidelines (COL 12/2011).

2.6. INTERPRETATION

The ‘thinking out loud’ exercise in both focus groups also involved the issue of interpreters, although according to the respondents this is not a juvenile-specific issue. The quality of interpreters and the use of one interpreter for consultation and interrogation, seemed a point of attention.

According to the lawyers it is common practice in Belgium that the same interpreter is attending the consultation as well as the interrogation. All lawyers agreed this practice should be abolished. With regard to the quality of the interpreters, one lawyer considered it is the mere task of translating the interpreter should stick to; they should only translate what is being said because they translate and should not take part in the interrogation. According to this lawyer, the police require training to handle such situations with interpreters which is confirmed by the recorded interrogations. In the one case in which an interpreter was present, his role was ambiguous. On the one hand, the police officer discussed things with the interpreter in presence of the juvenile suspect which were not translated. Two examples illustrate this:

“Police officer: The lawyer is absent because of circumstances but we are not going to ask many questions. Normally there is always a lawyer present but the procedure is hopeless, to find a lawyer. Or we have to wait for hours and that we will not do.
Interpreter: I will tell her that...
Police officer: Errr, yes ... what date is it today? 25th I think?
Interpreter: Errr ...
Police officer: It will be mentioned in the written record. And it is taped, so...
Interpreter: Ah, OK”

“Police officer: I will get some water for her. Meanwhile, she can sign one of the copies”

39 This information followed from the interrogation and the interventions by the AA and was checked with the police afterwards.
40 In this case the juvenile suspect had a telephone consultation with a lawyer from the duty scheme since there was no lawyer found available to come to the police station.
Similar to the communication between the police officer and the interpreter, there also seems to be separate communication between the interpreter and the juvenile suspect. For example, when the juvenile suspect remains silent after a question, the interpreter seems to ask additional questions (or possibly reformulates the first question) but this is unclear:

"Police officer: Where does she live? Interpreter talks to juvenile who replies. Interpreter: She does not know. Interpreter talks again to juvenile suspect who replies. Interpreter: She lives in the Netherlands"

In some occasions, however, it is obvious that the interpreter autonomously asks questions to the juvenile suspect:

"Police officers is typing and does not ask a question. Interpreter talks to the juvenile suspects who replies. Interpreter: They are visiting here".

The latter happens regularly and it seems like the interpreter asks additional questions following the main question by the police officers who – in this way – receives additional information. The police officer does not address this issue with the interpreter. The same goes for the way in which the translations happens: ‘she’ (third person singular) instead of ‘I’ (literally; first person singular). The latter is taken over by the police officer as well:

"Police officer: Who are her parents?"

This supports the opinion of one lawyer in the focus group “that there should be more guarantees with interpreters about language and that they should not be (perceived as) linked to the police”. Based upon the interrogations, the role of the interpreter could be added as a point worthy of attention.

2.7. ASSESSMENT

The assessment of juveniles is considered an important topic regarding juvenile suspects as was shown by the ‘thinking loud’ exercise in the police focus group who immediately prompted the issue of assessing the juvenile:

"It is important to know who you are dealing with".

The importance is agreed upon by both of the practitioner groups, who are both required to assess the juvenile suspect according to the (legal) rules. The discussion of the concept of ‘assessment’ in the focus groups revealed it is a complex matter. When it comes to additional problems connected to
the personality of the juvenile such as learning disabilities, Attention Deficit Hyperactivity Disorder (hereafter: ADHD) and autism, the matter becomes even more difficult since police are not specialised to assess these symptoms. Moreover, what exactly needs to be assessed is under discussion.

2.7.1. What is assessed?

When asked about assessment of the juvenile suspect, various topics are mentioned in the focus groups. On the one hand the lawyers in the focus group mentioned the typical and easily visible things, such as intoxication or having had food or a blanket. Both professional groups raised medical aspects or age-related aspects (for example being below the age of 12) as well as psychological issues. One of the written records also mentioned medical assistance which was also discussed with the juvenile at the beginning of the interrogation. In particular, the police officer asked if she was OK now.

With regard to the assessment, police respondents mostly refer to getting a general picture of the juvenile (background, et cetera) in first instance. This assessment is based on the case file: the seriousness of the offence and the social context of the juvenile and what to expect from the juvenile based upon this information. In the police focus group a respondent from the behavioural science unit pointed out that, based on a circular letter, the assessment has to be based on 1) cognitive abilities, 2) intellectual abilities, 3) emotional condition at the time of interrogation and 4) psychological abilities.

In line with the assessment, police officers in the focus group also mention that "you know your repeat offenders". By this they – again – refer to repeat offenders as a special group of suspects (see infra paragraph 3.1.4).

2.7.2. How?

Focus groups demonstrated that police officers nor lawyers hold a standardised working method for the assessment of juvenile suspects. Nevertheless, some police officers felt they were able to gather this information:

"During the introductory talk, it will become clear what kind of juvenile suspect is being dealt with".

This statement shows that police officers might assess the juvenile during the interrogation. It is confirmed in the focus group by some police officers that there is not always time to make an assessment in advance. If it is possible, police reported they also contact the neighbourhood police officer or social police to access information. However, often the assessment is carried out
while communicating with the juvenile. Lawyers also reported that they assess juveniles by communicating with them.

The lack of a standardised method implies police officers and lawyers act to their best ability and individual differences occur. A common and intermittent theme with police officers and lawyers is to talk with the juveniles and compare their behaviour with the behaviour of other juveniles and adults in order to assess whether their behaviour can be qualified as common juvenile behaviour. One police officers formulated it like this:

“[…] it could be that you pick up on an intellect deficit or retardation because of the answers the juvenile suspect gives … there is not a clear model, not a scientific approach to this assessment.”

A similar example was given by one of the lawyers:

“It becomes apparent when you cannot have a normal conversation with the juvenile like with a ‘normal’ juvenile. Then he has psychological problems.”

The assessment by police and lawyers is based on questions about school, home situation, et cetera. Another approach reported in the police focus group is based on appearance and behaviour: clothes, how polite the juvenile is, level of cooperation and what they say. In both options, the received information is compared to other interrogations with juveniles and general knowledge. Police officers in the focus group do admit that the assessment also relies on a ‘gut feeling’. In the special juvenile police units, police officers hold another opinion:

“People that work with us are experts; seven years of education and a degree in humanities. […] I don’t know who could be more specialised, except for that they are also expert through their experience”.

It seems that police in general assess juveniles during the interrogation and whether they are fit to be interrogated is based upon whether or not the juvenile shows ‘typical behaviour’. A similar approach is adopted by lawyers. These findings suggest the assessment is subjective and needs standardisation as to what exactly needs to be assessed as well as how this should be done in order to provide a quality assessment.

A first step towards such a standardised assessment might be found in the assessment instrument used for juvenile victims and witnesses, which was explained by one of the police respondents from the behavioural science unit. This instrument consists of a basic questionnaire which is filled in prior to the interrogation and can be used as a starting point. The form consists of 60 questions about the juvenile (school, priors, environment, et cetera).
Police and lawyers did not mention the prevalence of difficulties such as learning disabilities or psychological problems they experienced with juvenile suspects. The written records do not contain references to difficulties or points of attention nor is any kind of assessment mentioned.

2.8. INTERROGATION

The interrogation of juvenile suspects relates to various relevant topics. A first important issue concerns the characteristics: timing and duration of the interrogation as well as the number of interrogators and the set-up of the interrogation room which may have an impact on the juvenile suspect. A second issue that might influence the juvenile’s behaviour during the interrogation is the interrogation model and techniques used by the police. This in turn is related to the third issue, the treatment of the juvenile suspect, more in particular whether priority is given to being a juvenile or being a suspect, including to what extent the interrogation language is adjusted to the juvenile. Then, of course, there is the juvenile suspect’s behaviour as such. The final issue relates to the recording of the interrogation and the extent to which the record allows an accurate image of what happened during the interrogation.

2.8.1. Characteristics

Characteristics of the interrogation refer to both the context of the interrogation as well as the interrogators. The timing of the interrogation is about how long the juvenile suspect has to wait before the interrogation starts as well as when the interrogation is carried out. It is also important to know how long the interrogation takes. Given the vulnerability and abovementioned short-term reasoning of juveniles, this might influence the juvenile suspect’s decisions and behaviour before as well as during the interrogation. The same goes for the number of interrogators and the impact on the juvenile.

2.8.1.1. Timing of interrogations

As mentioned above, police officers in the focus group reported that some juvenile suspects would like to waive their right to legal assistance because it would prolong their presence at the police station. Interrogations showed that the average time juveniles are at the police station before the interrogation starts varies. Table 5 provides an overview of duration between arrival at the police station and interrogation and whether a lawyer was present during the interrogation.

41 In two cases the written record only mentioned time of arrest and not time of arrival at the police station. In both cases a lawyer was present.
Table 5. Duration between arrival and interrogation*

<table>
<thead>
<tr>
<th>Cases</th>
<th>Duration</th>
<th>Legal assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case 1</td>
<td>3:01</td>
<td>No</td>
</tr>
<tr>
<td>Case 2</td>
<td>2:38</td>
<td>Yes</td>
</tr>
<tr>
<td>Case 3</td>
<td>3:54</td>
<td>No</td>
</tr>
<tr>
<td>Case 4</td>
<td>2:13</td>
<td>Yes</td>
</tr>
<tr>
<td>Case 5</td>
<td>2:12</td>
<td>Yes</td>
</tr>
<tr>
<td>Case 6</td>
<td>1:47</td>
<td>No</td>
</tr>
</tbody>
</table>

* Only in 6 cases written records contained information on arrival at the police station/arrest and the start of the interrogation.

Table 5 shows that duration is mostly shorter when a lawyer is present which contradicts the perception of police officers reported in the focus group that legal assistance lengthens the procedure. The average duration with legal assistance is 2 hours and 21 minutes in comparison with an average duration of 2 hours and 54 minutes without legal assistance.

When looking at the time of interrogation, interrogations confirm lawyers' remarks about nightly interrogations of juvenile suspects by the police. Table 6 provides an overview of the time of interrogations.

Table 6. Time of interrogation

<table>
<thead>
<tr>
<th>Time</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daytime (8.00–18.00)</td>
<td>7</td>
</tr>
<tr>
<td>Evening (18.00–22.00)</td>
<td>1</td>
</tr>
<tr>
<td>Night (22.00–8.00)</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
</tr>
</tbody>
</table>

The two cases in which the interrogation was conducted at night respectively started at 00:57 (two hours after arrest) and at 02:41 (approximately four hours after arrival at the police station). In the first case, the juvenile was suspected of a robbery with use of threat or violence and in the second case the juvenile was suspected of dealing drugs.

Police in the focus group balanced the pro and cons of nightly interrogations. Whether or not they should be carried out also depends on the juvenile’s age: according to one of the police officers an 11–12 year old cannot be compared to a 16–17 year old. In general police respondents claimed to hold a negative attitude towards nightly interrogations since juveniles can concentrate less. Some police officers report there is a local guideline which prohibits interrogating juvenile suspects at night. One of the police officers emphasised it is sometimes better to
carry out the interrogation immediately, albeit at night to deny the juvenile time to think.

In relation to these nightly interrogations, both police officer and lawyer respondents criticised the circumstances when a juvenile suspect is arrested late in the evening. Police officers in the focus group report that they have to put the juvenile in a cell, in particular when it concerns a severe offence. If possible, it is a passing through cell with CCTV. This, however, according to them is the decision of the public prosecutor. In this respect they display a formal approach towards their practice by referring to the responsibility of the prosecutor and the police being compliant. Nonetheless, a police officer critically reflects:

"The problem is that then you will be detained longer as a juvenile, because you are arrested close to midnight, than someone who commits the same offence at 9 in the morning."

This was the case in one of the observed interrogations where the juvenile suspect (14 years) was arrested in the evening and interrogated the day after at 13:32. It was unclear why the interrogation was not conducted in the evening or morning. Lawyers in the focus group make many objections about these practices and complain about an insufficient as well as inadequate night-care for juveniles in both civil and criminal cases.

Lawyers in the focus group did not agree with the police officers' opinions and do not see the necessity of most of these nightly interrogations:

"Once I was called in at 22:30 while the juvenile was arrested in the afternoon for facts committed two months ago. I don't think that should happen."

Several lawyers make mention of own experiences with nightly assistance and some lawyers express a certain distrust towards the police when it comes to nightly interrogations. They hold the presumption that the police might use it to circumvent legal assistance.

2.8.1.2. Duration of interrogations

Not only the time of interrogation but also the duration of the interrogation needs consideration in light of possible influence on the juvenile suspects' behaviour such as long durations that might increase pressure on the juvenile suspect leading to a confession. The interrogations had an average duration of 44.4 minutes with a minimum of 13 minutes and a maximum of 84 minutes.
2.8.1.3. Number of interrogators

According to the respondents in the lawyer focus group, interrogations of juvenile suspects are mostly conducted by two officers. If they use a similar interrogation style (and do not resort to interrogation techniques like good cop/bad cop) lawyers are fine with that. Unlike the experiences of the focus group lawyers, interrogations show that the majority of the interrogations was carried out by one interrogator. Table 7 provides an overview.

Table 7. Number of interrogators

<table>
<thead>
<tr>
<th>Number of interrogators</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>7</td>
</tr>
<tr>
<td>Two</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>10</td>
</tr>
</tbody>
</table>

In three out of ten recorded interrogations, interrogators followed the TAM training in which police are taught to interrogate alone which suggests non-TAM interrogators vary in interrogating alone or with a colleague.

Another remarkable difference among police officers, was the distinction between uniformed and non-uniformed. In only one case the interrogation was conducted by uniformed police officers, but this raises the question to what extent a uniform can influence the juvenile during the interrogation.

Whether two interrogators are perceived as accusatory and creating pressure will also depend on the interrogation model used.

2.8.2. Interrogation model

The interrogation model refers to the style interrogators use when questioning a juvenile suspect. The model also includes techniques which can be used to make a suspect cooperative, which also applies to the introduction of evidence.

2.8.2.1. Interrogation style and techniques

The interrogation models refer to a dichotomous categorisation that is widely accepted in the relevant literature between a dominant, accusatorial interrogation style and a humanitarian or information gathering interrogation style. The first style encloses a dominant, staccato questioning style in which

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42 Holmberg and Christianson 2002 p. 36.
the suspect is accused whereas the information gathering style is characterised by empathy, neutrality, and a more open style of questioning.

In line with this distinction, lawyers in the focus groups mentioned individual differences between the styles adopted by police officers:

"Police strategy differs a lot. Some will build trust, some are very distrusting, some are very frustrated because they have to wait. There’s a flavour for everyone."

The variation among police officers is confirmed in the police focus group which shows that police officers act to their own best ability. In the recorded interrogations the majority of the interrogators adopted an information gathering style. Table 8 provides an overview of the interrogation styles and related rapport building which refers to the establishment of a working relationship.

Table 8. Interrogation style, questioning style and rapport

<table>
<thead>
<tr>
<th>No.</th>
<th>Interrogation style</th>
<th>Extent rapport</th>
<th>Interrogation techniques43</th>
<th>Juvenile behaviour</th>
<th>Lawyer present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Int 1</td>
<td>Rather accusatorial</td>
<td>Very small</td>
<td>Accusing techniques</td>
<td>Rather cooperative (don’t know)</td>
<td>No</td>
</tr>
<tr>
<td>Int 2</td>
<td>Rather information gathering</td>
<td>Small</td>
<td>Active listening, empathy, persuasion</td>
<td>Rather cooperative</td>
<td>Yes</td>
</tr>
<tr>
<td>Int 3</td>
<td>Mostly information gathering</td>
<td>Large</td>
<td>Accusing techniques</td>
<td>Very cooperative</td>
<td>No</td>
</tr>
<tr>
<td>Int 4</td>
<td>Rather information gathering</td>
<td>Very small</td>
<td>Empathy, accusing techniques*</td>
<td>Very cooperative</td>
<td>No</td>
</tr>
<tr>
<td>Int 5</td>
<td>Mostly information gathering</td>
<td>Very small</td>
<td>Active listening, accusing techniques</td>
<td>Very cooperative</td>
<td>Yes</td>
</tr>
<tr>
<td>Int 6</td>
<td>Mostly information gathering</td>
<td>Small</td>
<td>Active listening, maximisation</td>
<td>Rather cooperative</td>
<td>No</td>
</tr>
<tr>
<td>Int 7</td>
<td>Mostly information gathering</td>
<td>Very large</td>
<td>Active listening</td>
<td>Very cooperative</td>
<td>Yes</td>
</tr>
<tr>
<td>Int 8 (TAM)</td>
<td>Mostly information gathering</td>
<td>Very large</td>
<td>Active listening, maximisation, persuasion</td>
<td>Rather cooperative (don’t know)</td>
<td>Yes</td>
</tr>
<tr>
<td>Int 9 (TAM)</td>
<td>Mostly information gathering</td>
<td>Very large</td>
<td>Active listening, empathy, persuasion</td>
<td>Very cooperative</td>
<td>Yes</td>
</tr>
<tr>
<td>Int 10 (TAM)</td>
<td>Mostly information gathering</td>
<td>Very large</td>
<td>Active listening, empathy, persuasion</td>
<td>Very cooperative</td>
<td>No</td>
</tr>
</tbody>
</table>

Table 8 shows that an information gathering style is most often used, which is in line with the opinions expressed by police in the focus group and the emphasis they put on having a good contact with the juvenile. However, the information gathering style does not always come together with an effort to build rapport

43 Minimisation and the good cop/bad cop technique were not found.
with the juvenile suspect. In the case where the interrogation style was rather accusatory, there was little effort for building rapport. Police officers tried to build rapport for example by personalising the interrogation and use of the name of the juvenile suspect, by starting the interrogation in a non-threatening way talking about school et cetera and by using active listening. When an information gathering style was adopted, all juveniles were given the opportunity to tell their story, with one exception in which the police officer immediately started asking leading questions.

Although most of the interrogations were characterised with an information gathering style, in some of the interrogations there was a shift towards a more accusatorial style in which the interrogator(s) used more persuasive techniques and became more accusatory in their questioning. This persuasion was seen to be the situation in one interrogation where the suspect was rather cooperative but regularly answering 'I don’t know':

“Police officer: You promised earlier that you would not lie about that. 
Juvenile: But I am not making things up
Police officer: all what you didn't see or don't know, is it because you don't want to tell it or.
Juvenile: No, I didn’t see it
Police officer: thus, it could have happened or not. Like that?”
Juvenile: yes

In other interrogations the persuasion was expressed as follows:

“Police officer: I just want to say... it doesn't make much sense to deny what others have seen, no?
“Police officer: If it didn't happen, OK. If you are afraid to say something, I also understand. Or if you suppressed something so that you don't know anymore, that can happen as well...
Juvenile: Yes, but you don’t forget something like that...
Police officer: there are people who did serious things, they push it away...
[...]
Police officer: But even when it is true and you are afraid too, you can also tell me that.”

“Juvenile: Can we tell you everything?
Police officer: Yes, and I think it is best that you tell me everything.”

44 This technique has an impact on memory distrust, a phenomenon by which the person doubts the accuracy of his own memory and subsequently is susceptible to external information: Van Bergen, Merckelback and Jelicic 2008, p 425–426.
“Police officer: *Try to come up with a reason why she would say that... Why does she think of that?*
Juvenile: *As an excuse or something like that...*
Police officer: *Supposed it happened or suppose you would remember it, would you tell me then?*
Juvenile: *That is a difficult question, also to imagine...*
Police officer: *Yes, but give it a try.*

In two of the abovementioned 'shift' cases the interrogators insinuated that there was more up to it (such insinuation can be an accusing technique, see table 8). In two interrogations the interrogator seems not to believe what the juvenile suspect says:

"So, nothing happened?" the interrogator raises arms and hands in a gesture. When asked about the phone again, he says: "You didn't know it was the boys phone? [Name co-suspect] knew it was, but you didn't? Somewhere that doesn't add up."

"It is strange, no, that the doctor saw you pupils were larger..."

These citations could be considered examples of negative feedback.

In contradiction with the statements in the focus group where police officers stressed the importance of being non suggestive and not putting pressure on the juvenile, almost all interrogators used suggestive questions:

"How is everything going at home... No problems...?"

"Police officer: Did you ever use something else?*
Juvenile: *No*
Police officer: *Hard drugs?*

"Police officer: 'The kitchen is next to the living room?*
Juvenile: *Yes*
Police officer: *And... don't you hear that then... when there is a bit of fidgeting?"

Suggestive questioning also occurred with interrogators who had undertaken the TAM training which *inter alia* focuses on avoiding suggestion. These findings suggest that TAM training does not protect against these pitfalls although some good practices such as friendly atmosphere, patience and positive feedback exist. TAM trained interrogators did use (suggestive) persuasion, which occurred in four interrogations, three of them being conducted by TAM interrogators.

45 This technique does not bring in hypothetical evidence but stimulates hypothetical thinking by the juvenile suspect.
46 See Gudjonsson 2003.
This might be due to what was reported in the police focus group. Police respondents with TAM training acknowledged the added value of the TAM model but emphasised that this classical victim/witness approach is often insufficient when dealing with juvenile suspects:

“You can combine the two. You start with TAM and when you start introducing evidence you switch to a different technique.”

This combined approach is found in the interrogations where TAM trained interrogators initially adopted a more information gathering style characterised with empathy and rapport building in comparison to the other more business-like approach but as the interrogation progressed there was a shift to a more subtle (in an empathic manner) influencing approach using suggestive questions and persuasion. This might be because the TAM training does not provide tools in how to deal with the presumption of guilt, which was found in some of the interrogations.

Despite this main difference between TAM trained police officers and non-TAM trained police officers, both groups were characterised by diversity. Police officers of both groups often encouraged the juvenile suspect to tell what happened and asked open questions. In some interrogations, it was apparent that some juveniles might encounter difficulties with open questioning, because they regularly asked for clarification or they did not really answer the question. In one case, the police officer systematically rewarded the juvenile suspect because of his effort to cooperate. On the other hand, some police officers also asked so-called less quality questions such as multiple-choice questions or multiple questions which can be more problematic for juveniles in comparison with adults.

These findings might suggest there is a need for an interrogation model for juvenile suspects which is currently lacking. The behavioural science unit of the Belgian federal police developed such a model but it was considered to entail potential risks for false confessions. Some police officers explicitly reported the need for such a model for example because of the vulnerability of juveniles such as higher suggestibility. Other police officers consider the approach to a juvenile suspect should be rather similar to adult suspects “as long as the approach is not accusatorial, i.e. not immediately confront the suspect with evidence et cetera, it can do”.

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47 With less effort to build rapport, show empathy and reflect on feelings or difficulties with the juvenile suspect. For example, when a juvenile mentions she is afraid of her stepfather, the police officers do not go into that but continues with questions about the facts.

48 Multiple questions refers to several questions in one question.

49 Tholen 2009, p. 45–49.
The confrontation with evidence and other confrontations is presented in table 9.

Table 9. Overview of confrontations

<table>
<thead>
<tr>
<th>Confrontations</th>
<th>Present</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrepancies in own statement</td>
<td>6</td>
</tr>
<tr>
<td>Witness statement</td>
<td>1</td>
</tr>
<tr>
<td>Victim statement</td>
<td>6</td>
</tr>
<tr>
<td>Co-accused statement</td>
<td>3</td>
</tr>
<tr>
<td>Forensic evidence</td>
<td>1</td>
</tr>
<tr>
<td>CCTV evidence(^{50})</td>
<td>20 (N=2)</td>
</tr>
<tr>
<td>Other documents</td>
<td>10 (N=1)</td>
</tr>
<tr>
<td>Hypothetical evidence</td>
<td>N/A</td>
</tr>
<tr>
<td>Other evidence</td>
<td>20 (N=2)</td>
</tr>
<tr>
<td>Other confrontations</td>
<td>50 (N=5)</td>
</tr>
</tbody>
</table>

Confrontations with evidence are mostly based upon the victim statement followed by evidence from a statement of a co-suspect. Next to confrontations with other material, juvenile suspects in six cases were confronted with discrepancies in their own statement. In half of the cases other confrontations occurred which often brought in the police officer’s perspective:

"Police officer: I don’t think these statements [i.e. contradicting statements of suspect and co-suspect] are correct..."

"Police officer: Two statements which contradict each other. So one is lying or twisting the facts so we have a problem..."

"Police officer [reply to an answer after several times ‘don’t know’ by the juvenile suspect]: Ah, this you do remember...?"

"Police officer: No, no, no... don’t lie..."

The way in which confrontations are conducted, also varied but most confrontations were characterised by a neutral confrontation style in which the juvenile was invited to reply and explain instead of accused. This style mainly occurred when confronting with evidence or discrepancies in the juvenile suspect’s own statement. However, confrontations become less neutral when juveniles show resistance or their response is found not to be satisfactory.

\(^{50}\) In the one case where a lawyer was present, he was allowed to look at the evidence.
Chapter 3. Belgium: Empirical Findings

In short, there is a lot of variation in how interrogations are conducted. The interrogation model and techniques used, as well as confrontations, seem to be connected to the individual interrogator. This might depend in part on the background and training of the interrogator which leads to the use of a (combined) TAM model for interrogating juvenile victims and witnesses or the normal model for suspect interrogation. The combined model is mostly characterised with higher levels of rapport, empathy and active listening but there is the pitfall of shifting towards persuasion and suggestion. In general, these differences do not entail major differences since the interrogation style is mostly information gathering with underlying differentiation in how to deal with the juvenile suspect by use of influencing techniques such as persuasion and suggestion.

These variations found in the interrogation model might be connected to the extent to which interrogators adjust to juveniles in either (i) treating them mainly as a juvenile or as a suspect and (ii) adjusting the language level.

2.8.2.2. Juvenile or suspect?

Related to the interrogation model used by the police officers, the treatment of the juvenile suspect is more or less oriented towards a juvenile or towards a suspect.

The treatment of the juvenile suspect appeared to be ‘fifty-fifty’: in half of the cases the juvenile suspect was mainly treated as a juvenile. In the other five cases the police officer approached the juvenile predominantly as a suspect. The TAM trained police officers adopted a juvenile treatment when interrogating the juvenile suspect. Some police officers (both TAM and non-TAM trained) adopted an educational approach towards the juvenile and informed the juvenile that “they must not behave like that anymore, beware of bad friends…”.

The difference in observed treatment, i.e. juvenile versus suspect, reflects the diversity noticed in the focus group with police officers for whom the mental abilities (cognitive development) are the decisive factor, since they see more and more younger juveniles up for interrogation and for more serious offences:

“For an armed robbery […] we had an 11 year old. The parents were as shocked as we were. They were not ‘original’ Belgians, but they seemed rather sophisticated people”.

This suggests that police officers also take into account the seriousness of the offence in relation to the age of the juvenile.

In contradiction with this way of treating the juvenile, lawyers in the focus group felt that priority should be given to the fact that it concerns a juvenile,
but they also took into account that sometimes the treatment is prompted by the juvenile’s behaviour:

“A problem is the juvenile that is just a little bit too cheeky because they are not treated at an age-appropriate way. They [police] throw themselves on those cases with too much ‘force’. The police tend to forget it is a juvenile”.

Even though half of the police officers treated the juvenile suspect as a suspect mainly, in eight cases the police officer installed a rather good (N=4) or very good (N=4) adjustment of the language used to the juvenile’s level. However, some had difficulty to adjust the language level to a juvenile and to avoid certain terminology: ‘briefcase, prosecutor, confiscation…’. Often these procedural issues as well as the notification of the facts (judicial qualification) could be overwhelming for a juvenile suspect.

A specific issue with regard to language level refers to the formulation of questions. According to police officers in the focus group, they try to explain some questions in children’s language which, in their view, differs between young juveniles (4 year olds) and the 16–17 year olds. Good examples from the interrogations are simple questions, use of simple wording or explaining the terminology used, as well as asking questions to check whether the juvenile understood. The opposite also occurred when police officers tried to make sure they understood the juvenile correctly. Good examples were police officers asking whether the juvenile can explain or whether he (the police officer) understood correctly.

“Police officer: Rape, do you know what it is? Can you explain?

“Police officer: He looked at you, or what do you mean?”

“Police officer: You understand my question?”

Another example of good practice was police paraphrasing what the suspect had said. However, in some cases police officers incorrectly summarised the juvenile’s answer(s) and not in all cases did the juvenile (or the lawyer) rectify this. In these cases, the language level was adjusted but police and juvenile were not on the same wavelength and there was no real conversation.

The adjustment of the language level and the formulation of questions in order to ensure the juvenile suspect understands the structure of the interrogation is an important issue. This was not systematically observed but in two of the interrogations the interrogator used a clear structure in which questions were asked in a logical order. This might be considered a good practice as well when talking about adjusting to the level of a juvenile.
Finally, in one region juvenile suspects were interrogated in a special interrogation room which is adjusted to juveniles with colourful walls, toys *et cetera*. These interrogation rooms were originally created in light of an implemented project on the interrogation of juvenile victims and witnesses but might also be used for the interrogation of juvenile suspects, which was the case in three of the recorded interrogations. The interrogations carried out in such a room are often conducted in accordance with art. 112* CCP. Which means there is no written record (because a literal transcript of the tape will be conducted afterwards) and police officers do not need to type and provide the juvenile with a statement that needs to be signed at the end of the interrogation, which is the common procedure.

Even when police treat a juvenile as a suspect, most police officers try to adjust their language to the level of the juvenile. In the WODC research lawyers reported they felt that police officers sympathised more with juvenile suspects compared to adult suspects. This and whether or not priority is given to the juvenile aspect of a juvenile suspect, might also relate to the juvenile himself, more in particular his behaviour during the interrogation.

### 2.8.3. Juvenile suspect’s behaviour

According to the lawyers in the focus group, the decision of a juvenile about the strategy they adopt during the interrogation depends on several factors. First, repeat offenders are experienced which is different from first offenders who according to the lawyer respondents need explanations. Police officers agree that repeat offenders act differently from inexperienced offenders who – according to them – use the right to remain silent less often. Second, lawyers mention that the juvenile suspect’s ethnic background might also influence their strategy. Some cultures (*e.g.* Moroccan) do not accept talking to the police and those suspects might prefer to use their right to remain silent. These strategies of juveniles are, according to these lawyers, no different from adults. Police officers in the focus group disagree and feel that juvenile suspects differ in comparison to their adult counterparts. First, they would be less cooperative. This is contradicted by the interrogations showing all juveniles being rather to very cooperative. In eight of the nine interrogations in which the juvenile suspect was invited to tell his story, juveniles gave their story in a limited (N=5) or even extensive (N=3) way. All juvenile suspects answered subsequent questions, though answers were sometimes short or limited to ‘I don’t know’. In two of the interrogations, the juvenile suspect used the latter more often. Both juveniles were not recidivists but did have another (no Belgian) ethnic backgrounds (respectively Bulgarian Roma and Moroccan). With regard to the ‘don’t know’ answer, there are different

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51 Vanderhallen *et al.* 2014, p. 113.
examples of how police officers dealt with this behaviour that seems to irritate police over the course of time:

“You have the right to say that you don’t want to answer. But then I prefer that you say it like that instead of ‘I don’t know or I can’t remember.’

“Ah, so this you do remember (ironic)”.

Second, police officers in the focus group also found that juvenile suspects more often mention accomplices (except when belonging to a gang) and they more often try to negotiate with the police compared to adults.

The interrogations did not illustrate any differences in behaviour of juvenile suspects who were or were not assisted by a lawyer. When a lawyer was present, juvenile suspects in four of the five interrogations looked one to two times for support from their lawyer, or at least gave the impression non-verbally that he was looking for support by looking at his lawyer without any obvious result. However, when the interrogation was interrupted by the police officer, i.e. to deliberate with a colleague in the monitoring room, the lawyer in two cases comforted the juvenile and asked whether he was okay. It must be noted that this was video-recorded as well (see infra paragraph 2.8.6).

2.8.4. End of the interrogation

Nine out of ten observed interrogations end in a positive (or at least neutral) atmosphere. In these interrogations the juvenile is allowed to ask questions, not only at the end of the interrogation, but also during the interrogation. Questions address things that are unclear, concern requests to call a parent, or requests for information about what will happen next. The latter occurs at the end of the interrogation and is – in all cases – answered by the police. In six of the interrogations the police officer spontaneously mentions what will happen, although not always in a very elaborate way.

In one case the interrogation did not end in a positive atmosphere since the police officer gave the impression that he was irritated and only provided short answers to the questions of the juvenile about further procedures.

2.8.5. Recording of the interrogation

Interrogations can be recorded in various ways. In Belgium, in an ordinary interrogation the law requires to have a written statement read by or to the

52 Whether or not excluding themselves.
suspect at the end of the interrogation after which they are invited to sign their statement. For a video interrogation (in accordance with Article 112ter CCP) this procedure is not applied but the interrogation will be fully transcribed afterwards, preceded by a summary. With regard to the recorded interrogations, it was possible to analyse the respective written records, both the surrounding information as well as the part of the written statement.

2.8.5.1. Statement

The written format of the statement differed largely:

Table 10. Format written record

<table>
<thead>
<tr>
<th>Format of the written record</th>
<th>Questions &amp; answers</th>
<th>Monologue including questions</th>
<th>Monologue</th>
<th>Summary (added to full transcript; Article 112ter CCP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 (N=3)</td>
<td>10 (N=1)</td>
<td>30 (N=3)</td>
<td>30 (N=3)</td>
<td></td>
</tr>
</tbody>
</table>

The most common formats are (i) the questions and answers and (ii) the monologue. Although the first format does not entail all of the questions and full answers, it provides more information in comparison with the monologue format which lacks any insight in the questions put to the juvenile suspect. Hence, the question and answer format reflects proceedings best, followed by the monologue including questions, and finally the sole monologue. Table 11 provides an overview of the extent to which the various written records format reflect the actual content of the interrogation.

Table 11. Content reflected in the written record compared to written record format

<table>
<thead>
<tr>
<th>Written record reflects content of the interrogation</th>
<th>Question &amp; answer</th>
<th>Monologue including questions</th>
<th>Monologue</th>
<th>Summary (added to full transcript; Article 112ter CCP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Well reflected</td>
<td>30 (N=3)</td>
<td>-</td>
<td>10 (N=1)</td>
<td>-</td>
</tr>
<tr>
<td>Sufficiently reflected</td>
<td>-</td>
<td>20 (N=2)</td>
<td>10 (N=1)</td>
<td>-</td>
</tr>
<tr>
<td>Insufficiently reflected</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

53 This format includes questions formulated as ‘To your question... I reply’ or ‘You asked me...’

54 It must be noted that in one of the written records the questions which might additionally have been put to the juvenile by the interpreter, were not included and therefore could also be labeled as ‘insufficiently reflected’.
Table 11 shows that the content is best reflected in the question and answer format.

Such a question and answer format obviously calls for additional effort during the interrogation since the statement has to be typed and subsequently printed at the end of the interrogation. In some of the interrogations observed, the typing interfered with the questioning and the contact with the juvenile, which is – according to the police officers in the focus group – even more important with juvenile suspects. This interference was primarily found when only one interrogator conducted the interrogation (and thus has to do the typing at the same time) which gives another dynamic to the interrogation. Moreover, it is time-consuming and in one of the interrogations, the impression was that the juvenile suspect became bored during these ‘typing breaks’.

Although the quality of the written records varied, juveniles signed the statement in all interrogations when this was presented to them at the end of the interrogation. None of the three attending lawyers signed the statement nor did they make any remarks. In one case a juvenile made a remark about the statement which was integrated in the written record. Before being invited to sign the statement, juvenile suspects were invited to read the statement in two cases. In two other cases the statement was read out loud and the juvenile suspect (and his lawyer) could listen to the statement.55 In one remaining case it was not clear what happened since the video-recording stopped. In the last remaining case the police officer avoided the opportunity to read the statement:

“This is your statement” Police officers hands the printed statement. “Please, if you sign this.” While immediately handing the copy of the statement to the juvenile: “This is yours. It is the same. OK?”
Juvenile: “Do I need to sign this all?”
Police officer (while showing where to sign): “Yes, here... and there...” (he helps the juvenile to sign all pieces of paper and the juvenile did not read the statement).

Some other police officers similarly did not put a lot of emphasis on reading or listening to the statement. Moreover, when a statement was read to the juvenile suspect, it was done in a rather monotonous way and the pace was not adjusted to allowing the suspect to listen carefully. These practices raise the question whether the obligation of presenting the statement should be maintained as it seems that juveniles don’t thoroughly read or listen to the statement, the draft of the statement interferes with the questioning and a video-record provides a more complete picture. When a video-record is only paired with a summary, information might decrease as well.

55 In one case the statement was read (translated) by the interpreter.
2.8.5.2. Other information in the written record

Written records all include standardised information, for example about the rights orally given to the juvenile suspect, the letter of rights, arrest procedure et cetera. However, not always does the standardised information reflect what happened in practice. For example information on rights was not literally provided. In some cases, it was not possible to check this, for example, because the rights were explained before the interrogation and referred to at the start of the interrogation.

Out of the ten written records (including the summaries added to the full transcripts) seven included additional information on special circumstances. Remarkably, in the three records with the summaries, some of the information provided could be considered ‘subjective’. In one record, the information concerned the behaviour of the juvenile suspect who was defined by the police officer as “a normal boy” and the non-verbal behaviour was subjectively described. In another record it is mentioned as follows:

“The juvenile suspect speaks freely but clearly has difficulties with directed questions. He avoids some questions.”

It must be noted that these records from the video interrogations provide more information but also sometimes more subjective information.

Objective information was very useful and added to a full picture. Records for example mention that there was no lawyer available, the interrogation room was shown before the start, the suspect refused to hand his mobile phone, pictures CCTV were added or that the interrogation was video-recorded. The latter is quite important since video-recording of ordinary interrogations of juvenile suspects is rare and these video-records are kept by the police. In case it would not be mentioned, the prosecution nor the judge would know about the video-record. One of the records also mentioned a complaint of the juvenile suspect “that the handcuffs were too tight”. By means of this information, the public prosecutor and judge receive a better picture about what happened.

2.8.5.3. Video-recording

The best picture of the interrogation can be derived from video-recording. Police officers and lawyers in the focus group support video-recording of interrogation with juvenile suspects because it is a safeguard and provides more comprehensive information. One police officer remarked it can also be considered a safeguard for police officers when a complaint is filed about the police officer’s behaviour. Another police respondent adds that police officers can be aware because they are being recorded. This seemed to refer to possible ‘more appropriate’ behaviour when video-recording interrogations.
A distinction should be made between the video interrogation with a full transcript (art. 112 ter CCP) and the video-recorded ordinary interrogation with the statement presented at the end of the interrogation. In the first situation there is a special interrogation room and monitoring room. These interrogation rooms provided good quality recordings. The quality of other video-recordings differed to a large extent. On some occasions the quality, particularly the audio quality, was low to such a degree that it was not possible to understand what was discussed during the interrogations. Due to this low quality some selected video-recorded interrogations in the present study had to be replaced by others of a higher quality.

Next to the quality of the video-recording, two issues are important. First it is important whether the video-recording is complete which means it has to start before or at the beginning of the interrogations, stop after the interrogation is ended and should not be interrupted. The latter did not occur, but in four of the ten interrogations it seemed the video-recording started after the interrogation had commenced and some video-recordings stopped when the statement was not signed yet (and was still being presented). Incomplete recording does not always accurately reflect what happened, which indicates it is better to start the recording before the interrogation starts or – even better – even more before the people enter the interrogation room. By doing so complaints or disputes about what happened or what was explained can be avoided although this would not solve the situations in which there is a complaint about what happened before the interrogation, like gathering information prior to the interrogation (see supra paragraph 2.1). In almost all cases where there was an interruption in the interrogation by the police officer, the reason for the interruption was explained. Main reasons were: to get the printed statements (not always mentioned) or to deliberate with a colleague in the monitoring room. The latter also happened by means of a note which was pushed under the door of the interrogation room. After he had read the note, the police officer explained but nevertheless the flow of the interrogation was affected. In the interrogations, there was one situation which alarmed the researchers. In this case a juvenile suspect needed to be interrogated a second time because new facts came up during the interrogation. According to the Salduz Act, a police officer has to start a new interrogation about these ‘new’ facts and the juvenile has the right to again consult with his lawyer. This procedure was fully complied with. The juvenile was allowed another confidential consultation which took place in the interrogation room after the police officers have left. Surprisingly, the video-recording was not stopped which allowed overhearing the consultation. The researchers informed the contact person of that region and it was said to be an error because the police officers have to start and stop the recording manually. In some other regions the recording is 24/7 and thus it might be the best option to not use
the interrogation room for the confidential consultation. Remarkably, neither the lawyer or the juvenile — who were informed about the video-recording — objected.

As for the image of the recordings: two of the interrogations only pictured the juvenile suspect whereas the other video-recordings pictured all people present in the room and provided a more complete picture.

3. **VULNERABILITIES, SAFEGUARDS AND GOOD PRACTICE**

When it comes to the protection of juvenile suspects in the interrogation, the vulnerability of juveniles needs to be identified: what makes juvenile suspects vulnerable when it comes to interrogation within a criminal investigation? After identifying these vulnerabilities, good practice can be examined as well as safeguards which address these vulnerabilities and protect juveniles in this regard. From the focus group interviews and the interrogations, the vulnerability as well as good practice and safeguards will be described. With regard to the practice and existing safeguards this will also include to what extent rules are being applied and whether this application seems sufficient.

3.1. **VULNERABILITIES**

The identification of juvenile suspects as vulnerable suspects is determined by several indicators among which age is probably the most identifiable factor.

However, juveniles, like adults, might also be affected by additional vulnerabilities in the area of psychological or medical issues. These have been emphasised during both focus groups. According to lawyers and police officers not all juveniles are vulnerable simply because they are under the age of 18, but because of their age in combination with social context *et cetera*.

3.1.1. **Vulnerabilities related to age**

Although age is considered an important indicator for vulnerability among all respondents in the focus groups, police and lawyer respondents differ regarding the various age categories of juveniles, particularly 11–12 year olds and 16–17 year olds. Lawyers and police felt the minimum threshold of liability should be 12 years of age. On the other hand, some respondents (police and lawyers) also wonder why young adults do not receive similar rights since the age of 18 is artificial.
Opinions differ when a person should be considered legally liable, which ranges from 12 to 14 years old, but in the end respondents agreed that it is the mental state that should count, not so much a number. Most experiences and examples given in the focus group with police officers, were related to the higher age category. With regard to the older juveniles, one of the police officers states: “the older the juvenile, the smaller the difference from an adult”. Likewise, suggestibility is a vulnerability that is mostly related to younger juveniles, according to a police respondent.

Sometimes juveniles can also try to overcompensate due to their age and then receive a different, undesirable treatment. One lawyer explained:

“A problem is the juvenile that is just a little bit too cheeky because they are not treated at an age-appropriate way. They (the interrogators) throw themselves on those cases with too much ‘force’. The police tend to forget that it is a juvenile”.

Thus, age is an important but not an absolute indicator for vulnerability. Vulnerability should always be looked at in terms of cognitive and emotional development.

When it comes to the appraisal of vulnerability, police officers and lawyers differed in the focus groups. Police officers from the behavioural science unit appeared to be mostly aware of the fact that juveniles might be more vulnerable due to their limited cognitive and emotional abilities. Again, the distinction between juveniles under and above the age of 12 was made since children under the age of 12 are more suggestible in comparison with their older counterparts and adults. In the interrogations, juvenile suspects demonstrated such limited abilities since they were asking for clarification. This was the case with open questions. Although some of the juveniles were able to ask such (and other) questions or correct police officers, other juveniles demonstrated compliance with, for example, an incorrect summary. Such compliance qualifies as vulnerability because in none of the cases it was explicitly noticed by the police officer. Importantly, this was not induced by the police officer’s pressure either.

The other officers in the focus group seemed to perceive the juvenile more as an adult-like suspect: being capable of committing an offence, a juvenile suspect therefore might also be capable of being interrogated. Lawyers were more aware of their client’s vulnerabilities and felt their clients are often vulnerable because of enhanced emotional reactions and/or mental abilities still under development.

Nevertheless, in the focus groups, police officers and lawyers referred to their understanding of rights and procedures when talking about the limited cognitive abilities of (some) juvenile suspects. The fact that juveniles are still cognitively developing can lead to diminished understanding. In light of the
subsequent possibility of making sound legal decisions, respondents in the focus group indirectly refer to the short-term reasoning of juvenile suspects.\(^{56}\) The example regularly mentioned in literature about waiving the right to legal assistance in order to be able to leave the police station, is also acknowledged by police officers in the focus group. However, given the fact that juveniles cannot waive their right to legal assistance in Belgium, police officers report that some juvenile suspects explicitly say they don’t want a lawyer. According to police officers in the focus group, one of the reasons might be due to this short-term reasoning behaviour since juveniles then “have to wait too long” and “are expected back home”.

A typical juvenile issue that relates to their incomplete cognitive and emotional development is puberty which was specifically addressed by one of the lawyers:

> “Puberty behaviour is displayed by a lot of juveniles. Juvenile judges don’t all have a feeling for this.”

This behaviour was also explicitly found in one of the recorded interrogations with a 14 year old juvenile suspect who showed disinterest, asking to go home, complaining about the circumstances and the treatment, fidgeting with paraphernalia from her purse et cetera. The interrogator sometimes gave the impression of being irritated or not knowing how to deal with this behaviour, which is already a challenge in normal circumstances but might make juveniles vulnerable in the interrogation or even during consultation.

3.1.2. Social context

Juveniles, in comparison to adults, are often in a situation they have little control over, unlike an adult who is often more in control over his life and less depending on (rules by) others. This is illustrated by several examples. First, because juveniles are still attending school, this is a place where they can be picked up from as one of the lawyers explained. This can cause vulnerability, because it can enhance stress because of stigmatising by peers. Regarding their parents, being interrogated by the police also enhances stress with juveniles: on the one hand they are confronted with the police, on the other hand they have to face their parents since parents are being informed when their son or daughter is arrested.

In addition, police officers stressed that they often encounter juveniles who have problematic social backgrounds and are institutionalised on a regular basis. According to these police officers, juvenile suspects rarely come from

\(^{56}\) Owen-Kostelnik, Repucci and Meyer 2006, p. 293.
harmonious family situations, which also has an impact on the interrogation and the assessment:

“Police officer: This makes it even more difficult to interrogate these juveniles because they react differently than other ‘normal’ 16 year old juveniles.”

Institutionalisation is also raised by the lawyers in the focus group as a problematic issue:

“In my view […] Name institution for juvenile delinquents is a hotbed for criminals”

This refers to the shared opinion among lawyers in the focus group that juveniles become ‘better criminals’ when being institutionalised in such a facility, which will cause the juvenile to be even more vulnerable in the sense of being more prone to becoming a repeat offender and having less perspective towards the future. Police officers share the opinion that juveniles from problematic backgrounds who are in contact with other criminal youth have a higher risk for becoming a repeat offender.

Hence, both police officers and lawyers reflect upon vulnerability in a broader context than just the interrogation or the criminal procedure.

3.1.3. Additional vulnerabilities

One police officer of the federal police behavioural science unit reported in the focus group that out of approximately 35,000 audio-visual recorded interrogations of juvenile victims and witnesses (of which about 5% are juvenile suspects) 30 per cent suffer from additional problems such as intellectual disabilities. Other police officers in the focus group add low intelligence as well as learning difficulties and mental illnesses. One of the lawyers in the focus group also stresses the high number of juveniles affected by psychological issues, such as ADHD, and autism.

3.1.4. Types of juveniles.

As mentioned above, lawyers and police officers in the focus groups differentiated when talking about juveniles. Mostly, they answered questions while thinking of a certain type of juveniles. According to lawyers and police respondents, THE juvenile does not exist, but different types of juveniles can be distinguished. These distinctions can be made on the basis of several criteria, mentioned in the focus groups such as demographic characteristics, experience and crime type. Vulnerability also depends on the type of juvenile suspect.
3.1.4.1. Demographic characteristics

Demographic characteristics that are implicitly or explicitly mentioned or referred to in the focus groups concern the age, gender and nationality of the juvenile suspect.

With regard to age and gender, it was noticed throughout the focus group with police officers that most examples or experiences were about older (15–18 year) boys. Police officers confirm that this is the vast majority of juvenile suspects they are confronted with. According to some of the police officers of larger cities, age is dropping with more younger suspects for more serious offences.

In both focus groups, respondents referred to differences in suspect behaviour in relation to the ethnic background of the juvenile. In particular, lawyers and police officers agreed that for example Moroccan boys will more often remain silent, because it is not accepted in their culture to talk to the police or confess. The interrogations showed that when juveniles are silent, more in particular stating “they don’t know” – which happened with a Bulgarian Roma and Moroccan juvenile suspect, police officers might become irritated and lose their patience which can lead to a more suspect oriented instead of a juvenile oriented approach.

With regard to nationality one lawyer in the focus group reported that police sometimes get in colleagues from a similar ethnic background to conduct the interrogation. According to this lawyer, this could be a good idea to avoid misunderstanding.

3.1.4.2. Experience

When police officers talk about juvenile suspects, they often refer to repeat offenders. This might not be that surprising since lawyers in the focus group reported that most of their clients are recidivists.

When a juvenile suspect is considered a repeat offender this could make the juvenile more vulnerable. According to police officers: “juvenile repeat offenders are better able to explain than me” which rights they have, which refers to the assumption that repeat offenders know their rights well enough. Some lawyers agree that some repeat offenders “know perfectly how the game is played and how to behave. You have to be alert on that as well”. From the recorded interrogations this wasn’t shown, but the Salduz evaluation study pointed out that juvenile suspects do not always understand their rights or misinterpret their rights.57

Assuming that repeat offenders 'already know it all' creates a pitfall and could possibly make some of them more vulnerable because of the expectations

57 Penne et al. 2013, p 63–64.
about their understanding and behaviour. Some police officers assume that repeat offenders also more often use their right to remain silent which can lead to a self-fulfilling prophecy.\(^{58}\)

On the other hand, juveniles who are first offenders can be vulnerable due to unawareness and not consulting a lawyer when invited. Although both police officers and lawyers in the focus groups acknowledge they are vulnerable, they also criticise a possible over-information effect and lack of understanding with juvenile suspects.

From the recorded interrogations it indeed became clear that juvenile first offenders when asked to explain their rights given to them earlier, experienced difficulties in formulating or remembering their rights even shortly after receiving them.

Related to the distinction of first offenders and repeat offenders, police officers also make a distinction between juvenile suspects from a rural area and from a city. In larger cities juveniles are considered to commit more criminal acts and to be more familiar with criminal proceedings. These juveniles are considered to come across as more adult-like and tough. Thus, some police officers took the viewpoint that repeat offenders are more often found in (larger) cities.

### 3.1.4.3. Crime type

With regard to crime type, police officers reported that some crime types are more related to a younger age than others, such as theft. With such a minor crime committed by a first offender, the police officer in one of the recorded interrogations took an educational role by stating to the juvenile “that he must watch out for bad friends, and that he can see he is a good guy but he must avoid these bad friends”.

One of the lawyers emphasised that juvenile suspects might be very scared even when it concerns only a minor crime. This makes them vulnerable because of their emotional state.

### 3.2. SAFEGUARDS AND GOOD PRACTICE

When it comes to safeguards to protect juvenile suspects in interrogations, several points are worthy of attention. These can be divided into two categories: practitioner characteristics and system characteristics. Practitioner characteristics relate to important aspects of the person dealing with (some aspects related to) the interrogation such as professionals (lawyers, police,
magistrates, AAs from social welfare…) as well as non-professionals (parents…).

System characteristics concern the procedures prescribed by the legal system.

Both categories of safeguards and good practice can be characterised in a hierarchical way. Some safeguards or practices can be considered a prerequisite for the realisation of others. For example, effective legal assistance and good interrogation techniques require adequate skills acquired through training. But even so, for assistance and interrogation to be effective in terms of protection, it must be reflected upon whether the interrogation of juvenile suspects requires specialisation and if so, what specialisation specifically entails should be made explicit. Before looking at practitioners, system variables in terms of procedures which can serve as a safeguard, will be examined. First, the framework of the system and accommodation are discussed, after which the procedural rights will be examined.

3.2.1. System characteristics

System characteristics refer to procedures which need to be followed in order to install good practice which protect the juvenile suspects and guarantee the effectuation of their rights. One of the police officers in the focus group put it like this:

"A procedure needs to be in place to make sure the interrogation of juveniles is done carefully".

3.2.1.1. Underlying (and final) goal: rehabilitation and protection

In Belgium juvenile proceedings finally aim at protection and rehabilitation of a juvenile. The exact meaning and scope of this aim was discussed during the focus groups with police and lawyers. Whereas some lawyers felt all professionals (police, lawyer, judge…) should be on the same side, namely the side of the juvenile, other lawyers and police officers disagree. Not all lawyers were of the opinion that they would act as ‘social workers’. The recorded interrogations show that police officers widely differ in their treatment of juvenile suspects, which might also be due to the type of the juvenile, as mentioned before.

Notwithstanding such different opinions, most police officers and lawyers agreed about the often bad family environment of the juvenile (i.e. a problematic family situation):

"Lawyer: We should never forget that the juvenile has to go home. It’s not obvious and it’s like choosing between the plague and cholera. I find it problematic that POS
juveniles are placed together. This is because there aren’t enough means. Juveniles are placed where there is room and not where it is most suited”.

Thus, in the long term there should be appropriate places for juveniles as well, in which POS juveniles (juveniles who are in a problematic family situation) and MOF juveniles (juveniles who committed an offence) should be separated, according to the lawyers in the focus groups.

3.2.1.2. Timing of interrogation

Lawyers in the focus group also criticise the shortcomings of appropriate places for juvenile delinquents during the criminal investigation which is related to the timing of the interrogation. When a juvenile suspect is arrested in the evening, a choice needs to be made between a nightly interrogation, keeping the juvenile in a police cell during the night or letting the juvenile go home. The latter is not ideal according to the police in the focus group because when you invite them, they often do not show up the next day. Although they agree these options are not ideal, they do interrogate also during the night or keep the juvenile suspect at the police station overnight, if possible in a special cell with CCTV (see supra paragraph 2.8.1). Although lawyers in the focus group disapprove of nightly interrogations and police cells, they admit that it is not always a good option to let juveniles go home (if they at all have a place to go). According to some lawyers, who also take up a social role in addition to mere legal assistance, it is also the lawyer’s task to find a place to go for the juvenile but because places are scarce, this is quite a challenge.

Thus, there is the dilemma regarding how to deal with juvenile suspects in the evening and during the night. According to lawyers in the focus group, police should only arrest a juvenile in the evening as a matter of last resort. Nightly arrests indeed puts juvenile suspects in a vulnerable position whereby they are either being interrogated overnight or have to stay in a police cell. Appropriate alternative places to keep the juvenile is also suggested as a possible measure instead of an ordinary police cell.

3.2.1.3. Facilities

When talking about facilities, this refers both to the consultation room as well as the interrogation room. With regard to the consultation room, there is an area of tension between the safety of lawyers that needs to be guaranteed at the police station (including in the consultation room) and the confidentiality

and MOF juveniles are placed for: Problematic Upbringing Situations (POS; Problematische Opvoedings situatie) and juveniles placed for Acts Defined as Crime (MOF, Misdrijf Omschreven Feit).
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of the consultation. Whereas police officers focus on the safety aspects, lawyers
give priority to the confidential character of their conversation. With regard
to the latter, lawyers in the focus group complained that the confidentiality is
often below par. A possible answer to the problems lawyers experience in the
consultation room with the glass division might be dealt with by using the
interrogation room for consultation as well. However, there is a recording system
in there and it must be noted that mistakes do occur allowing police to possibly
overhear the consultation.

It must be noted that the concerns mentioned above do not only relate to
juvenile suspects but to adult suspects as well. In most recorded interrogations,
juvenile suspects were interrogated in an ordinary, business-like interrogation
room whereas in a minority of cases, it was chosen to have the interrogation
take place in a youth specific, child-friendly interrogation room. According to
some police officers in the focus group, it should be questioned which rooms are
most suitable for the interrogation of juvenile suspects. This might also depend
on the age of the juvenile. For example, in one of the recorded interrogations in
which the interrogation took place in a youth specific interrogation room, the
interrogator explained the function of the room to the older juvenile suspect.
Despite the design of the room, the focus groups and recorded interrogations
suggest that it is necessary to always have the equipment for video-recording
available in order to obtain an accurate picture of what actually happened during
the interrogation.

3.2.1.4. Recording of the interrogation

The focus group interviews and the recorded interrogations suggest that
video-recording of the interrogation is considered a safeguard concerning
the interrogation of juvenile suspects. The video-recording cannot replace
the safeguard of legal assistance but is regarded a separate safeguard to ensure
a better picture of what happened during the interrogation. This might also
be used in case of conflicts. The video-recording should follow a standardised
procedure in terms of the camera perspective about what took place, the start and
end of the recording, as well as the storage of the video materials. Furthermore
– as mentioned in the focus group with lawyers – to avoid discussions about
what happened before as well as in the beginning of the interrogation, the video-
recording should be started before people enter the room and end after everyone
has left the room.

The video-recording is of additional value to the statement in the written
record. Nevertheless, a question/answer model shows better quality compared
to a monologue when it comes to the resemblance of what happened both
regarding proceedings as well as content. The written record should entail as
much information as possible about proceedings: the arrest, the proceedings
at the police station, legal assistance and other objective information about circumstances.

3.2.1.5. Standardised assessment

Police and lawyers in the focus groups agreed that ‘the juvenile’ does not exist but different types of juveniles can be distinguished: first versus repeat offenders, very young versus older offenders et cetera. Despite these identifiable categories, juveniles also differ when it comes to their specific vulnerability which makes each juvenile suspect unique. This requires an assessment in order to identify the vulnerability of an individual juvenile suspect. The current practice of assessment is as diverse as the juveniles who need to be assessed. The assessment by both lawyers and police officers depends on the individual approach of the respective practitioners who act to their best ability mostly making use of their gut-feeling when talking with the juvenile suspect to get an idea of whom they are dealing with. At the moment, no standardisation exists nor are there any validated instruments which can be used for this assessment. As a consequence, many variations occur about what is assessed (mental aspects, emotion, psychological issues, medical needs et cetera) and how. In Belgium, a 60-question checklist used for the assessment of juvenile victims and witnesses could serve as a basis for juvenile suspects.

3.2.1.6. Legal assistance

Legal assistance is considered one of the most important safeguards from the lawyers perspective but also the police acknowledge the importance of this right. In order for assistance to be effective, some aspects need to be analysed more in depth.

Mandatory assistance

As stated above, in Belgium, legal assistance for arrested juvenile suspects is mandatory in the sense that they cannot waive this right. In practice, the mandatory character is actually undermined by three mechanisms.

The first refers to the absence of lawyers at the police station. Particularly the duty system does not always succeed in having a lawyer present for consultation and interrogation in each juvenile suspect case. When there is no lawyer available to assist at the police station, juvenile suspects can have a telephone consultation with the responsible lawyer at the duty scheme system.

The second mechanism refers to the gap between invited and arrested juvenile suspects. Invited juvenile suspects are supposed to consult a lawyer themselves, which presumes they received and understood this right mentioned on the invitation as well as know whom to turn to. Moreover, they only receive consultation and cannot have a lawyer present during the interrogation. This
distinction creates an unequal situation which might even be considered counterproductive. Since invited juvenile suspects receive less protection, a juvenile should be arrested in order to receive the most possible protection. Hence, if you want to provide juveniles with the best protection, they should be put in the most vulnerable position by being arrested. Based upon the results from the present study (focus groups pointing at more arrests since juvenile suspects don’t show up when invited although only one juvenile in the cases of the recorded interrogations was arrested) and the results of other studies (juveniles are more often invited), it is not clear what the exact division is between invitation and arrest. At least, the degree of protection should not be a reason for arresting or inviting a juvenile suspect.

The third issue concerns the resistance of some juvenile suspects to have a lawyer present but according to the Salduz Act, they cannot waive this right. If a lawyer is providing legal assistance, it might not always be clear to the juvenile whether or not they or their parents need to pay for this assistance.

The financial regime can also be considered as one of the weaknesses of the system because of several reasons. First, duty lawyers receive a small reimbursement. According to police officers interviewed in the WODC study, this would refrain some lawyers from registering in the duty system. Thus, the financial regulation would not encourage lawyers to take part in the system of legal assistance at the police station, which is also expressed during the focus group: “we can work pro deo but not pro bono”. This mandatory right to legal assistance will be expanded in the future. Currently, it only applies to the first interrogation but it will be extended to all interrogations which will increase the shortcomings of the system even more.

Active versus passive assistance

Lawyers and police officers disagree about the extent to which the role of the lawyer in the Salduz Act should be interpreted as an active role. Nevertheless, when looking at practice, lawyers mostly display passive behaviour. This might be due to insufficient knowledge as was the case in England and Wales, which makes them comply to the police officers’ approach. This passive role might undermine effective legal assistance. The interrogations indeed showed that (1) juvenile suspects sometimes look for support from their lawyer and (2) some police techniques could be up for discussion and whether or not it should be necessary for a lawyer to intervene.

Hence, there is a lack of clarity about what the lawyer is allowed to do when assisting a juvenile suspect during the interrogation. Besides, lawyers might benefit from specific training in how to deal with police officers during the

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61 Vanderhallen et al. 2014, p. 137.
interrogation of juvenile suspects as was suggested by one of the lawyers (and is the case in England and Wales).

Lawyers and police officers agreed that legal assistance improved the rights of the juvenile suspect. Nevertheless, one of the lawyers in the focus group suggested to bring forward the consultation between lawyer and juvenile suspect. As soon as the juvenile suspect arrives at the police station and a lawyer is appointed, he should be allowed to have a short telephone consultation with the juvenile suspect since a lot may already have happened (arrest, transfer, et cetera).

Use of electronic devices
Lawyers in the focus groups remarked that they should be allowed to use electronic devices during the interrogation – which at present is not the case – in order to make notes. Making notes is considered necessary for providing effective legal assistance. The recorded interrogations showed that all lawyers (when visible on the recordings) take notes during the interrogations. In one interrogation, the lawyer was allowed to have her mobile phone with her during the interrogations: this was noticeable since she received a call during the interrogation and left the interrogation room. Thus, if carrying a mobile phone is allowed, there should be rules about how to use this device during the interrogation.

3.2.1.7. Interrogation

With regard to conducting the interrogation, two main aspects should be mentioned in light of protection: understanding of the juvenile and the interrogation model. The interrogation model, and treating the juvenile suspect in accordance with this model, determines in first instance whether or not a juvenile suspect is protected and whether or not a legal intervention is needed.

3.2.1.7.1. Understanding

Lawyers in the focus group emphasise that it is important for juvenile suspect to understand what happens during their interrogation. Because juveniles operate on a different level and their cognitive development can cause vulnerability, it is important to have safeguards. Police officers need to explain procedures and rights and provide the juvenile with all necessary information. According to the present study, this obligation to inform juveniles in order for them to understand what will happen, gives rise to four issues.

The first issue refers to a possible over-information effect. Both focus groups and recorded interrogations showed that juvenile suspects receive information
about many, sometimes different, issues (including rights) at different occasions, 
\textit{i.e.} before the interrogation and at the start of the interrogation.

The second issue concerns the shared responsibility of lawyers and police officers. Police officers cannot be discharged from their responsibility to inform the juvenile because a lawyer is present. \textit{Vice versa}, the lawyer's role still involves the explanation of rights and proceedings during the consultation with the juvenile suspect.

The third issue is about the way the information about rights should be delivered. Although a standardised file (electronically and/or on paper) or memory aid can support police officers to keep track of all the information which needs to be provided, such a checklist might also result in simply 'reading out' the information. Such a working method does not facilitate proper understanding nor does it reflect a 'lived through' notification of rights. The latter is also expressed by police officers who mention "I have to tell you that you have some rights". In order for a good understanding, it is suggested that police officers (also) explain the information in their own words, in particular in a language adjusted to the juvenile suspect's level.

The fourth issue concerns how to check whether the juvenile suspect understood the information (on rights). Whereas some police officers literally ask the question "do you understand", other police officers ask juveniles to describe their rights or what a certain right means.

This suggests the need for police officers to have a more standard procedure to increase the level of understanding of rights of juvenile suspects.

Related to the information of rights and the understanding thereof, is the letter of rights. Police officers are obliged to hand over this letter of rights but there is not much attention paid to it. This might also be due to the fact that it is not a youth specific letter but a letter used for adults as well which is found to be difficult to understand for some juvenile suspects.

The first topic that comes to mind when talking about juveniles' understanding, is their rights and other relevant information. A good understanding is indeed imperative to make accurate decisions about, for example, their strategy during the interrogation. However, the understanding of the conversation and questions during the interrogation deserves the same amount of attention. Recorded interrogations show that even when police officers attempt to facilitate the conversation for the juvenile by adjusting the language and questions, errors of misunderstanding do occur. This might be due to the question not being understood well enough by the juvenile. Whereas open questions are promoted to be used with juvenile victims and witnesses, some juvenile suspects give the impression to have difficulties understanding what is expected from them when answering these questions. Second, an error might occur if an answer is wrongfully summarised by the police officer as was observed in a few of the
The above mentioned possible errors indicate that police officers as well as lawyers need specific training to be able to properly inform the juvenile suspect, explain things, ask good questions and understand the juvenile correctly as well. This was also pointed at by one of the lawyers in the focus group interview who was of the opinion that juvenile lawyers are better placed to do so because of their training. Moreover, lawyers reported they felt police officers needed similar training as well, which also should include knowledge about juvenile proceedings as a first step for accurate delivery of information.

3.2.1.7.2. INTERROGATION MODEL

The model used in the recorded interrogations was mostly information gathering. Although most police officers attempted to adjust the interrogation to a juvenile, at the end of most interrogations, the juvenile was treated foremost as a suspect characterised by confrontations with evidence. Many confrontations were neutral and offered the juvenile suspect the possibility to answer. Nevertheless, when receiving no or limited answers or when the interrogator seemed to believe the juvenile suspect was indeed involved in the alleged offence, persuasive techniques often occurred. The most common distinction was between a more business-like approach and an empathic approach. The former being characterised by a questioning using a rather more suspect oriented approach from the beginning and the latter by more friendly and patient questioning, being more juvenile oriented.

The interrogations revealed that police officers trained in interrogating juvenile victims and witnesses were in general more proficient in dealing with juvenile suspects, which was expressed in the language used and the formulation of questions, checking for understanding summarising, active listening and so on. Challenges for these police officers mainly occurred when the confrontations with for example evidence started.

Police officers who were confronted with puberty behaviour and avoiding behaviour (‘don’t know’) after some time gave the impression to be challenged by the juvenile’s behaviour which sometimes seemed to lead to irritation. Responses ranged from a calm reply (“If it did not happen, OK”) to subtle persuasion (“It is important to tell the truth”) and to outspoken confrontations with the juvenile (“Don’t lie”).
In short, most police officers seem to put effort in dealing with juvenile suspects and try their own techniques, but interrogations are characterised by many individual differences. These differences were obvious between TAM and non-TAM trained police officers but the group of non-TAM trained police officers also varied widely. It is not yet clear why the approaches of police officers differ so much. This might be because of the lack of a specific model, but also current training could involve different approaches. The findings suggest police officers are in need of an interrogation model for juvenile suspects as well as of specific training in how to deal with juveniles. This could possibly avoid the adult approach or the juvenile approach with a shift ‘*en cour de route*’.

3.2.2. Practitioners variables

Lawyers and police officers acknowledged the importance of training and also discussed whether the assistance and interrogation of juveniles should be a specialist matter or not.

3.2.2.1. Specialisation

Focus groups show major agreement about the fact that it takes specialised personnel to both interrogate and assist a juvenile.

3.2.2.1.1. Police officers

Due to capacity issues, in many police stations the interrogation of a juvenile suspect is generally conducted by whoever is available. This is, according to police officers, unfortunate, since the interrogation of juveniles cannot be conducted the right way by everyone. The interrogation should be carried out by people who have a feeling for it, are motivated and have relevant experience as well. Thus, selection of adequate police officers is a first issue. Second, they need to build experience thus it should be done by a steady pool of interrogators. Besides, police respondents consider a specialised juvenile unit a good approach. However, experiences from specialised units are by some police officers considered harsher meaning that juvenile suspects are mostly considered suspects when the focus of the unit is on criminal investigation instead of welfare.

Nevertheless, all police officers and lawyers in the focus groups agreed that training is a fundamental requirement for quality interrogations of juvenile suspects. Most police officers agree that specialisation is required.

When it comes to specialisation, many questions arise. Should this specialisation imply these police officers only interrogate juvenile suspects or should there be room for the interrogation of adult suspects and/or juvenile victims and
witnesses? In this regard, police officers agreed that specialisation should not go as far as solely interrogating juveniles, because they can get ‘isolated’ if the focus is solely on juveniles. Police officers who currently interrogate juvenile victims and witnesses confirm that for them it is important to also interrogate adults and suspects because of the different viewpoints. The only restriction involved, according to them, is that a police officer should not interrogate juvenile suspects and victims in the same case.

3.2.2.1.2. Lawyers

Lawyers in the focus group are specialist juvenile lawyers meaning that it is mandatory to follow a special training. In their region, becoming a juvenile lawyer is a choice and the lawyers felt that it is a calling to be one. They feel only specialist lawyers should assist juveniles.

According to the lawyers in the focus group, being a juvenile lawyer should mean, that juveniles are assisted by the same lawyer for all cases (civil and criminal) throughout their childhood years. In this way, legal assistance has the highest potential of a safeguard. This working method allows going beyond legal assistance and ascends to the level of trust and a special bond which enables better assistance. Not only because the lawyer is able to build a working relationship with the juvenile, but the lawyers also knows the context and people in their social surroundings. Thus, each juvenile from the first contact with the justice system, should have their own lawyer appointed, which is already strived for in the region where the lawyers respondents come from. This was also suggested in the Salduz evaluation study. In order for the police to contact the juvenile’s appointed lawyer, they can contact the Legal Aid Board who are aware of who this lawyer is.

When you are the appointed lawyer, throughout the juvenile’s childhood, the lawyers in the focus group felt they have a responsibility to assist the juvenile and go to the station to provide this assistance. According to the lawyers in the focus group, it should become a requirement to go to the police station when a lawyer has chosen to be enrolled in the duty scheme. This would also solve the problematic situation of interrogations being conducted when no lawyer was available.

3.2.2.2. Training

From the focus groups, both police officers and lawyers need training in the interrogation and assisting of juvenile suspects. Lawyers refer to good practices by special trained police officers (TAM) such as a respectful treatment and showing empathy to the juveniles. Lawyers also emphasise that such training should not only incorporate skills training but the transfer of knowledge on legal procedures.
Police officers add that this training should focus on the interrogation of juvenile suspects since this requires additional skills and points of attention.

Lawyers in the focus group come from a region in which all juvenile lawyers received special training (theory and skills) and most of them were also involved in a training on providing legal assistance at the police station. Lawyers were very positive about such training because this enabled them to talk on a juvenile’s level as well.

In the future, lawyers in the focus groups felt that joint training with the police could have advantages, for example to know each other’s work better. This might be a good idea since lawyers also mention that their training is mostly about how to deal with juveniles instead of assisting juveniles during the interrogation and, subsequently, how to deal with police officers.

4. CONCLUSION

The main conclusions of the present Belgian study concern the juvenile’s vulnerability, the practices and possible improvements. Conclusions are indicative and provide points of thought since focus groups only provide the professional’s perspective and not the juvenile’s experience. Besides, the interrogations come from a small sample.

4.1. JUVENILE’S VULNERABILITY

The juvenile suspect’s vulnerabilities are similar to those of juvenile victims such as those related to cognitive and emotional abilities, additional psychological problems or medical issues. Besides – from the viewpoint of mostly police officers – juvenile suspects seem to suffer from their own behaviour. The biggest threat for youth is the act they might have committed: if they are capable of stealing, they are capable of being interrogated. Besides, their behaviour during the interrogation is a second possible pitfall and vulnerability. The more their behaviour resembles an adult suspect’s behaviour, the more they might be considered primarily a suspect.

4.2. GOOD PRACTICES BUT NEED FOR IMPROVEMENT

The present empirical study shows that both lawyers as well as police officers put effort into the assistance and interrogation of juvenile suspects. They also consider it a specialist matter. Examples of good practices can be found with the
police in the explanation of proceedings with the use of examples, the respectful treatment, the use of simple questions, request for clarification, representation of proceedings in written records, video-recording and so on. From a lawyer's perspective, explanation of proceedings and consequences of strategies are among the good practices as well as suggestions to have a particular juvenile lawyer appointed to a juvenile.

Nevertheless, current practice also shows restrictions. Whereas police officers lack a specific model and training for interrogating juvenile suspects, including appropriate techniques, lawyers mostly remain passive during the interrogation and consultations are clearly within the admitted 30 minutes time frame.

The interrogation of juvenile suspects is mostly characterised by diversity: individual differences are found in many aspects of the interrogation such as the notification of rights, the treatment of the juvenile suspect and the confrontation with evidence or discrepancies. Nevertheless, some pitfalls are rather common: such as suggestive questioning, difficult language and persuasion. Besides, police officers show difficulties in handling juvenile suspects behaviour, such as resistance or pubescent behaviour. Practice thus shows that the need for a specific interrogation model as mentioned by most police officers in the focus groups, is necessary to effectively safeguard juveniles when interrogated by the police.

The protection of juveniles during interrogation is also safeguarded by the presence of a lawyer. Although legal assistance for juveniles is mandatory in Belgium, there often is a lack of assistance and interrogations are conducted without a lawyer present. In case lawyers are present, there role is to assist but, according to some lawyers, also to comfort the juvenile suspect and take up a more social role. In the interrogation, the role of the lawyer is rather passive characterised by few interventions and mostly consisting of listening and taking notes.

4.3. IMPROVEMENT BY RULES

These areas for improvement might be related to four issues concerning the rules.

First, the existence of rules (law in the books) does not guarantee a safeguard will be put in practice. In Belgium, the best example in this respect is mandatory legal assistance. When no lawyer is available, the interrogation is conducted without a lawyer being present.

Second, there seems to be a tendency of rule compliance with police officers. This has for example been seen when it comes to the notification of rights. Not only do police officers read out these rights, they also literally mention they have to inform the juvenile suspect about this. Another example can be found in mandatory legal assistance. When juveniles do not want a lawyer, they are told they cannot refuse simply because it is the law. However, when there is no
lawyer available and the duty system or magistrate agrees, the interrogation is conducted without a lawyer present despite the importance of assistance as mentioned in the focus group by the majority of police officers.

The second mechanism refers the situation in which rules leave room for interpretation. Police officers nor lawyers seem to have enough grip and tools to deal with these situations. Especially police officers admit that they need adequate training et cetera. The vagueness also allows for both practitioner groups to choose their own interpretation. This is noticeable with regard to the role of the lawyer where police officers consider the role far more passive in comparison with lawyers themselves. Although lawyers emphasise their role should be more active, they remain passive during the interrogation following a rule which proved to have many interpretations.63 Lawyers in the focus group suggest there should also be better adjustment between the guidelines of the prosecution service and the legal aid organisation in order to avoid different interpretations.

The fourth mechanism is about the situation in which there are no rules, for example with regard to video-recording or the AA. Only in a minority of police stations, enough priority is given to install the equipment which allows video-recording of suspect interrogations. But individual stations show to be motivated and put effort in making video-recording possible. Since there is no legislation on AAs for juvenile suspects, parents or social workers are rarely allowed to attend the interrogation. Nevertheless, police officers seek for a solution for example by providing a waiting room or allowing a parent to be present although without the permission to intervene. These experiences might suggest a small possible shift from sole rule-compliance to living up to the rationale behind the rule and safeguard the juvenile suspect when interrogated.

Summing up, rules must be clearly defined first. Second, police officers as well as lawyers must be given sufficient tools in order to turn these rules into effective safeguards. This probably also requires adequate selection as well as specific training.

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CHAPTER 4

ENGLAND AND WALES: EMPIRICAL FINDINGS

Vicky Kemp and Jacqueline Hodgson

1. INTRODUCTION

This chapter examines police practices and safeguards connected to the interrogation of juvenile suspects in England and Wales. Arising out of concerns over police pressure encouraging false confessions in interrogations in the 1970s, the Philips Commission was set up in order to examine the duties and powers of the police and the rights of suspects in respect of the investigation of criminal offences.¹ The murder of Maxwell Confait, a 26-year old homosexual prostitute in 1972 became a cause célèbre because of the way in which the police obtained false confessions from three young people. They were all subsequently convicted of serious offences but the convictions were later quashed by the Court of Appeal. Subsequently, the Police and Criminal Evidence Act 1984 (PACE) set out a legislative framework in order to protect suspects arrested and detained by the police, which includes a number of safeguards required during interrogations.² These include the contemporaneous recording of all interrogations with suspects, the right to legal assistance during detention and interrogation, and the provision of an appropriate adult for juveniles and for vulnerable adults. Furthermore, section 76 of PACE requires that for confessions to be admissible in court, they must be voluntary and not the result of coercion and/or oppression. From analysis of interrogations post-PACE, however, it was found that a manipulative form of interrogation had been replaced by a confrontational form in which the police would accuse suspects of having committed an offence at the start of the interrogation and ask for their response to such accusations.³ In response to this practice the new ‘PEACE’ model of interrogation, which arose

¹ Royal Commission on Criminal Procedure 1981.
² See further Hodgson and Kemp 2015, p. 131 and 142–143.
³ This was based on the ‘Reid model’ of interrogation which was developed in the US. See Moston et al. 1992 and McConville and Hodgson 1993.
out of a collaborative effort between the police and psychologists in England and Wales, was adopted by the police in the early 1990s. 4

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 reported to have the desired effect on police interview styles in the 1990s, 5 there has been very little research subsequently into police interrogations with juvenile suspects. The most recent study, conducted by Medford and others 6 was based on interrogations undertaken in 1997. Subsequently in 2002 a performance target was introduced which required the police to increase the number of detections. This was intended to put the police under pressure to get suspects to admit to offences during interrogations so a higher volume of cases could be dealt with quickly. While the target had led to an increase in the number of detections, it also led to ‘net-widening’ with people, particularly juveniles, being given a criminal sanction for trivial offences and borderline criminal activity. Indeed, from 2003 to 2008 while the number of people convicted at court remained stable, the police use of out-of-court disposals increased by 135 per cent. 7 It is important to examine, therefore, current styles of police interrogation when dealing with juveniles and the extent to which procedural safeguards are upheld.

The empirical findings from this study are drawn from focus groups held with police, lawyers, appropriate adults (hereafter: AAs) and juveniles, all located in the Midlands, and from analysis of 12 audio-recorded interrogations with juveniles. 8 In the police focus group there were nine officers who were drawn from five different police stations. The focus group of lawyers comprised seven legal advisers working for three different firms, of which six were duty solicitors and one an accredited representative. 9 The AA focus group involved ten people; six of whom were acting as AAs, two Youth Offending Team (hereafter: YOT) managers, a former YOT worker who was involved in the training of AAs and a coordinator of national AA schemes. These respondents were based in six different YOT areas. The focus group with juveniles included five juveniles who had experience of being interrogated by the police for

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4 Milne and Bull 1999.
5 Milne and Bull 1999.
6 Medford et al. 2003.
7 The target was amended in 2008 to encourage the police to concentrate their efforts on bringing more serious offences to justice and in 2010 it was abandoned – see Padfield et al. 2012 and Kemp 2014.
8 A more detailed account of the methodology is set out in ch. 2.
9 Non-lawyers can provide police station legal advice if they have been accredited to do so (see Hodgson and Kemp 2015, p. 139.)
various types of crime. These juveniles were mostly male repeat offenders between 16 and 18 years old. All participants were currently involved with the YOT on court orders.

The interrogations were also drawn from the Midlands area and included interrogations from three different police stations. In total 12 cases were selected which included a mix of juveniles with ages ranging from 13 to 17 years, different ethnic backgrounds and with some being of good character at the time of their arrest\textsuperscript{10} and others recidivists. Within the provided sample for selection, there was just one female suspect, one case with an interpreter and two where the interrogations were undertaken on a voluntary basis. All the interrogations examined involved cases where the juveniles were charged or summoned to court and the offences were denied. The sample encompassed different types of offences.

These focus groups and observations make up a snapshot of current practice, which enables us to examine the extent to which this can deviate from legal procedural safeguards. This also provides the opportunity to see how juveniles can be vulnerable in interrogations and to identify good practice and appropriate safeguards. It is not the aim to obtain a representative picture of practice in England and Wales but the composition of the focus group interviews and recorded interrogations is characterised by variety in order to reflect different practices. There are highlighted ambiguities and contradictions in the views of practitioners on how to deal with juvenile suspects, not only between practitioner groups but also within such groups. To some practitioners, for example, juveniles should be treated as a ‘child’, whereas others seem to think that regular offenders, or those who have committed a serious offence, should be treated first and foremost as a suspect. Thus conflict and ambivalence are embedded in the concept of the juvenile suspect.

This chapter begins with an overview of the interrogation practice starting with the first contact with the police, which is followed by several activities before and during the interrogation. The vulnerabilities of juveniles in relation to these activities are next examined, including differences related to their age, mental ability and other social and welfare factors and also in relation to the lack of legal assistance and long delays in the detaining of juveniles in custody. Finally, following consideration of safeguards and good practices, including the need for specialisation and training, there are some concluding comments.

\textsuperscript{10} The cases were drawn from those pleading not guilty at court and so they had not been convicted at the time the tapes were examined.
2. A LOOK AT THE PRACTICE

2.1. FIRST CONTACT

It was only in the focus group with juveniles that we were able to explore what happened when first coming into contact with the police. A couple of juveniles described similar experiences when arrested after having been stopped and searched in the street. They both complained of being ‘grabbed’ by the police and this made them try to pull away, at which point one said he was threatened with being arrested for ‘resisting arrest’. From the outset the two juveniles said that the police treated them as if they were ‘guilty’. In retaliation both admitted to ‘kicking off’ when in custody. This was because, as one explained, “If we’re treated badly by the police then we behave badly.” The recent experience of another juvenile was very different. He described the police coming to his home and being polite when they arrested him and took him down to the station.

2.2. POLICE PROCEEDINGS

When suspects are arrested they are taken into custody and handed over to the care of a custody officer who is then responsible for authorising their detention. The police said that the custody officer has to consider the ‘necessity’ of bringing them into custody, a test which had recently changed and now requires custody officers to be more challenging of the police when bringing suspects into custody.11 The police felt that this change had led to fewer juveniles being arrested and more being dealt with by way of a Voluntary Interview. In cases where suspects’ detention is authorised the custody officers have to go through a set procedure. The police reported that this first involves opening up a new electronic custody record, which requires a number of mandatory fields to be completed on the computer. In the first section the custody officer asks suspects questions about their welfare and health.12 It was also while being booked into custody that the police described suspects being given their legal rights, searched and then placed into a cell.13 It is from the time the suspect is booked into custody the police said the PACE clock begins and they have 24 hours in which to conduct their investigations.14

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11 This change was due to a revision of Code G of the PACE Codes of Practice in November 2012.
12 Further details of this assessment are considered infra paragraph 2.7.
13 When being searched money and any other valuables, such as watches and mobile phones are removed for safekeeping. As a protection against suspects harming themselves, the police said that any belts, cords or shoelaces were also removed.
14 Which can be extended up to 36 hours on the authority of a superintendent.
2.3. INFORMATION ON RIGHTS

The juveniles said that when arrested the police have to caution them, tell them the reasons for the arrest and take them to the station where they are given their legal rights. It was at the beginning of the interrogation that the police confirmed suspects had to be cautioned again and asked if they understand what this means.

2.3.1. Information about the right to legal assistance

All the juveniles said they were advised by the police that they have the right to legal advice and they were not discouraged from having such advice. The police said it was the custody officer who first advises suspects of the right to legal assistance when booking them into custody. If an AA is not present at that stage, the officer has to go through their rights again in their presence. With long delays often between the juvenile being brought into custody and the interrogation most AAs said they first saw the juveniles just before the interrogation. When the custody officer asked the juvenile if they wanted legal assistance the AAs said that it was their policy to advise them to have a lawyer. In the Justice Hub, due to the close proximity of AAs to the custody suite, they said that they could be called down when juveniles were first brought into custody and given their legal rights. From the lawyers’ perspective, concerns were raised that the police could sometimes try to deter suspects from having legal advice, particularly in juvenile cases where the parents were acting as the AA.

At the start of the interrogation the police are again required to advise suspects of their right to legal assistance. In nine out of the 12 interrogations examined where a lawyer was present, when commenting on this right the officers tended to remind the juveniles that they were free to speak to their lawyer privately at any time. Having declined a lawyer in the other three cases, the police advised the suspects of their right to legal advice.

2.3.1.1. Informing invited juveniles in Voluntary Interviews

Instead of arresting and detaining a suspect in custody the police can invite suspects to attend a Voluntary Interview. These can be held in different places, with one juvenile saying he was interrogated at home and another in the back of a police car. The police pointed out that those interrogated on a voluntary basis have a right to legal advice and it was their view that it was common for a lawyer to be involved. This was not the lawyers’ perception, however, as they felt that legal safeguards in Voluntary Interviews were not always upheld. As one lawyer noted: “We do attend Voluntary Interviews but there’s a lot where we’re not involved.” Another lawyer pointed out that at satellite stations, where suspects
could be interviewed on a voluntary basis, there were no procedures to ensure that they have been given their legal rights. In addition, the lawyers complained about the police sometimes trying to deter suspects from having legal advice. In a room used for conducting Voluntary Interviews, for example, a lawyer said there was a poster stating that legal advice was available but at a cost. A couple of lawyers reported being told by clients who declined legal advice in a Voluntary Interview that the police advised them they would have to be taken into custody in order to arrange for a lawyer to attend.\(^{15}\)

There was seen to be a misapprehension among the AAs about the status of Voluntary Interviews as most of them thought these were not dealing formally with a crime. Instead of an interrogation, a number of AAs said that these interviews were more about clarifying certain issues or used in cases where the suspect had been formally interrogated and this was a follow-up interview.\(^{16}\) Despite Voluntary Interviews having the same status as an interrogation, with the evidence being admissible in court, the AAs did not invoke their policy of requiring a lawyer to be involved. This was of concern to a YOT manager who felt that the police sometimes conducted a Voluntary Interview in cases where there was no evidence as a ‘fishing expedition’ to try and obtain further information about an offence. Another YOT manager questioned how voluntary these interviews were; particularly as suspects were told they would be arrested if they attempted to leave. In the two cases which involved a Voluntary Interview it is useful to consider the words used by the officers when discussing this issue. In one case the officer said: “You can leave but if you do you might be arrested and you would then be taken through to custody.” In the other the juvenile was told: “You can leave this interview but if at any part I feel the need to arrest you I will do so and produce you before a custody sergeant for your rights and entitlements.” The lawyers were concerned that increasingly the police use Voluntary Interviews instead of custodial interrogations and that the legal rights of suspects were being undermined.

2.3.2. Information about the right to silence

When cautioning suspects the police have to say: “You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.” The suspect is then asked if they understand what this means. In the 12 interrogations the police cautioned all the juveniles and asked if they

\(^{15}\) This is not correct as officers outside of custody can contact the Defence Solicitor Call-Centre in order to arrange for a publicly funded lawyer.

\(^{16}\) Worryingly, this reflected the perspective of the police, rather than the interests of the suspect.
understood what this meant. There were two cases where this was all that was said but otherwise the officers went through the caution again in their own words, breaking it down into three main elements. The officers explained the first part by saying that the juveniles could decide not to answer any of their questions or otherwise answer some or all of them. In some cases the officers asked the juveniles to say ‘no comment’ if exercising their right of silence as this was quicker than having to wait to see if a reply was forthcoming. In dealing with the second part of the caution, officers said that if the juvenile fails to mention something during the interview which they later rely on in court then the court could question whether they were telling the truth. The officers commented on the interrogation being audio-recorded as the third part of the caution, with a master sealed copy of the tape being made available to the court as evidence in the event of a trial.

While advising juveniles of their right to remain silent, there were four interrogations where the officers effectively undermined this safeguard by requiring the suspects to ‘tell the truth’. In one case, for example, after explaining the meaning of the caution the officer stated: “Do you agree to tell me the truth?” to which the juvenile replied: “Yes.” Similarly, in another case the officer said, “The most important expectation is that you tell the truth. Do you agree to tell the truth?” The juvenile replied, “No comment.” In the other cases the two statements from the officers were as follows: “I don’t expect you to lie and you need to tell the truth” and “Your best choice here is to tell us the truth.” A lawyer was present in these four cases but they did not challenge the police when putting juveniles under pressure to ‘tell the truth’. This is despite the related principle against self-incrimination and it seems contradictory for juveniles to be told, on the one hand, that they have the right to remain silent but, on the other, asked to tell the truth. This is likely to be particularly confusing for juveniles who do not have a lawyer. The way in which the officers checked that the juveniles understood the meaning of the caution is considered further below.

2.3.3. Information about the right to have someone informed of detention

The juveniles said that when brought into custody they were advised of their right to have someone informed of their detention. On one occasion a juvenile said he had asked his mother to be informed but the police delayed notifying her of his detention. He later complained that the police had searched his home and reflected that the police could have waited to tell his mother of his detention so she did not have the opportunity to remove any incriminating evidence beforehand.
2.3.4. Checking for understanding

The police commented on suspects frequently being given their legal rights in custody. One officer said, “They are constantly told about the procedure, what's going to happen, why they are here.” Repeating to suspects their legal rights, however, does not necessarily mean that this helps them to understand their rights. The juveniles said that they were given their legal rights on a number of occasions and also given a leaflet. This leaflet was not considered to be particularly helpful. One juvenile said: “I don't read it because it's shit.” Despite frequently being given their legal rights there was some confusion among the juveniles about what these rights actually were. The following comments from three different juveniles help to illustrate this point:

“They say it so fast it goes straight over your head.”

“When they go through and read it out so quickly I don't really understand what they're on about.”

“I've understood it [my rights] at the time but I can't think what they are.”

Some officers said that by routinely going through suspects’ legal rights there is a danger of a perfunctory approach being adopted with juveniles failing to understand what their rights actually mean in practice. For other officers the priority in reading out to suspects their legal rights was to adhere to PACE requirements so that any evidence obtained during the interrogation would be admissible in court.17

2.3.4.1. Right to legal advice

There were three interrogations examined where a lawyer was not involved and the police checked with the juveniles that they understood their right to legal advice. In two cases the police enquired as to why the juvenile did not want legal advice. The reply in one case was: “I don’t need one. I haven’t done anything wrong.” This juvenile was then advised by the officer that he had the right to speak to a lawyer at any time during the interrogation, either over the phone or in person. In the other case the juvenile was a 14 year old and he had been arrested on suspicion of rape. With legal advice having been declined the officer

17 This approach was observed in the four jurisdictions in the Inside Police Custody study: see Blackstock et al. 2014, Chapter 5, especially p. 243–255. Research has shown that suspects can become confused about their legal rights, particularly if read out quickly and/or unintelligibly by the police. This could be either due to the routine way in which custody officers regularly read out to suspects their legal rights or as a ploy designed to discourage them from having legal advice: see Kemp 2012, p. 28–33.
was at pains to check that the juvenile understood his rights, pointing out that legal advice was free and that the lawyer would be independent of the police. When the juvenile was asked if there was any reason why he did not want legal advice he simply replied: "No." In the third case, which involved a Voluntary Interview, the officer did not ask the juvenile why he had declined legal advice but he did say that the interview could be stopped at any time if he changed his mind and wanted a lawyer.

2.3.4.2. Right to remain silent and 'adverse inferences'

In some of the interrogations examined the officers asked the juveniles questions to check their understanding of the caution. The most common question was for the officers to ask the juveniles if they had to reply to all their questions. While most juveniles replied correctly one said he did have to reply to all questions but the officer corrected him saying this was not the case. Some officers also asked juveniles questions to check they understood the meaning of 'adverse inferences'. In one case, for example, the officer asked the juvenile what would happen if he did not comment on something during the interrogation which he later mentioned in court. He replied: "It will look like I've made up a story." More generally, the officers would use their own form of words when commenting on 'adverse inferences'. In some cases the explanation given by the police suggested that a court would always draw adverse inferences if the juvenile failed to tell them something they then said at court. In one case, for example, the officer said:

"You'll have seen on TV people being silent or making 'no comment'. If it goes to court though and you give answers not said earlier, or you give a different account, or raise a defence, which could have been investigated, then questions will be raised. Why wait until court? They could draw adverse inferences, which means you won't be believed and this can go against you."

There were cases where officers were seen to take the opportunity of checking with juveniles their understanding of the caution as a way of putting them under pressure to answer their questions. This was implicit in one case when the juvenile said he did not understand the caution and in response the officer said: "You don't have to speak but it helps if you do."

2.4. LEGAL ASSISTANCE

The AAs in the focus group said that they were trained to require a lawyer to be involved in the interrogation of juvenile suspects and not one of them had sat in on a custodial interrogation without a lawyer being present. However, in the rare cases where a juvenile is adamant they do not want a lawyer involved a YOT
manager said they would arrange for an AA to be present in order to provide support. This effectively means that the decision about legal assistance is made by the AA, although the lawyers pointed out that in PACE this is a decision for the suspect. Accordingly, the lawyers said they could not represent a juvenile if the AA had requested legal advice against their wishes. The police said they were well aware of the policy of AA schemes to require a lawyer and if a juvenile declined legal advice when first brought into custody, but an AA from a local scheme was involved, they would anticipate a change of mind and arrange for a lawyer to attend in time for the interrogation.

It is not known to what extent parents and other carers/guardians acting as the AA might encourage juveniles to have legal advice but the lawyers raised concerns that they did not always appreciate the lawyer’s role in the interrogation. If there was an inexperienced juvenile with their parent acting as the AA, for example, one lawyer said: “They often won’t bother with a lawyer because the police can give them the impression that if they ask for legal advice it shows they don’t trust the police.” The lawyers were also critical of the police for sometimes putting parents under pressure to decline legal advice, particularly by saying it would cause a delay.18

All but one of the juveniles said they would always have a lawyer when arrested by the police, and generally a family member or friend would act as the AA. One juvenile said that his decision about legal advice could depend on a number of factors. For minor offences, for example, he said he tended not to bother but he would do so if arrested for a serious offence. Whether he was guilty or not was said to be another factor influencing his decision about legal advice. He said, “If you’re going [to plead] guilty then there’s really no point in having one [a lawyer].”

Having requested a lawyer, it is not known to what extent juveniles rely on the duty solicitor, or use their own nominated lawyer. When first arrested, the juveniles did not know any lawyers and so they used the duty solicitor. However, they were concerned over the lack of independence of duty solicitors from the police. As one juvenile put it: “The duty solicitor is shit. It’s like they are working with the police.”19 Subsequently, when having their own legal adviser, this was described by one juvenile as, ‘a proper lawyer’.

18 Research has identified the police in some stations using the threat of delays as a way of discouraging a suspect to have a lawyer – see Kemp 2013, p. 192.
19 Similar concerns were raised in a survey of over 1,000 people in the criminal justice system. Indeed, almost a quarter of respondents in police stations and in court said that they thought the duty solicitor was employed directly by the police and just over one-third were not sure if this was the case or not (Kemp 2010, p. 89).
2.4.1. Pre-interview disclosure and lawyer's advice

PACE requires the police to provide disclosure to suspects, which sets out details of the offence and why the suspect is being interrogated. The police pointed out that they were not required to disclose details which might prejudice the investigation. In addition, while required by PACE, the police said that they would not give an unrepresented suspect any disclosure. For the lawyers, disclosure was reported to usually consist of a copy of the front sheet of their client’s custody record and a note of their detention (which includes the reason for their arrest). It was then said to be a matter for individual officers to decide whether more information was disclosed. In relation to shoplifting cases, for example, an officer said: "If there’s CCTV evidence we might show this before the interview as it can encourage them to engage." Those dealing with mainly minor offences commented that they were more likely to disclose evidence when dealing with juveniles as this could encourage them to talk in the interrogation. In relation to serious offences, however, the police view, as expressed by this officer was: "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." The detectives in the focus group said that for more serious offences they would have two or more interrogations and they would give the lawyers 'staged disclosure', which means confronting them with 'bits of evidence' as the investigation progressed.

The lawyers complained about receiving limited disclosure from the police in relation to all offences. These included, as one put it: "Nonsense crimes such as nicking a Mars bar." The disclosure received was described by the lawyers as generally comprising one typed paragraph on which was said to be little more than: "He's been arrested on intelligence." When asking for more information, the lawyers were generally told that the police first wanted their client’s version of events. From the lawyers’ perspective, police policy in relation to disclosure was the same whether dealing with an adult or a juvenile.

2.4.2. Consultation

When dealing with juveniles in an interrogation the lawyers said that after first meeting with the police, they would have a private consultation with their client. The consultation with juveniles tended to take longer than with adults because, the lawyers explained, they were more likely to be upset and distressed, particularly if brought into custody for the first time. More time was also said to be needed to reassure juveniles and to go through their case in detail, using simple language and explaining what was happening. The lawyers also commented on the need to take time with juveniles in order to gain their trust

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20 See PACE Code of Practice C, para. 11.1A.
and to get them talking about the alleged offence and other factors which may
be relevant, such as their schooling and home life. Without putting in this effort,
the lawyers said that juveniles could be withdrawn and monosyllabic in their
responses.

During the consultation the lawyers explained that their advice would generally
depend on their clients’ instructions as well as on the strength of the evidence
disclosed by the police. If the police failed to disclose evidence, or at least
sufficient to show that they have a case, the lawyers would generally advise their
clients to make ‘no comment’. This was because, a lawyer explained, it was the
responsibility of the prosecution to construct a case and sometimes it was in
their client’s best interests to exercise their right of silence, particularly if this
could avoid incriminating themselves. As this lawyer put it: “We sometimes tell
clients not to speak in the interview so they don’t stitch themselves up.” On the
other hand, when dealing with serious offences the lawyers pointed out that it
could sometimes be helpful to advise clients to give an early account of what
happened, particularly if this could avoid the case being sent up to the Crown
Court.

The lawyers stressed that their advice was often dependent on the police
engaging with them at the investigative stage, which did not always happen.
There were also noted to be differences between police stations. At their local
station the lawyers said the police were reluctant to give them any meaningful
disclosure, which often meant that they would advise their clients to remain
silent. One lawyer outlined the problem when saying:

“A lot of officers don’t seem to grasp that if there’s a strong case evidentially, and we are
told this from day one, then the likelihood is that we would be advising our clients to
make admissions.”

In a neighbouring area the lawyers reported that the police provided them with
more disclosure, which often meant they could make progress in cases.

The police acknowledged that it was frustrating for them if suspects did not reply
to questions during the interrogation, and some officers felt that there were legal
advisers who always advised their clients to make ‘no comment’. As this officer
put it: “As soon as you hear a solicitor’s name you can almost guarantee you will
get a ‘no comment’ interview.” The lawyers did not accept that this was their
practice, although one of them did say that at his previous firm he was required
to always advise clients to say nothing in the interrogation.21

21 See Kemp 2013, p. 52–56 for a discussion of lawyers advising ‘no comment’ responses in
interrogations.
There were officers who accepted that lawyers have a duty towards their client and that this includes protecting them from self-incrimination. As this officer explained:

“You tend to get them going ‘no comment’ when there is a serious offence involved, or they are a prolific offender. The solicitor doesn’t want their client to stitch themselves up. They might have done 10 to 20 offences and we only have evidence for one and so a solicitor tells them not to say anything.”

For the police, ‘no comment’ replies were also said to be frustrating because this was contrary to their main aim of getting a result. This was the comment from one officer: “We want the truth at the end of the day rather than a technical ‘no comment’ which we can use against them.”

Sometimes the juveniles said they were advised by their lawyer to make ‘no comment’ but this was not always the case; one saying that he had never been given this advice. Having been advised to exercise their right of silence, three juveniles gave reasons for doing so. Two of them said that their lawyer advised there was no evidence against them. The other juvenile had given a full explanation of what had happened to the police in the first interrogation and when he was called back for a second time he was advised to say nothing because his lawyer told him: “You don’t want to give the police the opportunity to trip you up.”

With the consultation between the lawyer and their client being confidential and subject to ‘legal privilege’, the lawyers would not allow the AA to be present because they could repeat to others what had been said in the consultation. One AA reported that he was only present in the consultation if the juvenile was particularly upset and he was invited to do so by the lawyer. Another AA said he refused to be present during these private consultations because he was aware that if certain matters arose, such as child protection issues, he would be under a duty to report what had been said.

The juveniles found the consultation with their lawyer helpful, particularly as it meant they generally had more information about the offence and what was happening. When asked about their lawyer in the consultation, for example, one said: “They explain everything to you and break it down so you know what’s going on.” It was also pointed out by the juveniles that it was helpful for their lawyer

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22 The concept of ‘legal privilege’ means that lawyers are under a duty to keep confidential conversations held with their clients but this does not extend to third parties involved in the conversations.
to have a discussion with the police as this could help to identify what questions might arise in the interrogation.

2.4.3. Legal assistance during interrogation

The lawyers considered it important for them to be present during the interrogation and available to assist the juvenile. While their priority was to provide legal advice they also wanted to make sure that the interrogation was conducted fairly and the juveniles understood what was happening. In summarising their role a lawyer said:

“We need to make sure it’s done properly. The police can use all sorts of tricks to try and get them [the juveniles] talking. They will use repetitive questioning, give their opinions and use misleading propositions to try and get a response. We can interject if the questions aren’t appropriate.”

However, the lawyers also pointed out that there were occasions where they would not intervene if the police were using undue pressure in order to get a confession. As one lawyer put it: “Sometimes it’s better to sit back and let the police dig themselves into a hole,” pointing out that the admissibility of the evidence could later be challenged in court.  

While the police acknowledged that the role of the lawyer was to look after their client, it was also pointed out that this was their interrogation. As one officer put it: “We have to control the interview and not let the solicitor take over.” It was commented on by the police that some lawyers could try to deflect attention away from their client by intervening inappropriately. In seeking to manage such interventions one officer said he would take a break during the interrogation. Another officer reported that if the lawyer tried to prevent him from asking certain questions he would reply: “It’s my interview and I can ask what I want.”

2.4.3.1. Lawyer interventions

Out of the 12 interrogations observed there were nine which involved lawyers and in all but one of those cases the lawyer made an intervention during the interrogation. Set out in Table 1 are the types of intervention.

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23 This line of reasoning was also observed by lawyers in England and Wales in Blackstock et al. 2014, but given that it was often someone different representing the client in court, and that most defendants ultimately plead guilty, it seems likely that these breaches would simply go unchallenged.
Table 1. Interventions by lawyers

<table>
<thead>
<tr>
<th>Intervention</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer makes a comment to the police</td>
<td>4</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Lawyer provides additional information</td>
<td>2</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Lawyer advises juvenile to be silent</td>
<td>0</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Lawyer advises juvenile (other advice)</td>
<td>2</td>
<td>7</td>
<td>9</td>
</tr>
<tr>
<td>Lawyer explains something to the juvenile</td>
<td>0</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Lawyer comments on written statement</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Lawyer asks/requires a consultation</td>
<td>1</td>
<td>8</td>
<td>9</td>
</tr>
</tbody>
</table>

Four cases were observed where the lawyers intervened because the police were putting their juvenile clients under pressure either to respond to questions or to make an admission. The reasons for these interventions are examined further below. There were also occasions where the lawyers would intervene in order to provide the police with information and/or to help clarify questions put to the suspect. In the case where an interpreter was involved, for example, the officer started the questioning by asking the juvenile: “You were arrested yesterday for being concerned in the supply of a controlled drug. Did you commit this offence?” Through the interpreter, the suspect’s response was: “Yes, I was arrested at the house yesterday.” As it could be inferred from this reply that the juvenile was admitting the offence the lawyer asked that the question was rephrased. The officer obliged and the suspect responded saying that he was arrested at the house but that he was not involved in the supply of cannabis.

In a couple of cases the lawyers intervened in order to advise their client. In the first case the police were putting the juvenile under pressure to say whether or not he had assaulted his sister. The police were not satisfied with the juvenile’s response that he might have caught her during a scuffle and putting him under pressure he later said that he might have hit her but he was not sure. At this point the lawyer intervened saying: “Don’t guess. If you’re not sure what happened then you should say so.” In the second case the juvenile had been reluctant to name his co-accused as the person who was responsible for causing criminal damage to a house. After the police read out the victim’s statement the lawyer advised his client to tell the police that it was his co-accused who had caused the damage.

2.4.3.2. Juveniles’ experiences with lawyers

The juveniles commented on their lawyers being helpful in the interrogation if the police were trying to ‘twist their words’ or ‘trip them up’. On one occasion
a juvenile declined legal advice but later changed his mind. He said: “They [the police] started to say things which weren’t true and tried to mix up my words.” While lawyers can intervene in order to protect juveniles during interrogations, it should be noted that the majority of suspects do not have legal advice.24

While the juveniles were complementary about the support provided by lawyers in the police station, they were sceptical about their independence, particularly when in court. When asked who was most trusted in the system, for example, the juveniles replied probation officers and YOT workers. In relation to lawyers one juvenile said: “You see them in court going up to the judges and making deals. They’re corrupt.” Another one complained about his lawyer at court saying: “He was too cosy with the judge and tried to make me plead guilty to everything.” When considering further this apparent lack of trust, most of the juveniles pointed out that at least they could speak openly and honestly to their lawyer. This was because, the juveniles recognised, their lawyer was not allowed to repeat anything said to them during the private consultation.

2.5. ASSISTANCE BY THE APPROPRIATE ADULT

There was a difference of opinion expressed among the AAs as to their role within the interrogation. A volunteer AA formally described the role as being:

“To protect the well-being of the vulnerable person and also the police by fulfilling our obligation to PACE by having someone who is independent and can keep our eye on the process.”

This was to include making sure that juveniles understood what was happening. The police also commented on the AA having a dual role. For instance, this officer said: “They are there to protect the young person and us too.” Some AAs said they needed to act as a ‘referee’ between the juvenile and the police, in order to see ‘fair play’. Accordingly, as one AA put it: “We should be neutral and make sure that everything is done properly and fairly.” Other AAs, particularly those in a YOT, took exception to this mediator role, pointing out that there was not a ‘level playing field’ between the police and the juvenile suspect. For that reason they considered themselves to be firmly on the side of the juvenile. Set out in Table 2 is the relationship of the AA to the suspect in the 12 interrogations examined.

24 In a recent study 45 per cent of suspects requested legal advice (with 35 per cent receiving such advice) but surprisingly, children aged 10 to 13 years were identified as being the least likely to request legal advice at 39 per cent (Kemp et al. 2011).
Table 2. Details of the AAs involved in the 12 interrogations

<table>
<thead>
<tr>
<th>Case</th>
<th>Age</th>
<th>Type of offence</th>
<th>AA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15</td>
<td>Burglary</td>
<td>Mother</td>
</tr>
<tr>
<td>2</td>
<td>16</td>
<td>Assault</td>
<td>Father</td>
</tr>
<tr>
<td>3</td>
<td>17</td>
<td>Robbery</td>
<td>Mother</td>
</tr>
<tr>
<td>4</td>
<td>16</td>
<td>Criminal damage</td>
<td>Mother</td>
</tr>
<tr>
<td>5</td>
<td>16</td>
<td>Theft of vehicle</td>
<td>Mother</td>
</tr>
<tr>
<td>6</td>
<td>14</td>
<td>Robbery</td>
<td>Mother</td>
</tr>
<tr>
<td>7</td>
<td>13</td>
<td>Assault with intent to rob</td>
<td>Mother</td>
</tr>
<tr>
<td>8</td>
<td>14</td>
<td>Rape</td>
<td>Father</td>
</tr>
<tr>
<td>9</td>
<td>17</td>
<td>Burglary</td>
<td>YOT worker</td>
</tr>
<tr>
<td>10</td>
<td>16</td>
<td>Supply class B drugs</td>
<td>Volunteer</td>
</tr>
<tr>
<td>11</td>
<td>16</td>
<td>Assault</td>
<td>Mother</td>
</tr>
<tr>
<td>12</td>
<td>16</td>
<td>Assault</td>
<td>Father</td>
</tr>
</tbody>
</table>

While it was predominantly parents involved as the AA in the 12 interrogations, only YOT or volunteer AAs who regularly dealt with juveniles were included in this study.

Within the AA schemes there were different times in which AAs were available. For the YOT AAs, including those at the Justice Hub, their working hours were 09:00 to 17:30 hours from Monday to Friday. Outside of those hours the AA services were picked up by the emergency duty team, which effectively meant that YOTs provided a 24-hour service. The voluntary AAs described their service as having longer hours, from 06:00 to 22:00 hours, seven days a week but no cover was available outside of those hours. It was a major benefit to YOT AAs that they had access to other YOT workers and also to social services and mental health teams, which the volunteer AAs, on the other hand, had not. In their view, this was an important gap in provision which has consequences for undermining the safeguards of juveniles. Similarly, in another area, the lawyers pointed out that AA services were provided by volunteers and this meant that rarely were YOT and social services involved in juvenile cases in the police station.

Technically anyone over the age of 18 can act as the juvenile suspect’s AA, although the AAs pointed out that the police can challenge a juvenile’s choice if the AA was considered to be ‘inappropriate’. With no routine screening to check their suitability, the AAs said that the police only tended to reject someone as an AA if they were a prolific offender or heavily dependent on alcohol or drugs. The lawyers argued that there should be a screening process for AAs which checked their understanding of the role and helped to determine their suitability to act as the AA. In some cases, the lawyers complained that the AAs were themselves
vulnerable and, if they were arrested, they too would require the involvement of an AA.\textsuperscript{25}

It is not the role of AAs to provide legal advice and this is why the AAs said their policy was always to involve a lawyer. With family and friends mainly taking on this role, however, the lawyers were concerned that the legal rights of juveniles could be undermined. This was because, as one lawyer explained: "Parents often tell their children not to bother with a solicitor as they just want to get on with it and tell the police the truth."

\subsection*{2.5.1. Appropriate adults interventions during interrogation}

There were six cases where the AAs intervened during the interrogation and in three cases for different reasons. Shown in Table 3 are the types of interventions.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|}
\hline
\textbf{Intervention} & \textbf{Yes} (%) & \textbf{No} (%) & \textbf{Total} (%) \\
\hline
Adult makes a comment to the police & 3 & 9 & 12 \\
Adult provides additional information & 2 & 10 & 12 \\
Adult makes a comment to the lawyer & 1 & 11 & 12 \\
Adult advises juvenile & 1 & 11 & 12 \\
Adult criticises the police & 2 & 10 & 12 \\
Adult comments on written statement & N/A & N/A & N/A \\
\hline
\end{tabular}
\caption{Interventions by AAs}
\end{table}

In all 12 interrogations the AAs were advised by the police that their role was to ‘help facilitate communication and understanding’, but only in half were they also advised that they were there to make sure the interrogation was conducted ‘fairly and properly’. There were two cases where the AAs intervention was to challenge the police for not acting ‘fairly or properly’, which are considered below.

There were some cases where the police asked the AAs not to answer questions on the suspect’s behalf. While this request was reasonable in most cases, there were occasions where the police took the opportunity to restrict the AA from intervening. In one case, for example, the officer said to the AA: “Your role is to facilitate communication and not to answer questions or talk to your son. If you do we will stop the interview and get another AA.” There were cases where the officers asked the AAs not to answer questions put to the juvenile but when they did so

\textsuperscript{25} Under PACE the police are required to appoint an AA for vulnerable adults (see Hodgson and Kemp 2015, p. 140).
the officers were tolerant of these interventions - mainly because the information was helpful to the interrogation. Indeed, in a couple of cases the police responded by asking the AA some questions. In one case, for example, the juvenile had been arrested for an offence of burglary and was making 'no comment' replies. At one point the AA, the juvenile's mother, asked the police questions about the others involved in the offence and the police took this opportunity to ask her questions to find out more information about the co-accused. There were also cases where the police put juveniles under pressure to respond to their questions but there was no intervention from either the AA or the lawyer involved.

2.5.2. Juveniles’ experiences with appropriate adults

The juveniles in the focus group said they would generally have their parents acting as the AA and all but one of them would have a lawyer. When asked, the juveniles were not particularly complementary about the role of the AA in the interrogation. One juvenile said: “They don’t really do anything do they? If there’s a problem they just sit there and it’s the solicitor who picks it up.” This was the comment from another juvenile: “I can’t really see the point of an AA as they just make the interview room more crowded.” Nevertheless, the juveniles did accept that the AA was there to give them moral support and help them understand what was happening.

2.6. THE ROLE OF THE INTERPRETER DURING THE CONSULTATION AND INTERROGATION

There was just one case in the interrogations examined which involved an interpreter. The juvenile was Vietnamese and he had been arrested on suspicion of supplying cannabis, a Class B drug. As an interpreter was involved the police had to ask each question slowly and wait for both the question and response to be translated before moving on to the next one. In the focus group the lawyers raised concerns that while it was necessary to have an interpreter involved in the private consultation with their client they were not required to keep this information confidential. As the interpreter could later be required to assist the police the lawyers complained that they could repeat things said in the consultation to the police.

2.7. ASSESSMENT

There is a requirement for custody officers to conduct an assessment of suspects when they are booked into custody. The police said that no further assessment was required prior to the interrogation. In a Voluntary Interview the police
confirmed that no assessment of suspects was required. The way in which suspects are assessed is next explored.

2.7.1. Assessment of mental state and intoxication

The police reported that the list of questions asked by custody officers during the assessment were the same irrespective of the age of the suspect. A lawyer said this meant at the age of ten years a juvenile could be asked if they were addicted to alcohol or drugs. A girl of that age was asked if there was any chance she could be pregnant. The juveniles confirmed they were asked a lot of questions by the custody officer, including how they were feeling, whether they had any suicidal thoughts or felt like self-harming or had self-harmed in the past. A criticism made by the AAs was that the police do not deal sufficiently with the mental health of suspects when conducting the assessment. In particular, it was pointed out that if juveniles were ‘kicking off’ when brought into custody they could be placed in a cell and any mental health problems could go unnoticed at that stage by the custody officer. The AAs in the Justice Hub said this was one of the reasons why the police could call them down to check when juveniles were first brought into custody. The other AAs commented that it was not feasible for them to attend at the station when juveniles were first arrested because there were often long delays before the police were then ready to conduct the interrogation.

A police officer remarked on the electronic custody records as being helpful in highlighting if a suspect has a history of mental health problems. On opening up a new record, for instance, he said that this would ‘flag up’ whether any problems with the individual had been noted in the past. If concerns were raised it was pointed out that the custody officer had to decide whether a medical assessment was required. If so, an officer explained that the police doctor (known as the ‘FME’ (forensic medical examiner)) would carry out an initial assessment and, if required, arrange for a further examination from a mental health practitioner. The lawyers said that while the medical assessment used to be carried out by the FME, increasingly it was being conducted by a nurse.

Having recently been trained on issues relating to autism a couple of YOT AAs said that they had been trying to encourage the police to include this factor in their assessment. It seems that this strategy has been successful, at least in one station, as a police officer said the custody officers were required to ask juveniles questions about autism and ‘attention deficit hyperactivity disorder’ (ADHD).26

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26 Following a review of mental health problems and learning disability in the criminal justice system there is being set up liaison and diversion schemes which involve mental health practitioners being based in some police stations (see further NHS England 2014).
In commenting on this an officer said: “They will look on the computer and see if there’s a mark on autism. You are constantly assessing them.” However, he also went on to say: “It helps us to judge them too, even though we probably shouldn’t.” The lawyers were critical of the police assessment saying it failed to deal with the capacity of juveniles to understand what was happening and respond to questions put to them in the interrogation. Criticisms of this initial assessment also came from the police. One officer was critical that it was based on a subjective test with no matrix available to assist custody officers when deciding on what action was required.

It was the view of the police that no assessment was required prior to the interrogation, unless issues over a suspect’s mental health had been raised. The lawyers pointed out, however, that the custody officer and the officer in the case are required to assess whether the suspect is fit enough to be interviewed and to involve a healthcare professional in the assessment if required. It was reported that such assessments rarely happened and instead, as this lawyer described: “The officer in the case says to the custody officer ‘I’m ready for the interview now’ and to receive the reply ‘I’ll get him out of his cell’. There isn’t an assessment before the interview.” The lawyers and AAs said that if they had any concerns over a suspect’s ability to engage in the interrogation they would raise this with the custody officer. There was a difference of opinion among the lawyers as to what action was then required to be taken by the police. One lawyer thought that PACE only required the police to make a note of the lawyer’s concern on the custody record. Another was of the opinion that following representations a formal assessment of the suspect’s mental health was required. A third lawyer said that they were required to bring in an AA, a mandatory protection for juveniles in any event.

2.8. INTERROGATION

2.8.1. Characteristics

2.8.1.1. Timing and duration of interrogations

The type of offence involved in the 12 interrogations together with the time of arrest, detention, interrogation, the duration of the interrogation and the overall length of time in custody is shown in Table 4.

27 PACE Code of Practice C, para. 12.3.
Table 4. Timing and duration of interrogations

<table>
<thead>
<tr>
<th>Case</th>
<th>Type of offence</th>
<th>Time of arrest</th>
<th>Time at police station</th>
<th>Time of interview</th>
<th>Duration of interview (minutes)</th>
<th>Length of time in custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Burglary</td>
<td>18:10</td>
<td>18:40</td>
<td>23:00</td>
<td>20</td>
<td>23:40</td>
</tr>
<tr>
<td>2</td>
<td>Assault</td>
<td>21:55</td>
<td>22:00</td>
<td>15:30</td>
<td>20</td>
<td>23:00</td>
</tr>
<tr>
<td>3</td>
<td>Robbery</td>
<td>20:50</td>
<td>21:16</td>
<td>13:19</td>
<td>56</td>
<td>19:30</td>
</tr>
<tr>
<td>4</td>
<td>Criminal damage</td>
<td>22:50</td>
<td>23:25</td>
<td>10:00</td>
<td>14</td>
<td>12:00</td>
</tr>
<tr>
<td>5</td>
<td>Theft of vehicle</td>
<td>20:50</td>
<td>21:40</td>
<td>14:30</td>
<td>14</td>
<td>19:40</td>
</tr>
<tr>
<td>6</td>
<td>Robbery</td>
<td>18:45</td>
<td>19:22</td>
<td>20:17</td>
<td>27</td>
<td>2:15</td>
</tr>
<tr>
<td>7</td>
<td>Assault with intent to rob</td>
<td>19:54</td>
<td>20:19</td>
<td>13:05</td>
<td>20</td>
<td>18:10</td>
</tr>
<tr>
<td>8</td>
<td>Rape</td>
<td>18:30</td>
<td>19:00</td>
<td>19:44</td>
<td>40</td>
<td>1:45</td>
</tr>
<tr>
<td>9</td>
<td>Burglary</td>
<td>10:30</td>
<td>10:50</td>
<td>19:05</td>
<td>25</td>
<td>22:20*</td>
</tr>
<tr>
<td>10</td>
<td>Supply class B drugs</td>
<td>16:50</td>
<td>18:10</td>
<td>20:30</td>
<td>30</td>
<td>16:20*</td>
</tr>
<tr>
<td>11</td>
<td>Assault</td>
<td>N/A</td>
<td>N/A</td>
<td>17:10</td>
<td>30</td>
<td>N/A</td>
</tr>
<tr>
<td>12</td>
<td>Assault</td>
<td>N/A</td>
<td>N/A</td>
<td>16:00</td>
<td>24</td>
<td>N/A</td>
</tr>
</tbody>
</table>

* These two juvenile suspects were remanded in police custody.

The duration of the interrogations studied here varied from 14 to 56 minutes, with an average of 26 minutes. However, in all these cases the juveniles had been charged and the offences denied at court. If the sample had included cases where the offences were admitted the average duration would have been shorter. One officer pointed out that the length of interrogations could vary enormously, depending on the seriousness of the offence and whether or not there was a confession. There were concerns raised by AAs over the length of time taken in some interviews, particularly as juveniles tend to have a short attention span. The police also commented on this saying that sometimes 15 minutes of questioning was too long for juveniles. In long interviews the police said regular breaks are needed but the lawyers and juveniles complained that this seldom happened. One lawyer pointed out that it was common practice for breaks in police interviews involving juvenile victims and witnesses and there needed to be a similar requirement for juvenile suspects.

In the ten cases where the juveniles had been arrested, there were nine where they were arrested during the early evening or late at night. It was evidently due to the time of their arrest that some of them were held in custody overnight. Having been arrested the night before in four cases, the juveniles were not interrogated until the afternoon of the following day. There were two cases where the juveniles were arrested during the early evening, interrogated and released from custody within a couple of hours. It seems that in these two cases the police had taken statements and were ready to go straight into the interrogation. In three cases there was a spontaneous arrest and delays are to be expected while the police gather evidence prior to the interrogation. However, in another three
cases the evidence had been gathered, including statements from victims and witnesses, but there were still long delays before the interrogation.28

The lawyers and AAs raised concerns that there could be long delays in cases involving juveniles. They were critical of the police for failing to identify alternative ways of dealing with them which could avoid having to spend a night in the cells. In one case, for example, a 15 year old juvenile had been arrested at 18:10 hours and it was almost five hours later before he was interrogated. It is not known why he was not released following the interrogation, particularly as he was of good character and could presumably have been taken home as his mother was acting as the AA. Instead he was held in custody overnight and detained for almost 24 hours. It was an incident in the family home which brought another juvenile into custody for 23 hours. He was also of good character and having been arrested at 21:55 hours he was detained overnight and interrogated at 15:30 the next day.

The lawyers mentioned other possible causes of delays. These included the effects of budget cuts with fewer police officers being available to conduct the interrogations. It was also pointed out that the ‘handover’ of cases at the end of a shift from one officer to another could cause up to a two-hour delay. It was of concern to the lawyers that the police had the power to lock up juveniles for a long time, particularly as long delays might put them under pressure to say what the police wanted to hear. As this lawyer put it: “The police attitude seems to be to teach them a lesson by holding on to them for such a long time. They know that by the end of it all they’ll want to do is get out.” Perhaps not surprisingly, the juveniles perceived their time in custody as a punishment. One of them said: “It’s not meant to be nice. It does what it’s there for … You go in, get your punishment and come out.”

While detaining juveniles for up to 24-hours, PACE requires a continuous period of rest, of at least eight hours, free from questioning and usually taken at night time. The lawyers were critical of the police for ignoring this requirement and conducting interrogations late at night. As this lawyer put it: “It does happen but it’s wrong and it needs sorting.” In the past, when advised that a juvenile had been arrested during the night, the lawyers would suggest to the police that they put him to bed and deal with it in the morning. However, it was accepted by the lawyers that by ‘bedding down’ juveniles for the night this meant they could be held in custody for long periods of time.29 On the other hand, working regularly

28 In two other cases the juveniles had been charged and they were held in police custody prior to being taken to the next available court.
29 Concerns have been raised over juveniles being held unnecessarily in cells overnight (see Hodgson and Kemp 2015, p. 142).
in a large custody suite, the lawyers were critical of the police for operating as if in a '24-hour society', which included conducting interrogations of juveniles at night time. Without consideration of the vulnerabilities of juveniles, a lawyer complained that he heard an officer say: "If it's a night time offence and he's out burgling at midnight then he can be interviewed during the night."

It was the experience of three juveniles to be interrogated in the early hours of the morning. After having been detained overnight, one said that he was taken out of his cell to be interrogated at 03:00 hours. In his words he said: "I was feeling like shit and didn't know what was happening." However, he did accept that he had started to 'come round' by the start of the interrogation. Another juvenile said that when he was being dealt with for a serious offence the police interrogated him at night time and he was released from custody at 04:00 hours. Yet another one said that he was intoxicated when brought to the station at 20:00 and placed in a cell to sober up. When he was woken up and taken to an interview room four hours later he was still 'half-cut' and expected to be taken back to his cell. To his surprise, the police wanted to proceed and he agreed to be interrogated because, as he put it: "I just wanted to get out of there."

2.8.1.2. Interrogators

When interrogating juveniles the police said it was 'best practice' to have two police officers involved: one to ask questions and the other to 'mop up'. However, with budget cuts they said that those dealing with minor offences increasingly had to interview juveniles on their own. The lawyers said there were always two CID officers involved when dealing with serious offences. There were five cases where the interrogation was conducted by a single officer, three involving a male and two a female officer. One of the other interrogations comprised two female officers, another had a male and female officer and the others involved two male officers.

According to the AAs, police interrogation techniques were said to have improved over recent years. There was noted to have been a change from the 'old school' type of interrogator who tended to take a harder line with juveniles to officers now adopting a softer line. A YOT manager said that due to modern styles of police interrogations it had become rare that AAs needed to intervene. However, with recent budget cuts they were noticing differences with less experienced officers being involved. The lawyers and the AAs felt that this was having a negative impact on the quality of the interrogations.

2.8.1.3. Interrogation setup and interruptions

The lawyers described the police in the interrogation sitting on one side of the desk and the juvenile, AA and themselves sitting on the other side. There were
interruptions in three out of the 12 interrogations examined. In two cases the tapes stopped playing at the start of the interview. In the first case the officer was able to re-start the tape and in the second they had to move into another interview room. In the third case the interrogation was interrupted while the lawyer had a private consultation with his client. When re-starting the tapes in these three cases, the police asked the juveniles to confirm that everyone was still present and that they had not been asked any questions by the police between the two recordings.

2.8.2. Interrogation model

2.8.2.1. Informing the juvenile and the type of information

Set out in Table 5 is a list of information which can be provided to juveniles at the start of an interrogation. When listening to the recorded interrogations there were some issues which were only mentioned briefly by the police, accordingly a distinction has been made as to whether the issue was mentioned in detail or only in passing.

Table 5. Information conveyed at the start of the interrogations

<table>
<thead>
<tr>
<th>Information on:</th>
<th>Yes in detail</th>
<th>Yes, briefly</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason for interrogation</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Goal of the interrogation</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Being a suspect</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Proceedings</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Recording</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Role of the lawyer</td>
<td>6</td>
<td>5</td>
<td>1</td>
<td>12</td>
</tr>
<tr>
<td>Role of the AA</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Role of the interpreter</td>
<td>1</td>
<td>0</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Interrogators</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>The right to legal assistance</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>The right to remain silent</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>The right not to incriminate oneself</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

2.8.2.2. The way information is conveyed

When considering the information provided to suspects at the beginning of the interrogation it is helpful to describe what generally happens once the recording begins. Typically, the police start by commenting on the role of the AA and then the lawyer and the juvenile’s entitlement to legal advice. The police then read out the caution and provide an explanation as to its meaning. With quite a lot
of information being imparted at the start of the interrogation, one officer said: 
"This can all take time. You can be seven to ten minutes just explaining their rights and still wonder whether they understand." After having set out the legal rights the officers generally introduce themselves and explain that they will be asking the juvenile questions about the offence for which they are under arrest. It is only in this limited way that the police were heard to provide information on the reason and goal of the interrogation, as well as informing the juvenile that they were a suspect.

There were no cases examined where the juveniles were given information on proceedings at the start of the interrogation but two cases where this information was provided at the end. In one case, which involved a Voluntary Interview, the officer advised the juvenile that there would be further investigations following which he could be summonsed. In the other case the police told the juvenile that there would be an identity parade (hereafter: ID parade). While information on proceedings was not included on the tape recording it could be that the police comment on this when the recording ends. The way in which the police commented on legal advice and the right of silence was considered above. There were no interrogations where the juvenile was advised about the right not to incriminate themselves.

2.8.2.3. Approach

The police commented on using the ‘PEACE’ model of interrogation. All but one of the officers had been trained using this PEACE model, which an officer described as: "A non-accusatory, information-gathering approach to investigative interviewing." Seven officers had also been trained in ‘achieving best evidence’ (hereafter: ABE), which is concerned with interviewing juvenile victims and witnesses. Apart from the mandatory requirement for an AA to be involved in juvenile cases, the police said there tended to be no difference in the way they interrogated juveniles based on their age. However, when commenting on the approaches adopted during the interrogation the police did sometimes draw a distinction depending on the seriousness of the offence. One officer, who mainly dealt with minor matters said: "My style is quite chatty and informal. I try to put them at their ease." Others said that their priority was to ‘get a result’, particularly when dealing with serious offences. The lawyers’ view was that there was no difference in how officers dealt with cases when dealing with serious

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31 An important element of which is to encourage victims and witnesses to ‘tell the truth’ (Ministry of Justice 2011).
offences. As one lawyer put it: “They take the interview with juveniles the same way as an adult when dealing with a serious offence.”

When commenting on the police style of questioning a couple of juveniles said that they usually had two officers, one playing the ‘good cop’ and the other the ‘bad cop’. Another said that he had bad experiences of being interrogated and he usually got the ‘bad cop/bad cop’ routine. They also complained that they were not always treated well by the police. One summarised their concerns when he said: “They’re trying to say you’re guilty. It’s the way they talk to you. Talking right down to you and treating you like shit.”

2.8.2.4. Interrogation techniques

Some of the techniques used by officers in the 12 interrogations examined are set out in Table 6.

Table 6. Police interrogation techniques

<table>
<thead>
<tr>
<th>No.</th>
<th>Type of offence</th>
<th>Legal advice</th>
<th>Comment or no comment</th>
<th>Style of interrogation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Burglary</td>
<td>Yes</td>
<td>No comment</td>
<td>Persuasive</td>
</tr>
<tr>
<td>2</td>
<td>Assault</td>
<td>Yes</td>
<td>Comment</td>
<td>Repetitive questioning and accusatory</td>
</tr>
<tr>
<td>3</td>
<td>Robbery</td>
<td>Yes</td>
<td>Comment</td>
<td>Active listening then accusatory</td>
</tr>
<tr>
<td>4</td>
<td>Criminal damage</td>
<td>Yes</td>
<td>Comment</td>
<td>Active listening and persuasive</td>
</tr>
<tr>
<td>5</td>
<td>Theft of vehicle</td>
<td>Yes</td>
<td>No comment</td>
<td>Persuasive and accusatory</td>
</tr>
<tr>
<td>6</td>
<td>Robbery</td>
<td>No</td>
<td>Comment</td>
<td>Active listening and persuasive</td>
</tr>
<tr>
<td>7</td>
<td>Assault with intent to rob</td>
<td>Yes</td>
<td>No comment</td>
<td>Persuasive, oppressive and accusatory</td>
</tr>
<tr>
<td>8</td>
<td>Rape</td>
<td>No</td>
<td>Comment</td>
<td>Active listening</td>
</tr>
<tr>
<td>9</td>
<td>Burglary</td>
<td>Yes</td>
<td>No comment</td>
<td>Persuasive techniques and accusatory</td>
</tr>
<tr>
<td>10</td>
<td>Supply class B drugs</td>
<td>Yes</td>
<td>Comment</td>
<td>Active listening</td>
</tr>
<tr>
<td>11</td>
<td>Assault</td>
<td>Yes</td>
<td>Comment</td>
<td>Persuasive techniques and accusatory</td>
</tr>
<tr>
<td>12</td>
<td>Assault</td>
<td>No</td>
<td>Comment</td>
<td>Active listening</td>
</tr>
</tbody>
</table>

There were three cases where ‘active listening’ is the only interrogation technique adopted, which meant that the officers were calm and friendly throughout the interrogation. In two of these cases the juveniles gave a candid account in which there were admissions made, at least to some offences. The third case involved a Voluntary Interview and it seems that the police were taking the opportunity to gather evidence after the juvenile had been named by a co-accused as being one of the people involved in the assault. In the other interrogations there were
seen to be different techniques adopted by officers in order to put suspects under pressure to respond to their questions and/or to make a confession.

In two cases the officers had started out in the interrogation by being calm and friendly but this was to change. When dealing with an offence of robbery, for example, the juvenile responded to all police questions and while accepting that he was present when the offence took place he denied any involvement. The officers initially adopted a friendly attitude with the juvenile and after he responded to their questions one said: “Thanks that’s lovely. Thanks for giving your account.” Requiring further information the officers went through statements made by the victim and other witnesses. After around 50 minutes of questioning their attitude changed. One asks him: “Are you telling the truth? It’s your opportunity to tell us the truth now.” The juvenile still denied his involvement in the offence and the officer got annoyed and said: “We’re not going to sit here all day. We’ve given you every opportunity to tell your story.” At this point the lawyer intervened saying that he had answered all of their questions. It was not that the juvenile was refusing to answer police questions in this case but that his responses did not fit in with the police version of events.

There was one case where the police sought to maximise the seriousness of the offence in order to encourage a response. In this case a 13 year old was told by the police that an offence of ‘assault with intent to rob’ was very serious and it would have to be heard in the Crown Court in front of a jury. The lawyers in the focus group were critical of the police for sometimes exaggerating the seriousness of the offence, or the likely outcome, in order to elicit a response. One lawyer described how in one case the police had arrested his client for an offence of wounding without the intention to cause really serious harm (under section 20 of the 1861 Act) but in the interrogation they dealt with him as if he had been arrested for the more serious offence of wounding with intent (under section 18 of the 1861 Act). In particular, he reported that the police told his client he was being dealt with for a ‘grave’ crime which could only be heard in the Crown Court and that the sentence would require a lengthy term of imprisonment. The lawyer said he intervened correcting the officer by saying that a section 20 offence was not a ‘grave’ crime and it could be heard in the youth court.

Another way the lawyers said the police would try to maximise the seriousness of the offence was to tell juveniles arrested for robbery that they were facing life imprisonment. An officer in the robbery squad accepted that this was his tactic saying: “I tell them they are facing a life sentence unless they tell me what happened.” With this being the maximum sentence for robbery available to the court the officer did not consider that he was misleading the juveniles. On the contrary, he commented on the lawyers: “Not liking it when I point out what can happen if they remain silent.” The lawyers, on the other hand, were critical of
the police for exaggerating the seriousness of the offence because a life sentence, commented one lawyer: "Just doesn't happen with juveniles."

The reverse tactic, of the police seeking to minimise the seriousness of the offence or the outcome was also commented on by lawyers. In some cases, for example, the police would tell juveniles they were only looking at a fine when a more severe penalty was likely. There was one interrogation observed where the police tried to minimise the role of the suspect in an offence in order to encourage an admission. This case involved an offence of theft of a vehicle to which the juvenile had made 'no comment' replies to police questions. In seeking to encourage a response one officer said: "There's no suggestion that you were the driver. In fact the evidence suggests that you were the front-seat passenger. If you got in and didn't know it [the car] was stolen then you should say so."

The police seemed to imply that by accepting he was a passenger in the vehicle he would not be committing an offence. It seems the juvenile wanted to respond to this question but instead there was a break while the lawyer had a consultation with his client. When the interrogation resumed the juvenile continued to exercise his right of silence. Later on the officers contradicted themselves by saying that it would have been obvious to anyone in the car that it had been stolen as it had been hotwired and the cowling was hanging off. Pointing this out, the officers were now telling the juvenile that if he was a passenger he was committing an offence of joy-riding.

Various tactics were described by the lawyers when commenting on the police putting juveniles under pressure in the interrogations. One said: "They can start off with a 'softly-softly' approach when dealing with a child but within ten minutes they are treating them the same as an adult." The juveniles reported that if they made 'no comment' during the interrogation some officers would try to 'trip them up'. One said that the police would start to ask banal questions such as: "What did you have for breakfast?" or "What's your name?" in order to try and get them to respond. The police said that it was annoying for them to have 'no comment' replies. One officer said that he would sometimes ask neutral questions to try and encourage juveniles to talk about what happened. Another officer said that his tactic when dealing with juveniles who refused to comment was to stop asking questions and instead he would stare at them. While this could be effective in getting a response he said: "It works for three minutes or so but that's it."

The juveniles also commented that sometimes during the interrogation they would laugh or smile and the police sometimes tried to use this against them. While they said it was not appropriate for them to act in this way they could not always help it. As one of them put it: "They make you feel nervous, like you've got something to hide when you haven't. It makes you look guilty when
you’re laughing.” The juveniles acknowledged that it could be annoying for the police if caught smiling or laughing, particularly as it made them look cocky or disrespectful. On one occasion a juvenile described how the police used this as a tactic against him. During the interrogation, for example, the officer said to him: “I’d appreciate it if you didn’t smile at me.” Both his lawyer and AA intervened because he had not been smiling but the juvenile recognised that the officer’s intention had been: “To make me look bad.” This tactic was seen to be used early on in an interrogation when, after receiving a couple of ‘no comment’ replies the officer said: “Why are you smiling? Do you find it funny?” The juvenile replied “No” but the officer continued asking questions in an accusatory way putting pressure on him to respond.

2.8.2.5. Lawyers’ interventions

A lawyer was involved in nine out of the twelve interrogations observed and in all but one of those cases the lawyer intervened. As highlighted in Table 1, there were various reasons for their intervention, including providing information to the police and advising their clients. In four cases the lawyers’ intervention was to challenge the police. In one case, considered above, it was when the attitude of the police changed and they put the juvenile under pressure to answer their questions that the lawyer intervened pointing out that he had answered all of their questions. The officers then concluded the interrogation.

There were two cases where the lawyer intervened over the way in which the officers were advising juveniles about how ‘adverse inferences’ could later be drawn at court. In the first case the juvenile was arrested with two others on suspicion of burglary. After having received ‘no comment’ replies to the first few questions the officer said: “If it’s nothing to do with you then now is a good time to tell us. If you don’t then one conclusion that can be drawn is that you know the boys because otherwise you would be saying that you weren’t there and that you didn’t know them.” At this point the lawyer intervened and told the officers: “On balance I have advised my client to make ‘no comment’ because I’ve only had partial disclosure. It does not naturally follow that a court will think that he must have something to do with the burglaries.” In the second case, after receiving ‘no comment’ replies to his questions the officer said: “Your solicitor has obviously told you not to respond to any questions.” The lawyer interjected saying it was inappropriate for the officer to comment on what his advice might be as this was privileged information. In response, turning to the juvenile the officer said: “With respect it’s just advice you received from your solicitor and you can go ‘no comment’ if you want but it won’t wash in court and there’s stated evidence to this effect.” The lawyer corrected the officer saying that the court has to take into account the legal advice received when deciding whether or not adverse inferences could be drawn.
The intervention from the lawyer in the fourth case was not heard on the tape recording but at a point when the officers were putting the juvenile under pressure to comment the lawyer had a consultation with his client. In this case, considered above, the police had tried to get the juvenile to accept that he was a passenger in a stolen vehicle. Instead of interjecting during the interrogation the lawyer quietly intervened by requiring a private consultation with his client following which the juvenile maintained his 'no comment' replies to police questions.

There were three interrogations observed where the police were putting suspects under undue pressure to answer their questions but there was no intervention from the lawyer. In one case it was the AA rather than the lawyer who challenged the officer for repeating the same questions in order to encourage a response from the juvenile. Interestingly, the lawyer disagreed with the AA that the style of questioning was inappropriate. He said: "If I’d thought there was a problem I would have intervened." To which the AA replied: "There is a problem. He’s answered all their questions but they keep asking him the same thing." In the second case, the juvenile had been arrested for an assault and while he said there was an incident he denied hitting the victim. At one point the officer tried to undermine his credibility when stating:

“I’ve seen both of you. You’re confident and articulate and I’m finding it easy to speak with you. I’ve met [the victim] and he doesn’t strike me as the sort of person who would push past you. He’s very timid. That’s just my opinion. That’s what I’m saying. I’m a bit shocked having met him that this would happen.”

The lawyer did not intervene and challenge the officer over the inappropriateness of this comment.

Different tactics were adopted by the police in the third case when trying to put a 13 year old under pressure to respond to their questions. In this case the juvenile had been arrested for an offence of assault with intent to rob and his mother acted as the AA. With the juvenile making ‘no comment’ the police tried to put him under pressure to talk. As noted above, this included asking him why he was smiling during the interrogation and saying that the case would be heard in the Crown Court. The officers also gave their opinion on occasions and made accusatory comments. At one point, for example, an officer said: “The evidence against you is very strong and if you don’t admit it do you really think a jury will believe you?” The other officer noted that he had not tried to deny the offence saying: “If it was me I’d be shouting from the roof top that I’m innocent and telling the police where I was. How do you think making ‘no comment’ is going to look in court.” Further comments included the officers saying: “Were you out looking for someone to rob?” and “How many times have you robbed people?” Eventually,
under pressure, the juvenile said: “I didn’t do anything.” There was then heard a sob and he started to cry. As the juvenile was able to exercise his right of silence the lawyer did not intervene, although it was clearly upsetting for the juvenile to be subjected to such pressure in the interrogation.

2.8.2.6. Appropriate adults’ interventions

Set out in Table 3 above are a number of reasons why the AAs intervened during the interrogation. There were just two cases where the AA was critical of the police. In the first case the AA was the juvenile’s mother and she intervened on a number of occasions for different reasons. The juvenile had been arrested for an offence of robbery and the AA started out by trying to be helpful by responding to police questions about her son’s movements after school. Having described his usual route home, for example, the AA suggested that the police should examine CCTV evidence in order to help establish an alibi. As the interrogation progressed it became evident that the officer did not believe the juvenile was not involved in the offence. At this point the AA got annoyed and she reprimanded her son for helping the police saying: “You’re being too friendly, too nice. Can’t you see they’re stitching you up.” The officer then read out from the victim’s statement which said he had been robbed by someone wearing a mask. While he could not see the offender’s face he thought he recognised the voice and asked if it was X [the name of the juvenile]. On receiving the reply: “Yes it’s me,” the officer confirmed this is why the juvenile was arrested. The officer said they would be conducting an ID parade and the AA was critical of this decision saying that the victim had not seen the offender’s face but as he had been given her son’s name he would be picked out. Her representations were ignored and the AA asked for a lawyer but the officer said the interrogation was concluded but he would arrange for a lawyer to see the juvenile at the police station.

The other case in which the AA criticised the police, mentioned above, concerned a juvenile who had been arrested for assaulting his sister and his father was acting as his AA. In this case the juvenile was responding to questions during the interrogation but not to the satisfaction of the police. The tactic adopted by the officer was then to repeat the same questions ignoring the juvenile’s replies in order to put him under pressure to change his story. Eventually the AA intervened asking the police: “Why are you grilling him in this way, he’s a 16 year old boy. He has answered your questions and you ask him again and again.” While the lawyer did not agree that the police questioning was inappropriate, the officer stopped using the tactic of repeating questions following the AA’s intervention.32

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32 The effectiveness of AAs, particularly when family members and friends take on this role, has been questioned in earlier empirical research (see Hodgson and Kemp 2015, p. 141) but in this case it was the AA and not the lawyer who was effective in challenging the police.
In most other cases there was little input from the AA and when they did intervene this was generally intended to help clarify issues or to provide the police with additional information. In one case, for example, the AA intervened in order to clarify a legal issue with the police. In this case the juvenile had been arrested with a co-accused for causing criminal damage to a house and his mother was acting as his AA. The juvenile admitted to being present when the damage was caused but he was reluctant to name his co-accused as the culprit. When the police read out the victim's statement, in which he stated knowing both suspects, the lawyer said to his client:

"You can tell the officers who did it as your evidence can't be used against him as you are a co-accused. Whatever you say it can't be used in a court of law and so it's irrelevant."

The juvenile then named his co-accused as the person responsible for the damage. Towards the end of the interrogation the AA intervened asking the officer to clarify that the co-accused would not know that it was her son who named him as the offender. The lawyer responded to the question saying that the co-accused will know this because he will get a copy of her son's statement. The AA then pointed out that her son was concerned for his safety when saying: "Look at him. He's rubbing his face and he's obviously frightened of what will happen." This intervention suggests that the juvenile had been misled by the lawyer and that a private consultation could have helped to clarify his concerns.

There was one case where the officer had told the AA, the juvenile's mother, not to answer questions on her son's behalf but during the interrogation he asked her a number of questions. In this case the juvenile had been arrested for an assault and after having established that he told his mother about the incident the officer asked her why she had not reported it to the police. She replied: "I looked at it as a school boy skirmish. I didn't know it was serious at the time." Later on in the interrogation the juvenile tells the officer that he was sent text messages threatening him with violence following the assault. The officer asks the AA if she was aware of the threats and when she said not he then asks the juvenile: "If you're so concerned why haven't you shown the texts to your mum." He responds saying he was not concerned for his safety but he wanted the police to know that he had been threatened. By seeking further information from the AA in this case, the officer was trying to undermine the juvenile's version of events and he also took the opportunity of asking the AA questions as if she was a witness in this case.

2.8.2.7 Confrontations

It was after the police had given juveniles the opportunity to give their account of events that they sometimes produced or commented on other evidence. As set
out in Table 7 is the extent to which evidence was presented to juveniles during the 12 interrogations examined.

Table 7. Evidence presented to suspects during interrogations

<table>
<thead>
<tr>
<th>Evidence presented</th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrepancies in own statement</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Witness statement</td>
<td>6</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Victim statement</td>
<td>7</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Co-accused statement</td>
<td>1</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Forensic evidence</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>CCTV evidence</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Other documents</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Hypothetical evidence</td>
<td>6</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Other evidence</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Other confrontations</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

The most common form of evidence produced was noted to be statements made by either victims or witnesses. In most cases production of this evidence did not have an effect on what was said by the juvenile in the interrogation. However, there was one case, involving an offence of criminal damage, where the juvenile did change what he said after being confronted with the victim’s statement on the advice of his lawyer. In another case, involving an assault, the officer read out statements from the juvenile’s mother and sister saying that he had stamped on his sister’s head. The officer pointed out that their evidence was credible and when asking the juvenile to respond he said they both must be lying. The way in which juveniles were confronted with victim and/or witness statements during the interrogations suggested that the details had not been disclosed to the lawyers beforehand.

In one case the juvenile was being interrogated over an offence of rape and he did not have a lawyer. It was only towards the end of the interrogation that he was confronted with the victim’s statement. By this time he had given a detailed account of what happened, which included consensual oral sex and inserting his penis into her vagina: “For about four seconds” and by “About an inch or so.” In the victim’s statement she agreed to having had oral sex with the juvenile but said his penis had not touched her vagina. Crucially, it was only when producing the statement that the police revealed that she was just 12 years of age, which is below the age at which in law she could consent to sexual activity.
There were six cases where juveniles were confronted with hypothetical evidence. In three cases the police commented on the potential for CCTV images being available which, hypothetically, could help to support the prosecution case. Similarly, in another three cases officers hypothetically referred to the possibility of obtaining forensic evidence. These related to forensically checking items which included a mobile phone, a bottle, and a metal bar.

2.8.2.8. The end of the interrogation

It was usual at the end of the interrogation for one officer to summarise the key points arising. Generally the police would then ask those present if they had anything else to say. The time the interrogation ended is noted and the recording is switched off. With the interrogations being taped recorded there was no written statement for the parties to examine.

2.8.3. Suspect behaviour

Most of the juveniles said they would always have a lawyer when arrested by the police and tended to follow his advice in the interrogation. As noted above, the advice could vary depending on different factors, sometimes responding to some or all of the police questions or otherwise making 'no comment'. Research has shown that due to the passivity of most clients their lawyers are influential in their pleading decisions\(^{33}\), although the lawyers pointed out that clients did not always follow their advice. When advising juveniles to give their account of what happened to the police, for example, a lawyer said their advice was sometimes ignored and 'no comment' responses were made.

2.9. RECORDING OF INTERROGATION

2.9.1. Written record

The lawyers said that a summary of the interrogation was prepared in cases taken to court but only in those proceeding to trial is a transcript made available.\(^{34}\) It was while the police were preparing a transcript that the recorded interrogations were examined in this study. Accordingly, a written record had been prepared by the police and in nine out of the 12 cases a copy was made available. While there were no cases where a verbatim transcript of the interrogation was made, there were detailed accounts provided. In most cases


\(^{34}\) It was not possible to examine the summary made of the interrogation for the first court hearing.
these tended to follow what was said in the interrogation, although in a couple of cases, where the juveniles had exercised their right of silence, a number of questions were brought together to which the response noted was 'no comment'. In most of the written records examined there was seen to be a fair summary of the interrogation but seldom did this include details of interventions made by either the lawyer or the AA.

2.9.2. Audio or audio-visual recording of interrogations

The majority of police interrogations in England and Wales are audio-recorded but when conducting Voluntary Interviews a contemporaneous written record can be made in the absence of any recording equipment. All the interrogations examined in this study had been audio-recorded. The AAs said that it was only in relation to very serious offences, such as murder, that they had been involved in an interrogation recorded audio-visually. This was the experience of most police officers, although one did say that he worked in a station where all interrogations were now audio-visually recorded, including for minor offences. In the officer's view, the audio-visual recording of the interrogation made little or no difference to the way this was conducted.

There were differences of opinion expressed both within and between practitioners in the focus groups as to the potential benefits of making an audio-visual record. Most AAs and the police seemed to think this could be helpful, although for different reasons. Feeling that this would be fairer for juveniles an AA said: "It would be helpful to see the non-verbal stuff which goes on. People nod and it would be useful to see them." It was felt that an audio-visual record could also help to show juveniles who were clearly anxious and worried about what was happening, which anxiety could not be reflected in a written summary of the recording. For the police, on the other hand, an audio-visual record was thought to be helpful in picking up on the negative demeanour and body language of juveniles during the interrogation. As one police officer put it: "A video would help to show the police acting professionally while the suspect is slouching in the chair looking like they don't give a toss. Sometimes suspects can sit there laughing and this won't go down so well." A couple of juveniles said that their interrogation had been audio-visually recorded. One complained that the camera was directed at him rather than on the police and he felt this was unfair. In particular, he said that the police used this to their advantage as they were smiling and pulling faces at him trying to goad him but he was unable to respond because it would not have looked good on the video.
3. VULNERABILITIES

3.1. VULNERABILITIES RELATED TO AGE

There were differences of opinion expressed among the practitioners concerning the vulnerability of suspects related to age. For the police, apart from requiring an AA, and adapting their language to make sure the juvenile understands questions asked in the interrogation, there was said to be little difference in the treatment of adults or juveniles. The priority for the police was to ‘get a result’ and, as one officer put it: “They are a suspect regardless of their age or the offence.” For the lawyers, on the other hand, all juveniles were considered to be vulnerable because of their age.

The AAs recognised the vulnerability of juveniles due to their age but there was a difference of opinion about how far this extended to all juveniles. Due to their social work background, the YOT AAs all saw the juvenile as vulnerable: ‘just by reason of their age’, pointing out that there could be various different reasons for their vulnerability. A YOT AA, for example, said: “How they are arrested can determine what mood they’re in, how well supported they feel and how safe. It can be terrifying and confusing for some of them when brought into custody.” With a background in law enforcement, a couple of volunteers commented on some prolific offenders being cocky and disrespectful. One said: “We get a lot of regular offenders who don’t give a monkey’s. They know what they’re doing.” The other said: “I don’t like it when you get a suspect who shows no remorse and even laughs about the offence.” A police officer said he had a background in social work and he used to consider all juveniles to be vulnerable. However, since joining the police he has more of a focus on the victim which he acknowledged had changed the way he dealt with juveniles. As he put it: “I speak differently to them now I’m in the police. As an officer I know I’m being less sympathetic and more firm and harsh with them.”

The YOT AAs felt it was important to focus on the vulnerability of juveniles even if being disrespectful and not seeming to care that they were in custody. This YOT AA said: “Some will often put on an act, a show of bravado. This might make it seem that they don’t care while internally most are frightened.” The juveniles all said how nervous they were when being interrogated by the police. One said: “Once the tape machine goes on it starts beeping for a long time. When it stops you’re sat there with the tape recording thinking ‘fucking hell’.”
3.1.1. Mental ability and cognitive development

The police acknowledged that due to their maturation juveniles could have difficulties in understanding their legal rights and for this reason it was important that these had to be communicated to them in the presence of an AA. They also commented on needing to break down their legal rights into simple language. The lawyers said more time needed to be spent with juveniles because it was difficult for them to comprehend their rights and to understand what was happening. As one lawyer explained: “We have to break things down more, use simple language and go into sufficient detail so they easily understand what can be quite complex issues.”

There was one officer who commented that more attention should be paid to the mental ability of juveniles rather than their physical age. He said: “Some 14 or 15 year olds can have the mental capacity of a 10 year old. Others can have ADHD and other problems.” The lawyers also pointed out that many juveniles could be experiencing mental health problems. Summarising such concerns one said:

“A lot of kids have ADHD, it’s more common now. They can be very impulsive, which also makes them vulnerable. You can get a violent outburst in the interview to things like repeated questions which annoys them.”

Instead of the police taking into account the vulnerability of juveniles diagnosed with mental health problems the lawyers were critical that such factors can be ignored. As this one explained: “The problem is that so many kids have ADHD that the police just see it as an excuse for misbehaving.” A lawyer did say that the police response to mental health issues could improve if given more information. On one occasion, for instance, he described how a juvenile client with Asperger’s syndrome had been arrested by the police. He commented: “He kept a letter with him which said he had Asperger’s. The police read this and were brilliant. They dealt with him sensitively and did a good job.”

The AAs understood the need to take into account the mental ability and cognitive development of juveniles but there was a stark difference in the resources available to them. As noted above, in areas where the YOT provided AA services this meant that the AAs had access to other YOT workers and mainstream services while the volunteer AAs did not. There was a similar situation described by the lawyers with volunteers providing AA services in their area which meant that the local YOTs, social workers or mental health teams were not involved in juvenile cases in the police station. The practitioners saw this as a striking omission, particularly as the vulnerability of juveniles in custody is exacerbated if there are health and/or welfare problems.35

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While perceiving the process of detention and interrogation to be part of their punishment, the juveniles did not see that the police would be interested in their vulnerability. As one juvenile put it: "The police aren’t there to look after you they are there to scare you. To stop us from offending and deter us from going back into custody." From their perspective their interactions with the police were described as ‘playing games’. It was conceded that in ‘taking on’ the police this could impact on their treatment in custody. One juvenile said he sometimes got what he deserved from the police when he commented: "If I’m being alright with them then they will be okay with me. If I’m acting like a knob though I expect them to be a knob to me." The YOT AAs saw the bravado and disrespectful attitude of some juveniles in custody as raising questions about their vulnerability and whether they possess the cognitive ability and understanding necessary to exercise their legal rights.

3.1.2. Emotional ability

It was being in a cell for a long time that juveniles said was the worst thing about being held in custody. They complained that the bed was uncomfortable, the cell was either too hot or too cold and it was noisy. One juvenile said: "It was a nightmare. You can’t sleep, because there’s so much noise." While being held in a cell is unpleasant for all suspects, the AAs pointed out that it was a particularly difficult experience for juveniles. The juveniles described certain events as humiliating and being difficult for them emotionally. These included having to wear ‘plastic trousers’, which were said to be too big for them, if their own trousers had cords and had to be removed for their safety. The juveniles were also upset about having a camera in the cell, particularly as they felt the police could look at them when using the toilet. One juvenile complained of being punched by a detention officer in this cell.36 Another objected to seeing the police restraining a prisoner in handcuffs and straps on their legs. He said: "It doesn’t look right. You’ve lost your human rights altogether when you have coppers carrying you to your cell."

The juveniles also commented on the poor quality of the food as being an important issue for them in custody. Described as ‘horrible’, one said that he had not eaten anything when he was last in custody and when he was eventually released he almost fell downstairs because he was faint from hunger. A lawyer pointed out that the food could be a major issue causing problems emotionally for juveniles while in custody. He said:

“It might seem to be a minor thing refusing to eat but they can’t distract themselves while waiting in their cell. It ends up that they are desperate and will do whatever they think is necessary to get out of custody.”

36 The juvenile said that he made a complaint about this but he could not proceed because the CCTV evidence had gone missing.
The lawyers criticised the police in their local station for failing to recognise the emotional vulnerability of juveniles held in custody. From a police perspective, however, a couple of officers pointed out that custody was a safe environment for them. As this officer put it:

"Once they come in here it's a fairly safe place for them to be as we're constantly checking their rights. We have the staff here to look after them. I can't see that we can do anything more to safeguard them."

When talking about specific cases, however, the lawyers highlighted particular vulnerabilities. In one case, for example, a lawyer said he was currently dealing with an 11 year old who had been arrested for assaulting his mother. He was arrested at 22:00 hours the night before and by the time of the focus group, at 17:00 the next day, he was still in his cell waiting to be interrogated. In a similar case, another lawyer said that he had an 11 year old who had been arrested for an assault following an argument in the family home. The lawyer said that the child was frightened because his mother refused to come down to the station and so he would not leave his cell. He described how the police stood at the cell door trying to ask him questions about the offence.

Without the involvement of the YOT or social services in the custody suite the lawyers complained that there was no one available to deal with the emotional needs of children which meant that they sometimes had to discuss sensitive issues with them. In cases where a juvenile was brought into custody following an incident in the family home, for example, a lawyer reported that he sometimes had to explain that they were going into care. It was felt that such information was better coming from the lawyers than the police. Indeed, one lawyer reported that following an interrogation he heard an officer tell the juvenile: "You're going into care by the way, now back to your cell." In the past the lawyers said that social workers would have dealt with such issues.

3.1.3. Social context

The AAs pointed out that the social context for a juvenile's offending could be an important indicator of their vulnerability. Such factors included what was going on in their home life, with one AA saying that he was dealing with a juvenile who kept stealing food because he was not fed at home. Another AA said that child protection issues could lie behind much of a juvenile's offending. Accordingly, as one AA put it: "If we have a juvenile who starts offending the key question is to ask why?" A YOT manager also said that the status of a repeat offender should be recognised: "As a signifier of their vulnerability."
The police also commented on the social context of juveniles’ lives as having the potential to influence their offending behaviour. As one officer explained: “Something could be wrong at home or they can be exploited by people. Even when coming over as cocky they could still be vulnerable.” Another officer was critical of schools for not doing more to cope with minor offences. Instead, he said:

“The teachers try to kick them out of school saying it’s not their problem or call the police. We are the last line of defence but if they’ve been arrested five times already then something is wrong.”

One officer was critical over the lack of support from other agencies. In particular, he noted: “It’s got to the point where we need to lock them up to protect society. Maybe social services and the other agencies just aren’t working.”

3.1.4. Short term reasoning

The response of juveniles when brought into custody could sometimes be due to their short term reasoning but they did not always recognise that this could have a negative impact on their detention. When saying that they would sometimes ‘kick off’, for instance, this generally led them to being placed in a cell to calm down, thereby extending their time in custody. A juvenile said he would constantly ring the bell in his cell to annoy the police, not appreciating that in retaliation officers could delay dealing with his case. Another juvenile felt empowered in the interrogation saying: “The police can’t do anything to me. When I laugh in the interview they can’t do anything about it.” He then reflected that the last time this happened the police brought him back into custody on five different occasions for the same offence.

In the interrogation the juveniles referred to the police playing ‘mind games’ with them in order to get a confession. By referring to the interrogation as a game, and one in which they felt able to ‘take on’ the police, the juveniles highlighted their short term reasoning. In particular, one juvenile said he sometimes declined legal advice because he felt able to cope on his own. As he put it: “I don’t see the point in having them [a lawyer] to be fair … The police try to play you and you can play them.” He later said about the interrogation: “It’s all mind games. If you confuse them they don’t know what they’re on about and it’s a crap interview.” Without understanding the legal context in which interrogations are conducted, such bravado helps to highlight the vulnerability of juveniles.

It was also probably due to the short term reasoning of juveniles that they could get frustrated in the interrogation, particularly if this took a long time. A couple of juveniles reported having been interrogated for two hours and more without a break. The police acknowledged that it can be frustrating for them to sit through
a long interrogation, particularly after having given their account of events within the first two minutes. While the police said when interrogating juveniles a break would be taken after ten or 15 minutes, there were no such breaks observed in any of the recorded interrogations. The lawyers said that rarely did they experience breaks being taken, although this did happen when the police interviewed juvenile victims and witnesses.

3.2. VULNERABILITY DUE TO LACK OF LEGAL ASSISTANCE

The AAs said that it was important for juveniles to have legal assistance in the police station, particularly as some do not understand what a lawyer is and how they can help them. It was also pointed out by the AAs that some juveniles were deterred from having a lawyer because they thought they had to pay. The lawyers also raised concerns over juveniles being discouraged from having legal advice. When asking clients at court why they did not have a lawyer in the police station, for example, one said a common reply was: “The police told me it would take at least an hour to get one down to the station.” Not surprisingly, such a delay put juveniles off having legal advice.

From the interrogations examined there were a couple of cases where the juveniles were seen to be vulnerable due to the lack of legal assistance. In one case the juvenile was evidently vulnerable when arrested by the police for a serious offence of rape. He was interrogated without a lawyer despite replying to the officer’s question that he did not know what ‘rape’ was. The officer did not explain the offence of rape and neither did the AA intervene and ask him to do so. In another case the juvenile had responded to police questions but at the end of the interrogation it was obvious he was not believed as the officer said there would be an ID parade. While at this point the AA recognised the need to involve a lawyer, it was too late for them to be present in the interrogation.

Most of the AAs felt there were sufficient legal safeguards for juveniles, although this was in the context of their requiring a lawyer to be involved in such cases. The lawyers said that while in theory PACE provided sufficient legal safeguards for juveniles the problem was that their rights were not always enforced. One lawyer said: “There’s no check and balance on the police anymore. The custody sergeant used to be an independent and important arbiter of the process in the police station but not anymore.” Accordingly, the lawyers argued that the legal rights of juveniles needed to be further strengthened in cases involving familial AAs.
The police and AAs identified a gap in legal assistance being available at the conclusion of cases because the lawyers tended to leave the station at the end of the interrogation. The lawyers said that since the introduction of fixed fees for police station work they had to concentrate on the interrogation and they could not financially afford to wait around for the police to make a decision on the case outcome. In particular, one lawyer pointed out that if the case was referred to the Crown Prosecution Service there could be a delay of between two and four hours before a decision was made. The AAs said that they had to be available at the end of cases and there were often legal issues arising which they were unable to deal with. When the police wanted to impose a youth caution, for example, some AAs expressed concern that juveniles were under pressure to accept a criminal sanction in order to get out of custody and avoid court, even if there was no evidence against them.

3.3. VULNERABILITY RELATED TO TYPES OF JUVENILES

3.3.1. First offender vs. recidivist

In this chapter differences in the way the police treat juveniles depending on whether they are a first offender or a recidivist have been mentioned. The AAs said that there was a difference with a YOT AA saying: “The police here are very good. When they have first-timers they show them the cells and explain what’s happening.” However, he also noted that such attention from the police depended on the juvenile’s attitude. Thus, he said: “If they’re brought in bouncing off the walls and acting aggressively then they get shoved into a cell. You can get others who are crying.” Police comments seemed to suggest that juveniles brought into custody for the first time were seen to be deserving of their rights while recidivists were not. Indeed, for recidivists, and those being dealt with for a serious offence, the AAs said their treatment was the same as adults.

3.3.2. Arrested vs. invited

The AAs said that their policy was to require a lawyer to be involved in police interrogations of juveniles when they had been arrested and held in custody. However, as noted above when dealing with juveniles invited to be interviewed on a voluntary basis a number of AAs said that they did not appreciate that this was also an interrogation and so they did not have a similar requirement of requiring the involvement of a lawyer. With the focus group having highlighted this misunderstanding, the YOT managers said the issue would be addressed. For the lawyers, while PACE provides legal safeguards for juveniles in custody there are no similar mechanisms available to ensure the PACE rights of suspects are upheld during Voluntary Interviews. On the contrary, the lawyers
complained about ways in which the police tried to deter juveniles from having legal advice. Nevertheless, the lawyers recognised that a Voluntary Interview could be beneficial for juveniles as it avoided being arrested and held in a cell. In addition, for those arrested this information was noted on their criminal record, which information could then be available to others following a Criminal Records Bureau (CRB) check. There was no information recorded in the event of a Voluntary Interview.

3.4. VULNERABILITY DUE TO LONG DELAYS

The main concern raised by the juveniles was being held in a cell for a long time. It was accepted, as one juvenile explained, that they might need to be put in a cell for “Half-an-hour or so but not all day, particularly when being dealt with for a minor offence.” On the other hand, the juveniles said that being held in custody was intended to be a punishment. As this one explained: “If it was like a five star hotel then people would try and get themselves nicked. It’s supposed to be a deterrent and it is. You don’t want to go back.” The juveniles described boredom as the most difficult thing to cope with, particularly as they had no radio, mobile phone or other distraction in the cell. One said: “It’s how slow time goes when you are in a cell – it’s painful. There’s nothing to do.” Another commented that he would count the bricks on the wall to try and keep himself entertained.

There were long delays in most of the interrogations examined where suspects had been arrested. As noted in Table 4 above, eight juveniles were held for 12 hours or more, with two spending almost 24 hours in custody. A couple of juveniles also complained about being held in custody for long periods of time. One said that he had been released after 23 hours and 50 minutes in custody and another said that on one occasion he had been held for just over 24 hours.

The lawyers pointed out that one of the principal aims of PACE had been to rule out long delays in the detention of suspects in custody. However, despite the police being required to conduct a regular review of detention, the lawyers said that this had no effect on how long suspects were kept in custody. It had been intended that the reviews would stop police practices of leaving suspects for many hours in an attempt to ‘cool their heels’ in the hope of obtaining a confession. Recent research, however, suggests that the reviews are little more

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37 Two other suspects had been charged and held in custody until the next available court.
38 See section 37(2).
39 The first review of detention is to be carried out after a suspect has spent no longer than six hours in custody and the second review follows not later than nine hours after the first review and subsequent reviews must be at intervals of no more than 12 hours (see PACE s.40(3)(b)–(c)).
than a perfunctory exercise having little or no impact on the release times of suspects.\textsuperscript{41} The juveniles said they were not aware that the police were supposed to review their detention, although one did say: “Someone did come up to my cell but only the once.” Without suspects understanding the significance of the reviews, however, the lawyers pointed out that these were of no value.

Interestingly, the police did not always consider delays to be a problem of their making. As this officer put it:

“There’s nothing the police can do about it. The longest delay we get is in trying to arrange the solicitor, the AA and interpreter. It’s not the fault of the police. You can have all the safeguards but if there isn’t an AA at home and no one at social services then there will be delays.”

Another officer said that delays were beyond the powers of the police and this is why they sometimes needed an extension of time to the 24 hour PACE clock.\textsuperscript{42} In a recent study of police station legal advice, however, custody officers did complain about the ‘long windedness’ of the pre-charge process.\textsuperscript{43} While the custody officers in that study said that delays were mainly caused by the police, when gathering evidence, they were also critical of the defence. In particular, it was reported that some firms fail to provide sufficient cover at police stations, particularly during out-of-office hours.\textsuperscript{44} While the lawyers accepted that there could sometimes be delays due to a lack of cover, they were adamant that long delays were caused by the police. Accordingly, it was argued by lawyers that a shorter PACE clock was required for juveniles as this could help to expedite matters and reduce their time in custody.

4. SAFEGUARDS AND BEST PRACTICE

4.1. PROVIDING INFORMATION AND CHECKING FOR UNDERSTANDING

It was during the interrogations that officers would provide information and check for understanding, particularly in relation to the modified caution. Different approaches were observed, with some officers just going through the caution and asking the juvenile if this was understood. In most cases, however, the officers would break down the caution into three elements and explain this in their own words. In a small number of cases the officers asked

\textsuperscript{41} Kemp et al. 2012, p. 747.
\textsuperscript{42} This refers to the initial 24 hours’ detention permitted by PACE.
\textsuperscript{43} See further Kemp 2013, p. 188.
\textsuperscript{44} Kemp 2013, p. 190.
the juvenile questions in order to check their understanding. However, from the questions some officers put to the juveniles it seemed that the officers did not fully understand the caution, particularly in relation to the potential for adverse inferences later being drawn at court. It was also noted how some officers required juveniles to 'tell them the truth', contrary to their right to silence and the related privilege against self-incrimination. Indeed, in not one of the interrogations examined were juveniles told that they had a right not to incriminate themselves.

The lawyers felt that their involvement in cases was an important safeguard for juveniles but that their effectiveness had diminished. As this lawyer put it:

“We are essentially the only check and balance on the police. We can raise issues but we have become disenfranchised, certainly in some stations. In our local station there isn’t the environment to do our job. We can’t get to the custody sergeants. People say we should be more robust but we are just side-lined.”

In addition, the lawyers pointed out that in the majority of cases juveniles did not have a lawyer.

To help protect suspects the police are required to handover a leaflet which outlines their legal rights. With the design of the current leaflet the juveniles did not find this particularly informative. It would be helpful if juveniles who had experience of custodial interrogation were involved in designing a new leaflet which then communicated more effectively their legal rights. The leaflet could also include information on the juvenile’s right not to incriminate themselves and to clarify that they are not required to tell the police the truth during the interrogation.

4.2. SPECIALISATION AND TRAINING

There were different views expressed between practitioners about the need for specialisation and training. The view of the AAs was that training was required for all practitioners working with juveniles. As this YOT manager put it: “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.” However, this raises questions about how familial AAs are expected to undertake the role of the AA. The lawyers in the focus group all worked in large criminal departments and by routinely working with juveniles they considered themselves to be specialists. Although, it was acknowledged that many firms do not have the capacity to allow lawyers to become specialists by concentrating on juvenile cases.
The police recognised that while some interrogators were naturally good communicators others were not. One officer said: “Some aren’t interested in the ‘touchy feely’ sort of approach and they won’t bother with training.” When asked if they received supervision or mentoring when involved in the interrogation of juveniles all the officers laughed at this suggestion. One officer said: “There’s no appraisal process. It’s never done.” On the contrary, it was pointed out that only when seeking promotion were officers actively appraised. The police said this was wrong and they felt that training and supervision should be required for those involved in the interrogation of juveniles. Indeed, it was pointed out that officers were required to be trained when conducting specialist interviews with juvenile victims and witnesses but not when interrogating juvenile suspects.

It was suggested by a YOT manager that as practitioners involved in the interrogation of juveniles had different roles that joint-training events could help to improve working relations. He described this approach as having worked well in the youth court saying: “This helped everyone to better understand their roles and to address issues and concerns in a more coordinated approach. It also helped to get cases through to court a lot quicker.” The volunteer AAs were not so keen on this idea. Pointing out their limitations one said: “There’s resources available in other areas which enables a ‘Rolls Royce’ AA service to be provided. We can’t get other practitioners involved. That’s the issue which needs to be addressed for us.” Nevertheless, at the end of the focus group interview the volunteer AAs were pleased to accept an invitation from a YOT manager to attend their next training event. The lawyers agreed that joint-training could help practitioners to gain a better understanding of their roles but said this would only be effective if the police were prepared to engage. In particular, the lawyers felt that it would be useful for the police to see how the issue of disclosure influences what advice is given to clients in exercising their right of silence.

4.2.1. Specialisation and training for lawyers

The lawyers took the view that the current accreditation scheme for police station legal advisers was sufficient, even though it does not include training on how to deal with juveniles. This was not the finding arising out of an independent review of the youth justice system. Chaired by Lord Carlile, QC, the review found that lawyers are insufficiently trained to recognise the needs of juveniles. Accordingly, it recommended that regulators of criminal defence services should introduce ‘without delay’ a requirement for all legal practitioners representing children at the police station to be accredited to do so. The training to include, amongst other things, the needs of children, including mental health issues, speech, language and communication needs, welfare

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45 See Carlile 2014.
issues and child development. It was also recommended that: “Criminal justice system-experienced young people should be extensively involved in the delivery of training.”

4.3. LEGAL ASSISTANCE

While frustrated that the involvement of a lawyer tends to increase the likelihood of a ‘no comment’ response, the police acknowledged that it is important for juveniles to have access to legal assistance. Recognising the defence role in the interrogation one officer said: “At the end of the day they are only going their job: protecting their client and not letting them say something which will prejudice them.” For the lawyers, it was felt that their involvement in juvenile cases was important, not least because of concerns that their legal rights were being undermined. This was the comment from one lawyer: “The police have drifted away from PACE over recent years. It seems that they don’t know that what they are doing [in the interrogation] is wrong.” Another lawyer was cynical of the police priority to get a result. He said: “Sometimes it seems that all they are after is a detection [a criminal sanction] at all costs. A tick in the box.” Accordingly, it was the view of the lawyers that legal assistance should be mandatory for juveniles interrogated by the police, particularly the younger age group and those being dealt with for serious offences.

4.4. ASSISTANCE BY APPROPRIATE ADULT

It has only been possible in this study to consider the role of the AA from the perspective of those involved in YOT and voluntary AA schemes. The police and lawyers recognised AAs as providing an important safeguard for juveniles, but questioned the extent to which family members and friends were able to take on this role. As this lawyer explained:

“It can be very difficult for a parent to advise their child when a solicitor isn’t there. They won’t know details of the law, such as the concept of ‘joint enterprise’ in a street robbery. Parents also tend to encourage their child to ‘tell the truth’, which isn’t always in their best interests.”

The AAs were similarly concerned that some parents could put their child under pressure to ‘tell the truth’ in the interrogation and to admit to offences when there was no evidence against them.

46 Carlile 2014, p. 61.
4.5. JUVENILE FRIENDLY INTERROGATION

In the 12 interrogations examined the juvenile was treated first and foremost as a suspect, with few concessions being made with regard to their age. It was in relation to the ABE model of interviewing juvenile victims and witnesses that the police and lawyers referred to this as requiring a ‘child focused’ approach. The police commented that the ABE model could be adapted for juvenile suspects, pointing out that the ‘truth and lies’ approach was particularly helpful. Some officers also commented on how ABE currently influenced them in the interrogation. One officer said: “I start to think more about the victim now when I’m interviewing a juvenile.” As noted above, it is contradictory for juveniles to be advised of their right to remain silent and then be told by the police to ‘tell the truth’. Accordingly, if the ABE model is to be adapted to be used in the police interrogation of juvenile suspects this will need to take into account their legal rights as suspects. A requirement for officers to be trained in using the ABE model could also help to develop a child-friendly interrogation for juveniles.

4.6. PACE BEDS

When juveniles are charged by the police and the custody officer authorises their continued detention, PACE requires that arrangements be made for them to be taken into the care of the local authority and to be detained pending his court appearance.\textsuperscript{47} Despite this being a statutory requirement, the practitioners in the Midlands said that there was no provision made by the local authorities for PACE beds.\textsuperscript{48} A YOT manager pointed out:

\textit{“Without this facility it can be harmful to children going through to court. Those held overnight are likely to be tired and agitated. The magistrates will know they have been held in police custody and this can go against them in their hearing.”}

When considering safeguards for juveniles the AAs agreed that a key priority for them would be to reduce the length of time they are held in custody and to require local authorities to make available PACE beds.

\textsuperscript{47} PACE Codes of Practice, Para. 16.7.
\textsuperscript{48} After examining six local authority areas based outside of the Midlands area, an inspection team of youth offending found that rarely were children transferred into local authority accommodation following charge (Criminal Justice Joint Inspection 2011). In January 2015, the Home Secretary and the Secretary of State for Education issued a joint statement to the leads of Children’s Services, reminding them of this statutory duty and urging them to take action in advance of its extended application to 17 year olds under amendments to PACE that commenced in October 2015.
4.7. ASSESSMENT

When brought into custody all suspects are assessed by a custody officer to establish that it is safe to detain them. However, as the police pointed out, the assessment often does not take into account whether the juvenile is fit to be interrogated or their level of understanding. Accordingly, practitioners were concerned that no further assessment was required prior to the interrogation. The police were also critical that no assessment was required when interrogating juveniles on a voluntary basis. One officer commented that: “This will come back to kick us eventually.”

The Carlile review found that youth justice practitioners were not picking up on the mental health and welfare issues of juveniles. This was despite the review finding that many juveniles who offend have a range of needs, often arising out of family circumstances and their consequences. There is mentioned in the report two services, Youth Justice Liaison and Diversion and Triage services which involve police-station based assessment of a juvenile at the point of arrest, by a health worker and YOT worker, respectively. The aim is to identify children with vulnerabilities and to divert them away from the criminal justice system and into appropriate interventions. The development of these services into police stations in identifying and accessing support for the needs of juveniles could usefully be extended to include examining a juvenile’s fitness to be interrogated.

4.8. RECORDING OF INTERROGATION

For juveniles arrested the police said that all interrogations were at least audio-recorded, with some police stations now having audio-visual recordings. The lawyers raised concerns that an audio-visual recording could show their client in a bad light, particularly if they were nervous and playing up to the police. However, looking to the future the lawyers acknowledged that the audio-visual recording of interrogations was likely to become more commonplace and this could only be a positive development in helping to make the process more transparent.

5. CONCLUSIONS

The PACE Act in England and Wales provides a comprehensive framework for safeguarding suspects detained and interrogated by the police. Apart from a mandatory requirement for juveniles to have an AA, however, juveniles are...
treated the same as adults. This means that from 10 years of age children are responsible for deciding whether or not to have a lawyer, despite most of them not knowing what a lawyer is or how they can assist them in custody. Indeed, a key issue arising out of this study is the lack of understanding of juveniles of their legal rights and the procedures involved in the police interrogation and in police custody.

For almost 30 years PACE has provided safeguards in the interrogation but over the past two decades there has been very little research undertaken examining these protections. The findings from this study resonate with other recent studies which have found breaches of PACE safeguards or the protections are simply not enforced. There are provisions intended to avoid unnecessary delays, for example, but apart from the 24 hours the police are allowed to detain a suspect under PACE there is no restriction on the length of time juveniles can be held in custody. Consequently, the lawyers have suggested a shorter PACE clock for juveniles. Local authorities have a statutory responsibility to provide ‘PACE beds’ so that juveniles charged and remanded until the next available court can be transferred out of police custody but no such provision is available in the Midlands or in many other parts of the country. PACE also provides access to free and independent legal advice but lawyers raised concerns over juveniles being discouraged from having a lawyer, particularly when being interrogated under a Voluntary Interview. While PACE does have a mandatory requirement for AAs to be involved in juvenile cases, which protection is upheld, there is no similar requirement for mandatory legal advice, even when dealing with very young children and/or with very serious offences.

There were three different types of AAs services involved in the focus group, managed either by YOTs or the voluntary sector. A major difference highlighted between the two service providers is in their ability to draw on other services. The YOT AAs, for instance, are able to draw on other YOT colleagues and mainstream services when dealing with juveniles in custody. Where AA services have been contracted out to the third sector the volunteer AAs complained that they have no access to YOTs or other youth justice workers. It was also noted that in the areas where YOTs have contracted out AAs services that YOT workers, social workers or mental health teams were rarely involved with juveniles held in police custody. This is an important omission concerning the safeguards required for juveniles held in detention and interrogated by the police. In addition, apart from custody officers asking suspects questions about their health and welfare, there is no assessment made of a juvenile’s fitness to be interrogated. A requirement for an assessment to be undertaken could provide an early opportunity for juvenile justice practitioners to be involved with juveniles in the police station.
The policy of AA schemes is to advise juveniles to have a lawyer when interrogated by the police and this was seen to be an important safeguard. However, in the majority of cases it is the parents or other carers who act as the AA. It is not known to what extent familial AAs are effective in this role, particularly in the interrogation, and how they might influence the take-up of legal advice. Due to the ad hoc way in which family and friends take on the responsibilities of the AA it was not possible to bring them into this study but further research could usefully explore this important issue.

The involvement of lawyers in the interrogation was often found to be an important safeguard for juveniles but in many cases legal advice is declined. In the sample of 12 interrogations there were a number of cases examined where the police tried to put juveniles under pressure either to confess or at least to respond to their questions. Interestingly, such pressure was heard to be exerted irrespective of whether or not a lawyer was involved. While the involvement of a lawyer can help to protect juveniles those without legal advice are particularly vulnerable to police tactics putting them under pressure during the interrogation. The police officers involved in the focus group were critical that there was no requirement for them to be appropriately trained before being allowed to interrogate juveniles. They also commented that while there was a model for 'achieving best evidence' from juvenile victims and witnesses, there was no similar model available for interrogating juvenile suspects.

It would help to improve safeguards for juveniles if their legal rights were clarified and there was a standard way in which their understanding could be checked. There was noted to be some confusion within the police over the right to remain silent, particularly in relation to the potential for later drawing adverse inferences at court. Having cautioned juveniles, and explained the meaning of the caution, there were also some cases where the officers required juveniles to 'tell the truth'. Such an approach seems not only to contradict suspects' right to remain silent but also the associated right not to incriminate themselves.

Within the focus groups with practitioners there was found to be a lack of understanding of each other's role in the interrogation. One area where this was seen to be problematic was over the disclosure of evidence prior to the interrogation. In the main, the police wanted to hold back evidence so the juvenile could be confronted with it during the interrogation. The lawyers, on the other hand, wanted to examine the strength of the prosecution case and if no evidence was disclosed they were likely to advise clients to make 'no comment' during the interrogation. The practitioners said it would be useful to have joint-training events so they could better understand their roles in the interrogation and address any concerns or issues arising.
The engagement of juveniles in this study has been important in highlighting their perception of what happens in police custody and in the interrogation. It was interesting to listen to their complaints about police ploys being used during the interrogation and for the researchers to then hear similar tactics when listening to the interrogations. While most juveniles had been arrested on a number of occasions there was seen to be a lack of understanding of their rights. With some there was also seen to be misplaced confidence as they felt able to ‘take on the police’ and play ‘mind games’ with them during the interrogation. Interestingly, while the worse thing for all the juveniles was the length of time they were held in custody, with nothing to distract them, they all accepted this treatment as part of their punishment. It would be helpful if research could further examine the experience of juveniles in the interrogation and to consider the effectiveness of safeguards from their perspective.

While the PACE Act in England and Wales provides important safeguards for juveniles interrogated by the police there are a number of areas where such protections are undermined or simply ignored. A recent review of the youth justice system by Lord Carlile has made a number of recommendations which chime with the findings arising out of this study.50 These include requirements for the specialisation and training of all practitioners who routinely engage with juveniles in the criminal process, including the interrogation. Such training should provide practitioners with a better understanding of the vulnerability and needs of juveniles and to encourage a more child-friendly interrogation. In developing training materials, and also leaflets/podcasts explaining juveniles’ rights, it would be helpful to involve juveniles who have experience of custody and the interrogation.

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CHAPTER 5
ITALY: EMPIRICAL FINDINGS

Claudia Cesari, Deborah De Felice and Vania Patanè*

1. INTRODUCTION

The aim of this chapter is to describe the Italian practice of interrogating young suspects. Until today, no empirical research has been conducted in Italy with regard to the interrogation of juvenile suspects. In contrast with the wide range of literature on the questioning of young victims and young witnesses, no attention has been paid to the juveniles who are suspected of having committed a criminal offence. Therefore, this study aims to draft a first picture which is derived from focus group interviews with legal professionals and with juveniles. The findings from the focus group interviews are complemented with the analysis of recorded interrogations with young suspects.

Focus groups interviews were conducted with all actors directly involved in the interrogation of young suspects: police officers, prosecutors, lawyers and social workers. Participants varied in their experience with regard to the interrogation of young suspects as well as in the degree of their specialisation. In the police focus group nine police officers from two types of police forces (carabinieri and state police) participated. Police officers, mostly female, differed in function as well as in the interrogation training they had followed. The focus group interview with lawyers consisted of six male and female juvenile lawyers of which five were enrolled in the duty lawyer scheme. The focus group interview with prosecutors entailed seven mostly female prosecutors from three districts. Prosecutors were balanced on the criteria of their function (public prosecutors versus deputy public prosecutors) and training. The seven social workers in the focus group interview were all females who came from three different districts and varied in experience and training on interrogation of juveniles. The reason

* This chapter is the result of joint work of the authors. The paragraphs 2 – 2.6 have been written by Deborah De Felice. Paragraphs 5.2.7 - 5.4.4 have been written by Claudia Cesari and Vania Patanè. The introduction and the conclusion are the result of joint work of the three authors.
for this is that social workers are not always present during the first interrogation that takes place at the police station. It is more common that they are present at the juvenile first reception center\(^1\) or during the interrogation carried out by the prosecutor.

A focus group interview was also held with juveniles at a Juvenile Detention Centre. Eight male juveniles convicted for an offence participated. These juveniles, a mix of repeat offenders and first offenders, differed also with regard to the type of crime they were suspected of.

The focus group interviews with legal actors show ambivalent positions with respect to the functioning of the juvenile justice system. On the one hand, they expressed a general satisfaction with regard to the regulatory framework provided for juveniles involved in the criminal circuit. On the other hand, many organisational and operational aspects emerged as problematic.

Written records were examined since in Italy interrogations of young suspects are neither audio- nor video recorded. This means that information is derived from constructed written records which might not fully and/or accurately reflect reality. For the purpose of the document analysis 25 written records were selected. All interrogations were conducted between 2012 and 2014 by prosecutors or police. Written records from various areas in Italy were included to capture different practices. The geographical variability also reflects differences between large and small towns. Juveniles were mostly males who were interrogated for various types of crime. Most of them were assisted by one or both parents and a limited number by another appropriate adult (hereafter: AA). A balance was strived for between appointed lawyers (6) and hired lawyers (19).

Based upon integrated findings from these five focus group interviews and the analysis of 25 written records a picture of interrogation with young suspects in Italy will be drawn. First a general description of the practice from the first contact until the recording of the interrogation will be provided. Subsequently, the vulnerability of juveniles will be discussed, followed by an examination of safeguards and good practices, including the need for specialisation and training.

2. DESCRIBING THE PRACTICE

2.1. FIRST CONTACT

‘First contact’ refers to the first contact between juveniles and the judicial system. This ‘first contact’ could be with ‘street police officers’ (at arrest), or with the

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\(^1\) The ‘first reception centers’ (centri di prima accoglienza) are special facilities, managed by specialised staff, where the arrested juveniles are taken immediately after the arrest.
police officers who operate in the Juvenile Prosecution Division (when juveniles are invited to appear at the station for interrogation).

Juveniles report that they were arrested by the police and brought to the police station while they were at home or out on the street. At this stage the police only explain the reason why they are arresting them but refrain from asking questions. The police attitude is described as aggressive, threatening and designed to scare them. A juvenile said:

“You always have to say that it is as they say. They do it with the intention of seeing how you react but, in the end, they decide whether to believe you or not”.

Some differences were highlighted between the contact with the ‘street police officers’ at the time of arrest and the contact with the police officers who operate in the specialised unit at the Juvenile Prosecution Office.

Regarding the information gathered before the first interrogation, the police normally dissuade juveniles from making statements in the absence of their lawyer. According to the code of criminal procedure the police have a clear mandate to make a full record of everything said during the interrogation of juveniles and the lawyer must be present when an interrogation with the police takes place, also during the preliminary investigations.

In 20 out of 25 written records examined, no references were found to the information gathering preceding the interrogation. In the remaining five written records, some references were made concerning spontaneous statements given by young suspects immediately after the arrest. In two written records the police referred to information gathered before the interrogation. In the other three written records, the juveniles themselves refer to their arrest and their immediate spontaneous confession.

2.2. POLICE PROCEEDINGS

Almost all interrogations studied were delegated to the police: 23 out of the 25 interrogations were carried out by police officers after delegation by a public prosecutor and two were carried out by a public prosecutor. Due to the high degree of formality of the structure of 25 examined written records, it is impossible to examine differences between the interrogations conducted by prosecutors and by the police.

In general, for all the written records, it is possible to identify five basic parts: the charges, the appointment of the lawyer, the sources of evidence, the advice on procedural rights and the report of the facts by the juvenile.

It is the suspect who provides information about his identity, date and place of birth, residence (usually an identification document like identity card is shown). Other procedures of identification (mug shot and fingerprints) are
carried out by the police, as specified in the following paragraphs, only in the event of arrest and/or imprisonment.

According to the written records – before the start of the interrogation – the police serve the juvenile with the relevant article(s) of the criminal code he is suspected of having breached and they explain any possible aggravating circumstances. Secondly, they ask the suspect to provide an address for communications which very often will be the address of a lawyer, who is appointed simultaneously. Thirdly, the police make a list of the sources of evidence against the suspect even though sometimes evidence is lacking. Finally, pursuant to art. 64 of the code of criminal procedure, the suspect is notified that his declarations can always be used against him; that he has the right to remain silent; and that, if he makes statements concerning the responsibility of others, he will assume the role of a witness on these matters.

2.2.1. Timing

What emerges from the written records is that, in general, the interrogations are conducted in the morning (20 out of 25 written records report a time between 9:00h and 13:00h) or in the afternoon (at latest interrogations are concluded at 19:05h).

Both police and lawyers in the focus groups agree on the timing and that flexibility is normally granted in favour of the juvenile’s needs and obligations, particularly having to go to school. Conflicting results emerge from the focus group interview with juveniles, which shows a great variability concerning the time spent at the police station and the duration of the interrogation. It depends on when the juvenile was arrested: some juveniles were arrested at night, others during the day. When the arrest took place at night, juveniles were held at the police station waiting for their relatives or lawyer.

The written records of interrogations do not reveal anything about the time of arrest and the arrival at the police station. They merely record what is being said during the interrogation. It is important to underline that these written records were related to juveniles who were not arrested, but who were invited to appear at the station for interrogation. Normally, the prosecutor sends the juvenile under investigation a notice of invitation to appear, at least three days prior to the interrogation. This notification specifies the date, time, place of the interrogation as well as the authority before which the person must appear.

2.2.2. Police activities

In Italy, before the interrogation of an arrested juvenile commences, the following procedural steps are normally taken: 1) the juvenile is brought to the

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2 In one case, the interrogation was conducted in prison where the juvenile was being held in custody.
police office, where the police proceed to inform the prosecutor on duty, the family and the appointed lawyer; 2) the police proceed to perform biometrics recognition (short or tall build, size, eyes color, skin color, tattoo) at the police’s scientific office or at the scientific investigation department of the carabinieri; 3) the judicial police write a report of arrest and draw up a notice which they hand over to the juvenile to take with him to the first reception center; 4) if the juvenile has been arrested, he is identified (collecting biometrics) in order to make an information tag containing the date and reasons of arrest and the time of arrival at the first reception center et cetera and 5) the judicial police draw up a report to which all previous documents for the prosecutor are attached.

Prior to the interrogation of an arrested juvenile, the following procedure is generally followed: the police first proceed with the identification of the juvenile suspect, they invite him to elect domicile and to appoint a lawyer. If the crime is not serious, the prosecutor draws up a report entrusting the juvenile to the custody of his parents. In addition, the prosecutor prepares an informative document which is to be sent to the investigative judge of the Juvenile Division (specifying the acts performed by the police and the acts against the person under investigation), asking for the validation of the arrest. The public prosecutor, to whom the file is assigned by the chief prosecutor, delegates further investigations and the interrogation to the responding officers or to the section of the judicial police at the Juvenile Prosecution office.

2.3. INFORMATION ON RIGHTS

In Italy there is not a widespread use of a written notice of rights, yet. However, it is compulsory to orally communicate the rights to the juvenile before the interrogation begins. The focus groups with professionals confirmed that juveniles are informed on their rights prior to the interrogation. In contrast to what was reported by prosecutors and police, 5 of 8 juveniles have claimed that they were not informed of their rights. In the focus group interview juveniles seemed to be confused about the definition of ‘rights’. Some juveniles mentioned only the right to have a lawyer and the right to inform the family, but others said that the police didn’t explain anything. One juvenile, talking to the moderator during the focus group interview, exclaims:

“But according to you, there is someone that says: ‘You have the right to do this or that’?”

According to social workers, juveniles often ignore their rights, as do their families: they are just informed through ritual formulas without being put in the condition to really understand. This is maybe one of the reasons why social workers consider their role and the role of lawyers in informing and supporting
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juvenile suspects indispensable. They can reduce any misunderstandings and failures on the part of the interrogators.

Quantitative analysis shows that in all 25 interrogations the rights of defence were communicated to the suspect: the right to remain silent, not to incriminate himself/herself, and the warning that if he will make statements about third parties he will assume the role of witness in their cases.

2.3.1. Checking for understanding

To ensure that juveniles understand is an important aspect of information about rights in juvenile proceedings: there is an obligation to illustrate the meaning of procedural activities and the content and reasons of every decision taken. On the matter of checking for understanding, there are conflicting opinions: making sure that juveniles really understand what their rights are would depend on the personal sensitivity of the interrogators.

Prosecutors claim to inform juveniles before any interrogation in two steps: in a first step, reading the notices required by law and, in a second step, explaining what these warnings mean. Prosecutors agreed that juveniles, at the time of the interrogation, are confused and have difficulties in understanding what they hear: so, it is essential to explain not only what are their rights but also what are the consequences of these rights.

Some police officers said they literally read the warnings about rights as they are written in the code. Other police officers, instead, agreed that it is necessary to translate in simple terms what is normally said to adults:

“I put in plain words and not in legal language what is happening, what the law requires and what will happen”.

Since it often happens that juveniles experience difficulties in understanding Italian, because they are used to express themselves only in a local dialect (given the multitude of regional dialects in Italy), a police officer emphasises the need to be able to speak the local dialect, if the juvenile is not used to speaking Italian official language.

2.3.2. Information about the right to legal assistance

Legal assistance is among the rights about which the police inform juveniles. During the focus group interview juveniles were asked about which rights they were informed by the police at the time of their arrest. Juveniles mentioned the right to call their own lawyer. If the juvenile has no hired lawyer, a court-appointed lawyer will be chosen from a list of specialised lawyers.

In the written records the right to legal assistance is not among the rights the juvenile is warned about, but it is taken for granted: all the written records report the appointment of a lawyer.

2.3.3. Information about the right to silence

During the focus group, prosecutors agreed that it is important for juveniles to be well aware of their right to remain silent. If the juvenile decides not to exercise this right, this behaviour, according to prosecutors, helps them “to understand his situation and to be able to intervene to help the juvenile”.

The police, when informing juveniles about their right to remain silent, also state that it would be better for the juveniles not to do so, because it could be seen as an uncooperative attitude. Prosecutors themselves consider the juvenile's willingness to answer as a cooperative attitude. Such behaviour, according to them, could influence the request to be submitted to the judge, at the end of proceedings, in order to choose among the range of options for the case disposal the one that fits the specific situation best. The use of such a dissuasive technique (of informing the juvenile that it might be better not to remain silent) is problematic, because it can have an impact on the way the juvenile perceives procedural rights, on the outcome of the case and on the possibility of performing an effective criminal defence.

Police officers express the opinion that the juvenile suspect's strategy could depend on the lawyer instead of the juvenile's own volition. Conversely, lawyers explain to the juveniles why it is better for them not to answer, when the case requires so, because they do not have the sufficient information on the case, to devise a defensive strategy, yet, or they want to assess the situation first (that is the juvenile's background, the features of the suspected crime and the existing evidence). This practice seems to be confirmed by the juveniles in the focus group interview. When asked what they discussed with their lawyer, the juveniles reported that they had evaluated with their lawyers the opportunity to adopt the silence-strategy. Even though police officers try to dissuade from the use of the right to silence, it seems that juveniles in the interview were confused and chose to adopt this strategy nonetheless. It remains uncertain how many juveniles do cooperate because of this ‘informative’ statement by the police.

2.3.4. Information about the right to have someone informed of detention

The right to call a family-member is mentioned among the rights that the police communicate to the juveniles. In the focus group interview the juveniles indeed mentioned this as one of the rights they are informed about. When the arrest occurs on the street, school premises or elsewhere away from relatives, families are contacted by the police or by the juveniles at the request of the police, when
they are already at the police station. The juveniles, however, specify that the call to their parents was necessary to, first of all, collect their personal belongings (before being brought to a secured facility). Secondly, the parents were contacted because it is mandatory and the police insist on it.

### 2.4. LEGAL ASSISTANCE

The juveniles in the focus group interview said that their family contacted the lawyer who met them after hours or, in one case, after two days, directly at the hearing for the validation of the arrest. In general, if the interrogation is conducted by prosecutors, or by the police delegated by the prosecutor, the lawyer is always present.

Two interpretations of their mandate emerged from the focus group interview conducted with lawyers: one closely connected to ensuring a proper technical defense for the client; another more inclined to consider their role as more closely linked to the possible ‘educational value’ of the juvenile justice process. The two orientations, according to lawyers, are the result of a fundamental complexity in the legal system: while it is clear that the role played by the judge in the process is deciding on the merits of the case and safeguarding the fairness of proceedings, to define the role of the juvenile lawyer is more difficult. In fact, the juvenile lawyer has the responsibility to make sure the juvenile understands the procedural events, raising the level of awareness as well as ensuring a proper technical defense for his client.

#### 2.4.1. Decision / waiver

According to the participants it never happens that juveniles waive the right to legal assistance. The law in fact does not provide for this option: juveniles can decide whether to have a court-appointed lawyer or a chosen lawyer but they cannot waive the right to legal assistance in general. Moreover, according to the police, juvenile suspects would not have such self-determination capacity. A prosecutor said that only once in his entire career it happened that, due to the insistence of a juvenile and only because the lawyer did not arrive, he had to interrogate a juvenile in the absence of a lawyer. The law establishes that, in the lawyer’s absence, the results of the police interrogation cannot be used as evidence. The police are very clear on this point:

*We cannot collect confessions in the absence of the lawyer*.

*De facto*, on the written records of all the interrogations analysed, the lawyer is always mentioned as present. As shown in table 1, in 18 out of 24 interrogations,
the lawyer is a chosen lawyer. In one interrogation it was not specified in the written record what the lawyer’s qualification (chosen or appointed) was.

Table 1. Lawyer present during interrogation

<table>
<thead>
<tr>
<th>Assistance at interrogation</th>
<th>Yes, chosen lawyer</th>
<th>Yes, appointed lawyer</th>
<th>No</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal assistance</td>
<td>18</td>
<td>6</td>
<td>0</td>
<td>1</td>
<td>25</td>
</tr>
</tbody>
</table>

2.4.2. Pre-interview disclosure and lawyer's advice

During the investigative phase, the police and prosecutors tend not to reveal anything to lawyers: "It is the rule!". However it may happen that, in exceptional circumstances, prosecutors give some information to the lawyers if they show a collaborative attitude, aimed at finding the best solution for the juvenile.

Some lawyers indicated that they try to get information during an investigation, for example on the existence of any witnesses or about the type of precautionary measures that the prosecutor wants to ask. Only some of them are able to obtain the information required; it depends on the existence of a personal relationship of trust between the investigating authority and the lawyer:

“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”.

2.4.3. Consultation

The written records of interrogations only give information about what happens during the interrogation. Besides information obtained through the focus group interviews, there is no information about the consultation of juveniles with their lawyer. During the consultation, the lawyer may recommend the juvenile to answer. This depends on the dual mandate that lawyers feel they have towards juvenile suspects. On the one hand, lawyers suggest the juveniles to remain silent, with a view to their responsibility to protect them from the possibility to incriminate themselves. On the other hand, lawyers play an educative role, suggesting to juveniles to talk and trying to make them aware of the relevance of their behavior.

The lawyers interviewed did not do telephone consultations. On the questionnaires administered to the lawyers before the focus group interviews, all of them replied they had never made any telephone consultations: consultations are done face to face mainly in their own office and rarely at the police headquarters. Discussing the importance of legal assistance, one lawyer said:

“We are the first ones who deal not only with the legal aspects but also with the aspects of human life. We are in a middle ground, because the juveniles have such a fear and families don't know what to do. We are the first lifeline”.
All focus groups pointed out, however, a substantial difference between the lawyers enrolled in the duty lawyer scheme for juvenile lawyers and the chosen lawyers. The latter, according to the opinion of those interviewed, often do not have adequate training and are motivated more by making a profit than by the juvenile's best interest. Through this procedural strategy, juveniles get to experience the process from an adult perspective, targeted exclusively to get to a dismissal.

Legal consultation consists of a discussion of the offence details and of the defensive strategy. Normally, the lawyer asks juveniles and their parents or relatives (always present) to come to his office to discuss and to explain the defence strategy. At this stage the lawyer verifies, in addition by contacting social workers, the chances for a probation order or other options alternative to detention. When juveniles are detained, the lawyer can meet them at any time. As one lawyer suggests, it would be good to consider the possibility of ‘defensive investigations’ by using the knowledges and the work of other professionals, such as criminologists, psychologists and social workers to investigate some behavioral dynamics and the family background of juveniles.4

Basically, lawyers try to get juveniles and their family to trust the defence strategy which they propose, trying to involve, first of all, juveniles to follow the strategy.

The first meetings between juveniles and lawyers, however, are sometimes characterised by a lack of mutual trust: it is clear from both the focus group interviews with juveniles and social workers, that this first contact with the defence lawyer could give the juvenile false expectations about a positive outcome. A police officer complained that often this first meeting occurs in the hallway, just before the interrogation and does not last long.

2.4.4. Assistance during interrogation

During interrogations, three modes of intervention adopted by lawyers were identified: interruptions aimed at discussing privately with the juvenile the issues at stake; interventions to prevent leading questions; and questions addressed to the juvenile because the answer might be in his favor. Both police and prosecutors frown upon interferences by the lawyer during the interrogation. They invite lawyers to ask their questions only at the end of the interrogation. In all focus groups, it was pointed out that lawyers and interrogators often have disagreements. The lawyers say that many times they are forced to stop interrogations because questions are leading or badly formulated. However, during the focus group with lawyers, it emerges that perhaps a too conflicting

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4 See infra paragraph 4.4.
attitude may not be in the juvenile’s best interest. A significant remark in this regard is:

“When the lawyer starts with this kind of interrogation strategy, he destroys the next chance of being considered as teamplayer. It becomes complicated to make the juvenile aware that the system is there for him and not against him”.

In the representation of different views on the type of appropriate interventions for lawyers during the interrogation of a juvenile suspect, the concept of ‘mild justice’ is interesting. This would be a way to speed up the process by agreeing on the outcome. Nowadays, one lawyer indicated, it is rare to get to the trial stage, because of the widespread idea that the early diversion techniques, including mediation, should prevail, even if that could involve the risk that, with the appealing perspective of avoiding the trial through an early definition of the case, even an innocent could admit to be guilty.

Another lawyer mentioned the evolution of the juvenile protection system over the last decade. The lawyer’s role evolved from an idle bystander in the juvenile process which was handled entirely by the judge towards a more active participant during interrogations. Evidently, this evolution process is not considered to be finished because even within the same group of participants, there were varying views on their positions towards the process and the role of a lawyer therein.

2.4.4.1. Lawyer interventions

The written records analysis however, does not show interventions by the lawyer during the interrogation. As also emerged from the focus group interview with lawyers, they intervene only if there are violations of the rights of the juvenile under investigation. With their signature the lawyers just confirm the contents of the written records, so it is not possible to assume that having their signature on the records, means that no violations occurred.

It is common practice, however, that the police ask the lawyer if he wants to clarify any points to his client. However, this is an informal and non-confrontational invitation, so this type of intervention is not recorded in the official written record. None of the written records mentioned the lawyer advising his client during the interrogation.

2.4.4.2. Checking the statement

In the cases where it was possible to analyse the original transcripts of written records, it was found that the lawyer – as well as the juvenile and the adult who accompanied him – reads, confirms and signs the written record.
2.5. APPROPRIATE ADULT

2.5.1. Characteristics

In Italy, at every stage of the juvenile process, the presence of an AA (parents or another suitable person) is mandatory and in any case, the assistance of the Social Services Division of Juvenile Justice is guaranteed to the juvenile.

In all but one examined written records of interrogations, the presence of at least one AA is recorded. Only in one interrogation, upon the juvenile’s request, the parents did not attend the interrogation even though they were present at the judicial police office.

In 20 out of 25 interrogations analysed, one of the AAs is a parent: in twelve interrogations it was the mother, in four interrogations it was the father and both parents were present in the remaining four interrogations. In two interrogations the juvenile was not assisted by a parent, but a social worker to whom the juvenile had been entrusted. In the event that the interrogation was conducted in prison, there was the prison-educator who is part of the prison’s staff. This is shown in table 2.

Table 2. Assistance by appropriate adult

<table>
<thead>
<tr>
<th>Assistance by an adult during interrogation</th>
<th>Yes, by the mother</th>
<th>Yes, by the father</th>
<th>Yes, by both parents</th>
<th>Yes, by another person</th>
<th>No, right waived</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistance by an adult during interrogation</td>
<td>12</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>25</td>
</tr>
</tbody>
</table>

Prosecutors said it is useful to get acquainted with the juvenile’s parents and to assess whether they are supportive and whether they will cooperate to look after the juvenile.

Although the law provides for the presence of the social worker, together with an AA, the analysis of written records indicate their presence only in two interrogations. In both these interrogations the social worker was a woman. Similarly, all the social workers interviewed were women. In Italy, the social workers’ professional association consists of 93 per cent women.5

From all focus groups it emerges that the assistance of a social worker is considered an important safeguard for the juvenile, especially at the early stage of proceedings, which can be very stressing for the juvenile. Social workers say that thanks to their attitude and the way they act as third parties, they are

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5 Data (updated until 30 September 2012) available on: www.cnoas.it.
able to reassure juveniles and to establish a relationship of trust with them. Social workers believe that their role may be important to understand why the juvenile has committed the offense and to design a individualised programme of intervention.

Their contact with juveniles is also helpful because the juvenile can tell them what exactly happened, so the social worker’s report becomes a strong clue to finding the truth. As a prosecutor stated, referring to both social workers and, in general, to the staff of juvenile reception centers:

“This first contact, I think, is also important because juveniles do not see these people as authority, and they share a few hours or a few days with them. I think they contribute positively to the genuineness of the interrogation”.

Social workers emphasise the importance of their work, which is often underestimated:

“Sometimes they call you because it is expected that a social worker is present, but he must remain silent. Thus, whether you have a decisive role or not depends on the personal attitude of those who carry out the interrogation”.

When asked who was present during the interrogation, juveniles answered that social workers are not present during the first interrogation at the police station. It happens more often that they are present at the juvenile first reception center or during the interrogation carried out by the prosecutor. This was underlined by lawyers and police officers according to whom social workers are indeed not present during interrogations. In practice, notwithstanding legal provisions, police often does not notify social services. Sometimes they notify them, but they do not participate:

“Among the guarantees, there is also the invitation of a social worker from social services for the Juvenile Justice Department and it is mandatory to call them. If they do not show up, it is their decision”.

It seems that social workers are contacted only in particularly serious cases, in case of recidivism or on the discretion of the prosecutor and then only at the end of the preliminary investigation. The major reason of this lack of involving social services is the extra workload for them. One of the police officers says that they often prefer not to summon the social workers to assist at the interrogations. A prosecutor explains further:

“To inform the social services as soon as you record the crime would mean to overload them in vain, because many cases could be dropped afterwards.”
Despite the fact they do not admit it, social workers seem to have the function of informing the suspect about the upcoming procedure.

2.5.2. Experiences with appropriate adults

In general, the AAs rarely intervene during the interrogation of juveniles, because the interrogators ask them to speak only at the end of interrogation. The parents and social workers are more involved in different aspects of interrogations, such as in talks held in the absence of the juvenile.

Regarding the presence of the parents, the police, the prosecutors and the lawyers report different experiences both positive (cooperative and understanding) as well as negative. Negative experiences depend on the intrusive behaviour of some parents during the interrogation: they may have attempted to influence juveniles and their statements, they may have insistently defended or, on the contrary, further blamed the juvenile. These negative experiences have led investigators to ask them to speak only at the conclusion of the interrogation and to sit behind the juvenile during the interrogation.

Likewise, the role of social workers is rather marginal, as confirmed by one of the prosecutors, who said:

"The feeling of talking in private with the juvenile during the interrogation is important. I have it even when the social worker is present, because many times it is a person who knows nothing about the case and who is there for the juvenile but for the juvenile he is a stranger; an adult who I don’t say is useless but …”.

As a lawyer pointed out, however, the relevance of the role of social workers depends on personal differences, on skills, on willingness to work as well as on the empathy and ability to believe in the successful rehabilitation of the juvenile. Police reproach the absence of social workers because:

"Their presence could be an additional element of connection between all phases of interrogation for the effective rehabilitation of the juvenile”.

Although the presence of social workers or other professionals during interrogation is not common, some juveniles sometimes need their support. In general, all groups recognise the presence of social workers as a positive supporting role. Both prosecutors and lawyers in some cases asked the social workers to gather information about the social environment of the juvenile. During the focus group interview with juveniles, one of the boys commented on the role of social workers as follows:

"They write what they really see. So, sometimes it’s a good thing, even if they write that you behave badly and you are one who behaves badly”.
2.5.2.1. Appropriate adult interventions during interrogation

In one out of the 25 interrogations analysed, the written record mentioned an intervention by an AA, which was intended to provide additional information and to confirm the juvenile’s statement. This intervention, that is quoted at the end of the juvenile’s story, concerns a father who says having tried, without success, to contact the parents of the victim in order to clarify the innocence of his son.

It remains unclear how the police and the juvenile responded to this intervention, because in the written record of interrogation there is insufficient information: these aspects can be evaluated only ‘in person’ or mediated by an audio/visual recording.

2.5.2.2. Checking and amending the statement

In the twelve interrogations in which original transcripts of written records were analysed, it was found that the written record was read, confirmed and signed by the parent or the adult who attended the interrogation. Each written record contains the initials L.C.S. which indicate the reading, the confirmation and the signature of the written record. It is undiscernable, however, whether and how participants actually were given the opportunity to make changes to the written records.

2.6. ASSESSMENT

It is clear, from all focus groups, that Italy has not yet developed a method for assessing the suitability of the juvenile to be interrogated. None of the juveniles interviewed has ever felt that someone tried to understand whether or not they were ready to be interrogated.

Any attempt by the police to assess the juvenile appears more accidental than due to an explicit request by the prosecutor or legal instruction. The assessment of juveniles, if there are any, are sporadic and are carried out by the police immediately before the interrogation.

Police mention cases when they evaluated the juvenile’s psycho-physical condition and his capacity to link and to contextualise the chronological history of events during the interrogation: the police underline that, if the juvenile talks about situations without any logical nexus, to interrogate him is totally useless.
During the focus group interview the police officers complain about the difficulty of this task, because they do not consider themselves skilled enough to assess juveniles. If there is evidence of a psychological incapability or another type of problem (health, for example), the police can only mention it on the written record: on the basis of this, the prosecutor will have to evaluate the case. At the investigation stage prosecutors assess the juvenile's personal and social situation when they read the documents in their possession, therefore they are not face to face with the juvenile. Based on this assessment they may decide at this stage whether or not to delegate the interrogation to the police. During this assessment, prosecutors have in mind “the assessment of juveniles with the aim to check if the juvenile is liable to prosecution and to evaluate the opportunity to ask for any civil measure to be imposed”. They say that the request for more information about the juvenile’s family background from the Youth Social Services or the Local Services is rarely made when the juvenile has already been dealt with by Social Services before. In small municipalities, this request is not made at all because the waiting times are too long. In some difficult cases, prosecutors ask for the participation of Juvenile Social Services. When social workers find out that the juvenile is unfit for an interrogation they ask for the involvement of other professional actors, such as psychologists or neuropsychiatrists.

One social worker said that there are some parameters on which police normally rely to assess the ability of the juvenile to understand:

“Of course the police officer must refer to evaluation parameters that are commonly accessible, asking the juvenile where he lives or how much distance there is from his home to here, for example. In short, there is a shared practice”.

However, nobody believes that such a preventive assessment would have effective consequences on how the interrogation is conducted. Furthermore, nobody believes that those who do this type of assessment are fully competent to do so.

2.7. INTERROGATION

2.7.1. Characteristics

2.7.1.1. Timing

The juveniles in the focus group interview mentioned waiting between five and ten hours at the police station before the validation of their arrest. The other focus groups argued that, in establishing the time of the interrogation, the
afternoon is preferred not to cause the loss of a school day: however, 20 out of 25 interrogations were conducted in the morning.

2.7.1.2. Duration

In most of the written records the ending time of the interrogation is not recorded. Only in eight out of 25 interrogations this information was available. The duration of the interrogation varied between five and 65 minutes. Table 3 shows the division of these eight interrogations over the various duration-clusters.

Table 3. Duration of interrogations

<table>
<thead>
<tr>
<th>Amount of written records analysed</th>
<th>≤ 15 minutes</th>
<th>15–45 minutes</th>
<th>45–65 minutes</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>17</td>
</tr>
</tbody>
</table>

2.7.1.3. Number of interrogators

Usually, there are two police officers present during the interrogation, whilst it is carried out by one of them. The other officer is present to write down the written record of the interrogation. In some interrogations both the prosecutor and a police officer conduct the interrogation. This does not preclude, however, that the second police officer can ask questions. Written records analysis has not shown any particular trend in this respect. Out of the 25 written records examined, the interrogation was conducted by one officer in 12 interrogations and in the remaining 13 interrogations it was carried out by two interrogators.

2.7.1.4. Gender of interrogators

The analysis shows a prevalence of male police officers. There was only one case in which the interrogation was conducted by at least one female police officer. In one interrogation it is known that two police officers conducted the interrogation, but it is not possible to know the gender, since the names have been erased from the written record as a matter of privacy (see table 4). On this point, a specification is required: in Italy the percentage of female police officers is less than 10 per cent of the total as compared against the 22.5 per cent in the Netherlands, 25 per cent in England and Wales and 35 per cent in Germany.6

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6 Data available on www.poliziadistato.it/articolo/19068-Europa_le_donne_in_divisa/. For more information, see: www.difesa.it/Content/Documents/30991_serfemm.pdf.
Table 4. Gender of interrogators

<table>
<thead>
<tr>
<th>Amount of written records analysed</th>
<th>Male</th>
<th>Female</th>
<th>Male-male</th>
<th>Male-female</th>
<th>Unknown</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>10</td>
<td>3</td>
<td>9</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

2.7.1.5. Interrogators’ behaviour

From the analysis of the written records it was impossible to evaluate the interrogators’ behavior, because this type of data does not provide information on this matter. The examined written records are rigidly structured according to a predetermined pattern, extremely formal and concise (see supra paragraph 2.2). During the focus group interview, some police officers describe a formal role during the interrogation, insisting that it is not possible to do anything except what the delegation by the prosecutor and the law requires.

On the other hand some police officers describe a more fatherly approach during the interrogation, which was well expressed by one participant:

“If the juvenile takes a helpful attitude (...) the police officer, behaving like a parent, gives him a telling off”.

As stated above, information about this type of attitude is not available in the written records. However several written records in the end contain an apology from the juvenile for his actions. This practice seems to be so common that, in 13 out of 25 written records there is a partly-standard formula in which the juvenile says he is repentant and promises that he will never breach the law again. Remembering that during the interrogation the juvenile is under investigation, not indicted, this may be considered an indication of the interrogator’s behaviour discussed above.

2.7.1.6. Interruptions and set-up

The only case in which the interrogation was completely stopped concerned a juvenile who, when asked if he intended to answer, was deemed unable to express his will because of a mental disorder.

It emerged from the focus groups with the police and lawyers that there are cases in which the lawyers ask the police to temporarily interrupt the interrogation in order to consult with the juvenile. The written records however did not show such interruptions by the lawyer. The written records do not provide information on the setting of the interrogation room. Normally though the suspect is sitting on the other side of a desk and, when present, a parent sits behind the juvenile. The lawyer is (also) present, he is seated alongside the juvenile. The interrogating police officer(s) will regularly be seated opposite the juvenile.
2.7.2. Interrogation model

2.7.2.1. Information conveyed at the beginning of the interrogation

From the analysis of the written records, the interrogators provide a range of information at the beginning of the interrogation, such as: information regarding the reason for the interrogation, the offence which the juvenile is suspected of, the type of evidence available to the police and the procedural rights of the juvenile. All the people participating in the interrogation are identified: the prosecutor and/or the police, the lawyer and the parent(s) or possible other adult(s) accompanying the juvenile.

Having only the written record of the interrogation which, as mentioned, follows a rather standard configuration, information on how this information is communicated in practice is missing. However, there is reason to believe that the way the juvenile is approached changes according to the personality of the subject providing the information. As emerged during the focus groups, both the police and the lawyers have given different examples of how the juveniles are informed of their rights and of how the procedure of the interrogation is explained to them. Some are more careful to provide the information by adapting the language to the understanding of the juvenile whereas others are more careful to literally read out the text of the law. Also it is necessary to emphasise the difference in approach used with juveniles considered more astute (towards whom the police tend to maintain a more detached attitude) and the way in which more vulnerable juveniles are approached. More detailed information about his difference in treatment is discussed below.\(^7\)

2.7.2.2. Approach

Generally speaking, when choosing an interrogation strategy participants (prosecutor and/or the police) avoided taking a stand on either side regarding the choice between giving priority to the age (being a juvenile) or the status (being a suspect). On the one hand, the importance of adopting all procedural safeguards provided for adults in case of juvenile suspects is highlighted. Furthermore, the fact that the suspect is of a young age makes the approach more gentle and empathetic, with regard to the questions asked and the language used with the purpose of putting the juvenile at ease. The importance of taking into account the juveniles social context as well as their mental capacity is also emphasised as it may enhance the possibility of understanding the reasons that have led the juvenile to commit the offence.

\(^7\) See infra paragraph 3.3.
Prosecutors argue that the approach to juveniles is, and should be, different from the way adults are treated. Juvenile proceedings are characterised by a greater focus on understanding the juvenile’s personality and the difficulties he is experiencing, rather than only on investigative purposes. In this regard one prosecutor noted:

"Perhaps there should never be a desk in the middle".

According to the focus group respondents, especially the groups of lawyers and prosecutors, the idea is that juvenile proceedings have a dual purpose that is reflected in the approach used. On the one hand, the aim is to understand and establish the truth (investigative purpose), resulting in a more formal and aloof attitude for judges, and in a technical defense for lawyers. But the aim is also reeducational and rehabilitative. The crime is seen as an 'evolutionary accident' that should not lead to stigmatisation of the juvenile but, on the contrary, should mark the beginning of a process of empowerment and education towards legality, resulting in an more empathetic approach and relational closeness.8

The police express different opinions appearing to be less aware of this dual purpose of proceedings, compared to respondents from other focus groups. However, the police tend to emphasise a difference in approach with respect to the age of the juveniles and with respect to the difference between first offenders and recidivists. During the focus group interview the police say that it is normal to have a different attitude towards a 14-year old boy, compared to a guy who is almost 18 years of age. The difference between first offenders and repeat-offending juveniles seems to justify a change of attitude for the police respondents. According to them, this is explained by the increased awareness and knowledge of the criminal proceedings on the part of the juvenile recidivist.

2.7.2.3. Interrogation techniques

Information on interrogation techniques is not available in this study because of the type of data: written records do not show the type of techniques used. During the focus groups, no evidence emerged that special interrogation techniques are being used during the interrogation of juvenile suspects. Moreover, in Italy there are no studies on this matter. The lack of specific techniques could derive from an orientation to make the system as much flexible and adaptive as possible to the peculiarities of each single case.

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8 Perrella and Zizza 2012, p. 291.
2.7.2.4. Confrontations

An overview of the evidence held against the juvenile suspect was documented in about half of the written records. In most of these cases there are multiple sources of evidence with which the juvenile is confronted. As shown in table 5, the different types of evidence are: statements made by witnesses, the victims and the co-suspects and other documents such as the annotations of the police intervention, the seizure report or phone records.

Table 5. Confrontations with evidence (multiple response group)

<table>
<thead>
<tr>
<th>Evidence</th>
<th>Yes (%)</th>
<th>No (%)</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Witness statement</td>
<td>4 (33,3)</td>
<td>8 (66,7)</td>
<td>12 (100)</td>
</tr>
<tr>
<td>Victim statement</td>
<td>6 (50,0)</td>
<td>6 (50,0)</td>
<td>12 (100)</td>
</tr>
<tr>
<td>Co-suspect statement</td>
<td>3 (25,0)</td>
<td>9 (75,0)</td>
<td>12 (100)</td>
</tr>
<tr>
<td>CCTV evidence</td>
<td>1 (8,3)</td>
<td>11 (91,7)</td>
<td>12 (100)</td>
</tr>
<tr>
<td>Other documents</td>
<td>10 (83,3)</td>
<td>2 (16,7)</td>
<td>12 (100)</td>
</tr>
<tr>
<td>Unknown</td>
<td>–</td>
<td>–</td>
<td>13 (100)</td>
</tr>
</tbody>
</table>

The juvenile suspect’s remarks are often written down at the bottom of the written record, as was the case in 13 out of 25 written records in the sample. As mentioned above, in these 13 written records there is a partly-standard formula in which juveniles say they are sorry and promise that they will never break the law again. This is always an expression of repentance on the part of the juvenile (e.g. “I am sorry for what happened, it will not happen again”). Moreover, at the bottom of the written record, there is a standard formula asking if the suspect has anything else to add. In none of the interrogations did the juvenile make use of this right.

2.7.3. Suspect’s behaviour

2.7.3.1. Suspect’s strategy

All juveniles interviewed confessed. If this did not happen immediately, it seemed to depend on the fact that initially they did not know what the evidence held against them was.

Similarly, from the written records analysed, it emerges that only in one interrogation a juvenile used her right to remain silent. In all other interrogations, the juveniles answer questions put to them by the police and they give their version of events. Mostly, they tell how they found themselves involved in an offense unwittingly or they admit their responsibility.
The main reason for the juvenile to exercise the right to remain silent during interrogation is probably that they wish to wait for the investigation to be completed and to avoid providing information that the police might not possess yet. The situation is different for juveniles involved in organised crime: they are aware of the strategy to be adopted and in most interrogations they remain silent.

It often happens, however, that the juvenile wishes to confess and the lawyer advises him to do so. There are two reasons, according to lawyers who participated to the focus group, for them to give this advice: from a strategic point of view a collaborative attitude has a positive effect on the proceedings and from an educational point of view, admitting responsibility can be a first step away from a deviant career. Prosecutors pointed out that in some interrogations juveniles confessed because of their desire to receive help in getting out from their difficult familiar and social contexts, where they are, sometimes, even encouraged/forced to commit the crime.

2.7.4. Recording of interrogation

2.7.4.1. Written record

According to the Italian legislation, interrogations must be audio- or video-recorded only if they are carried out with detainees. Usually, the first interrogation of a juvenile is not recorded because the juvenile will not be detained at that time. Police do produce a written record containing the questions posed and answers given, interruptions, et cetera. This record will serve as the basis on which the prosecutor will make his own assessments and evaluate any further step to be taken during the investigation stage. Also prosecutors produce only a written record of the interrogation. Prosecutors realise how difficult it is to really understand the juvenile and, therefore, to be able to write in the record what he really means:

"He is a child, he has his own way of expressing himself and his own way of interpreting the question. And I am an adult! Often I have a way to interpret the answer in a different way. I realise that, when interrogating, he gave me an answer and, when I was writing, I gave that answer a different meaning than what he wanted to convey. My difficulty is often to come to a point at which we can understand each other and we can communicate in the same language".

How difficult it is ‘to put the interrogation on paper’ was highlighted also in the other focus group interviews. Respondents often voiced complaints about the poor quality of police reports. Both juveniles and social workers remark that the
facts can be reconstructed in a way which can be detrimental to the position of the juvenile suspect.

Because the empirical study conducted in Italy consisted only of analysis of written records of interrogations it was not possible to compare the written records with other documents (recordings). Therefore consistency between what is written and the verbal content or the way in which the interrogation was actually conducted cannot be evaluated.

In all written records the answers given by the juvenile suspect are reported as direct speech. In most interrogations, the written records do not contain the questions which were asked literally but only the answers, preceded by the specification that it is a response to a question. In nine written records both the questions as well as the answers are reiterated literally. Only in one written record, it seems that the juvenile is telling his story without being asked any questions (see table 6).

Table 6. Written record format

<table>
<thead>
<tr>
<th>Amount of written records analysed</th>
<th>Question and answer literally</th>
<th>Monologue mentioning Q&amp;A</th>
<th>Monologue Other 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>9</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

Although the responses of the juvenile are written within quotation marks, some doubts remain about the fact that it is a literal transcription: often, in fact, more formal or bureaucratic expressions appear and they do not seem to resemble the way juveniles would normally express themselves.

2.7.4.2. Audio or audio-visual recording of interrogation

The audio or audio-visual recording of interrogations would be an additional guarantee for the juvenile (see infra paragraph 4). Here is what one lawyer said during the focus group:

“**In our system, an assessment of the statement is not provided in the course of time: if one gives me the outcome of an interrogation, what he gives me is put together in a package and that is it, it is not touched anymore. For better or for worse, that’s it**”.

Especially juveniles mentioned the importance of audio-visual recording of the interrogation. All juveniles in the focus group think that this would be a way to avoid that police misrepresent what they say. Here are some answers of

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9 These are the two interrogations in which the juvenile did not respond or the juvenile was unfit to be interrogated.
juveniles about what they think of the possibility of audio- or video-recording the interrogation:

"It would be good"; "It's for our own protection"; "Today or tomorrow, at least, there's that"; "Of course, because sometimes you say something and the police say another thing".

3. VULNERABILITIES

In focus group interviews some vulnerabilities were mentioned: those depending on different factors such as vulnerabilities related to the suspect’s young age and his personality not fully developed yet; other vulnerabilities depending on organisational factors (such as the difference between rural and city context) and vulnerabilities related to nationality. The type of crime, the emotional ability of the juvenile and his cognitive development were also mentioned. On the other hand, a weak relation with juvenile gender was found. Anyway, focus group professionals don’t connect mental abilities or drug use to vulnerability. From all the above mentioned focus groups interviews it emerged that great importance is given to the family and the social context of the juvenile as a cause of vulnerability (see supra paragraph 2.3.4).

3.1. VULNERABILITIES RELATED TO AGE

Vulnerability is explicitly considered in all focus groups (except for the one with juveniles) as a personal condition related to the age of the juvenile. In fact, age-related vulnerabilities are considered an important dimension in approaching the juvenile suspect during interrogation. According to the respondents, being involved in criminal proceedings is a traumatic event in any case and even more so for a juvenile, who might also fear and suffer the loss of his parents’ trust.

Prosecutors specify that juveniles are also vulnerable when they are adolescent since this stage of life involves a series of emotional problems. In the words of a prosecutor:

"Imagine a boy between fourteen and eighteen years old who finds himself in a state of psychological weakness and of inner problems, then include him in criminal proceedings and these problems become more pronounced".

Quite often, during the focus groups, in illustrating practical examples, professionals highlight a distinction between juveniles aged fourteen and juveniles who are about eighteen years old. However, the age and the criminal record of the juvenile is considered not merely as a personal detail but as an indicator of greater experience and awareness.
One police officer said:

"It is different to interrogate a fourteen year-old boy in comparison to interrogating an eighteen or almost eighteen year-old boy, who is used to being interrogated, to our faces, to the judicial sphere".

However, none of the professionals believes it is appropriate to treat young adults like adults.

3.1.1. Mental ability

During the focus group with social workers, they mentioned some cases where juveniles with serious cognitive problems were interrogated and for whom it was necessary to involve specialised staff for their care. The police reported that when a juvenile suffers from a mental disorder, the interrogation is interrupted and steps to close the investigation are taken, sometimes with the support of a medical certificate submitted by the lawyer.

Respondents in other focus groups didn’t discuss the mental ability of juvenile suspects nor reported cases of mental disability. They consider juveniles vulnerable in a different way, namely if they illustrate that they are less aware of their surroundings and what is happening.

3.1.2. Emotional ability

The vulnerability of juveniles is also explicitly linked to the affective problems related, in particular, to adolescence. Here is the how a lawyer recognises the condition of immaturity that characterises juveniles:

"The juvenile is a person weaker than the adult because he is less able to manage his feelings and emotions".

Social workers, in particular, are requested to assess whether it is appropriate to separate juveniles from their family and accommodate them temporarily in a residential home. During the discussion between social workers about vulnerability of juveniles, a common opinion was that, to listen to juvenile suspects and to know their feelings of anger or victimhood helps to understand their experiences, and the value of what lies behind the offence. Often, communication between adolescents and social workers finds its major obstacle in the juveniles’ difficulty to trust the other, the unknown adult. In fact, this situation puts the juvenile in a defensive position that can preclude him to find a balance, even if precarious, to move forward.
3.1.3. Cognitive development

Juveniles are considered more fragile, because their personality is not yet fully developed. Therefore, during the interrogation, juveniles under pressure of the interrogation might contradict more easily what they declared earlier (e.g. in a prior interrogation or in the same interrogation). A prosecutor reiterated:

"Beyond the purpose of investigation, the interrogation becomes a means of acquiring information about the condition of the juvenile. If you keep this in mind, you don't care to bring the juvenile down, as you can do with an adult".

Above all, the incomplete cognitive development of juveniles may well affect their possible misperception of reality at the time of committing the offence and their effective understanding of their actions. One of the police officers reported:

"Being a juvenile often means committing crimes without knowing at that time that you are committing a crime".

During the focus group with juveniles, actually, a lack of assumption of responsibility about the crime was found. One of the juveniles said he committed the crime just because someone told him to do so, for example:

"When they questioned me why I had committed this crime, I said because someone told me to open a deadbolt and I opened it".

Only one of the boys explicitly said that the most difficult thing for him was to assume his responsibilities.

3.2. TYPES OF CRIMES AND VULNERABILITIES

The lawyers reported a collapse of the existing safeguards when a juvenile is indicted for a serious crime. According to them, in case of a serious offence prosecutors and police officers are upfront biased and take a more resolute attitude towards juvenile suspects of such serious offences. In fact, the police mention the type of offence as a second thing to be taken into account, in addition to age:

"It depends also on the person in front of us, because many times there are well-bred juveniles who, for an error or for complicity, wind up in situations bigger than they are".

Some juveniles are considered more prone to committing certain types of offences. For instance drug pushing. Some others seem to have been induced to
commit a crime by their families who are aware that below the age of fourteen they are not liable to prosecution, and below the age of eighteen there are milder consequences for committing an offence.

3.3. VULNERABILITIES RELATED TO TYPES OF JUVENILES

3.3.1. Boy vs. girl

Statistically a juvenile female is less likely to commit serious crimes. Lawyers have had very few experiences with female juvenile suspects. Nevertheless, according to prosecutors, as well as police, the gender of a juvenile suspect is not an important variable in orienting their approach. One difference mentioned by lawyers is that – in comparison to boys – girls normally have more structured characters and illustrate greater cunningness:

"In general, it is much easier to manage boys because they are weaker, objectively, they are less capable of great insights. Girls are much more structured, they are able to hold up better and they understand more quickly."

3.3.2. First offender vs. recidivist

Police and prosecutors take a different attitude towards juveniles based on the existence of prior criminal records. The police are more careful to explain the situation and their legal rights to juveniles who are alleged to have committed a criminal offence for the first time, taking on a more paternalistic attitude, because they might only have made a mistake. In contrast to this, they are more formal and detached when the juvenile is a repeat offender. However, all the police officers think that this kind of prejudice is not correct:

"The interrogation is an act aimed at the search of the truth! I don't care if you have committed twenty-five crimes, I have to find out if it was you or not, and what happened."

The attitude of prosecutors towards juveniles also varies on the basis of their propensity to break the law. A prosecutor affirms, similarly to the police:

"If the status of juvenile or the status of suspect prevail it should be calibrated to the specific case. At the interrogation, you realise if you have in front of you a juvenile who made a mistake or a person already deviant. Then, you adjust the approach accordingly."

\[10\] Data available on http://dati.istat.it/. Considering the total number of juvenile perpetrators of crimes between 14 and 17 years old in Italy reported/arrested by police, males are 83.7 per cent and females 16.3 per cent.
In addition, police identified the ease with which juvenile suspects recidivate as a weakness of the judicial system, which seems to be not very effective in building a social reintegration path.

3.3.3. Suburbs vs. city

Professionals did not mention differences between juveniles from urban areas and juveniles from rural contexts. Juvenile Courts’ jurisdiction, being based on districts, include both the city and the rural areas. If the district covers a wide area (which for instance is the case for Palermo’s province) and the offence is committed in peripheral areas or the juvenile lives in a peripheral area, prosecutors delegate the interrogation to the local police. One prosecutor explained:

"The area is very wide, so I have to delegate to the local police who don’t have the skills, they are not used to interrogate a juvenile".

For this reason, the juvenile who cannot reach the Juvenile prosecutor’s office is, in a sense, more vulnerable than the juvenile who is interrogated in the city by the prosecutor. Social workers suggested that lawyers and police who work with juveniles should all be specialised to remedy this.

3.3.4. Nationality

Neither prosecutors nor police mentioned the impact that differences in nationality can have on the vulnerability of the juvenile suspect. However, social workers and lawyers stressed the necessity of taking a different approach with foreign juveniles, because of the diversity of cultural parameters, the language barrier and the juvenile’s own perception of responsibility.

A similar experience was reported by prosecutors and police related to juveniles arriving from Northern Africa across the Mediterranean Sea and who are accused of smuggling. They said that these are situations of emergency that endanger all the existing guarantees and that, unfortunately, occur quite often in Southern Italy. A lawyer told the story of two fourteen year-old juveniles who had been wrongly accused of smuggling. Because of an error, on board of a ship that stowed two hundred migrants, the two juveniles, like all other migrants stowed clandestinely into the ship, were interrogated by the police in English and were assisted by one single lawyer.

3.3.5. Family and social context disadvantages

The disadvantage associated with family and social context of juvenile suspects, which is often characterised by severe unfitness or unhealthy growth, is mentioned in nearly all focus group interviews.
Prosecutors pointed out that the commission of a crime by a juvenile is often a symptom of need and expression of a call for help. In some cases, the decision to conduct the interrogation personally, rather than delegating it to the police, is dictated by the desire to understand whether there is reason to remove the juvenile from their social and family context that might otherwise take them back to committing crimes.

Even lawyers expressed this thought in relation to their experience:

“We all know that, when a juvenile embarks upon the criminal path, we are already at an advanced stage of deviance, that is the last symptom. You discover behind his back: sexual abuse, drugs, violence, abandonment, loneliness ... Unfortunately, we see that it is so”.

At the same time, to know the juvenile’s parents helps prosecutors to guide the decision on precautionary measures. On the basis of the suitability of the family context, prosecutors may decide whether to separate the juvenile from the family or not. To get acquainted with the juvenile’s parents is useful for appreciating whether they are suitable parental figures and whether they will cooperate in looking after the juvenile.

There are also some differences related to the attitude of juvenile’s family regarding the willingness to cooperate during the interrogation. Lawyers talked about ‘cultural inducement’ or about ‘crime legacy’ for juveniles who tarnish themselves with crime because they have a relative who has committed a crime:

“If we would take statistics, we would realise that most of the crimes are committed in families where crimes have been committed already and where the parents are detainees themselves”.

The habits of the family might have influence on the interrogation, because juveniles may have less propensity to critically review their actions, as both lawyers and prosecutors pointed out. One prosecutor said:

“In families where there are criminal records, there is a lack of awareness of the negative value of crimes. When I am questioning a boy whose whole family has criminal records for drug dealing, how can I empathise with that world? They can tell me, 'You don’t know anything about our world and you’ll never know'. There is a great distance between their way of seeing things and the way you perceive things”.

4. SAFEGUARDS AND BEST PRACTICE

All in all, the respondents consider the existing safeguards for juvenile suspects in Italy appropriate, even though they have pointed out some aspects which
can be improved. To provide for a complete documentation of interrogations through audio-visual recording in addition to written records seems to be a strong demand on the part of all respondents. This method of documentation of the interrogation would be an important additional safeguard for juveniles within criminal proceedings. It would meet the need to make statements which are clear, visible and verifiable \textit{ex post}, that manipulative interventions have not been carried out. The complete documentation might be a good tool to test, \textit{a posteriori}, the reliability of the juvenile.

Learning how the investigator related to the witness, what kind of questions he asked and what were the reasons expressed by the juvenile would allow to fully appreciate the extent of cognitive contribution collected for probative purposes.

4.1. SPECIALISATION & TRAINING

The specialisation of professionals who are involved in the interrogation process is felt to be necessary in all focus groups, save for some exception within the police focus group.

Among desirable practice, lawyers require that all lawyers who assist juveniles (not only those registered in the duty lawyer scheme as court-appointed lawyers) should be specialised in juvenile law. Lawyers hope that the specialisation becomes a requirement of the utmost importance not only for those assisting juveniles but for anyone involved in the interrogation of juveniles. Indeed, according to lawyers, prosecutors should not delegate those interrogations to the police but should carry them out themselves, because of their great degree of specialisation.

"The specialised subject has a different approach, particularly in view of the final design: the boy who enters in the criminal circuit must be rehabilitated, with the educational purpose to make him understand the error and to put him on a different route".

For the same reason, prosecutors would like that all lawyers are specialised in the juvenile judicial branch. Only one prosecutor observed a lack of training for prosecutors. In fact, they become specialised more through the experience over time than through special training courses. That's the main feature and the main issue of the prosecutor's specialisation: experience is the main key to gain specialisation.

In the focus group interview with police, regarding the question if there is a need for specialised actors, all police officers answer that the actors are already specialised in their respective fields and therefore, in a 'minimal vision'
of interrogation, there is no need. Despite this, one police officer, in the focus group, expressed the hope that specialisation of interrogators should soon become a common prerequisite:

“*I hope that this meeting is a first step to define a protocol (...) on how we should approach the juvenile, (...) in order to have highly specialised human resources (...) and not compel us to acquire experience of what we need in the field*."

4.2. UNDERSTANDABLE LANGUAGE

In response to the question about what good practices exist or should exist both in the focus groups with prosecutors as well as with lawyers, the use of understandable language emerged. Also police officers – although they do not state it explicitly as a good practice – point out the importance of the juvenile understanding what the police are saying, especially if the juvenile speaks in a local dialect and not in Italian language11:

“*Obviously, you must stay on the same level of the juvenile. If he doesn’t understand the Italian language and speaks only local dialect, it’s clear that I try to explain to him in dialect, because my goal is that he understands*."

For lawyers, how ‘friendly’ the attitude of the interrogator is, depends on many variables. Some police officers and prosecutors communicate in an understandable language to the juvenile (for example, some children speak only local dialect), some do not. In the same way, according to juveniles, there are some lawyers “*who speak to you bluntly*” and some do not.

4.3. PARENTS/RELATIVES’ PRESENCE

In all focus groups, the presence of an AA is considered an important safeguard for the juvenile during interrogation. Sometimes, after the interrogation, prosecutors feel they have to talk with the juvenile’s parents or their guardians who take care of him in order to give them educational advice.

However, in the focus groups with police, prosecutors and lawyers, the participation of parents emerges as a troublesome aspect of the interrogation. They emphasise the validity of psychological support and care of parents during the interrogation but, at the same time, they noted how difficult it can be for juveniles to admit that they committed the crime and thus discrediting themselves in front of their parents.

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11 Local dialect refers to regional and provincial varieties of the Italian language.
It is a common practice among police and prosecutors to ask parents to sit behind the juvenile, so that he cannot see signals, facial expressions or be influenced by the emotional state of the parents. Even lawyers point out that, often, the parental figure needs to be controlled, as they can become overly intrusive in the sense that they either try to defend or to scold their son/daughter. The existence of these problematic situations is confirmed by the police, who often have to send a parent away. In the words of a police officer:

"The parent is a figure of psychological support, and that’s it! Through his presence and not his action. I tell him clearly. It happens so many times that I have to distance them".

And in the words of one prosecutor:

"Parents should not interfere in any way. They are there to assist their child, the boy should feel reassured simply by their presence (...) otherwise they can leave".

4.4. THE IMPORTANCE OF TEAMWORK

A dimension that was mentioned by all participants is the importance of teamwork. It is widely accepted that a synergy among lawyers, social workers, prosecutors and police would be an ideal condition to cooperate and would ultimately be in the best interest of the juvenile.

A good practice, in the opinion of social workers, would be to involve social services from the very early stage of the proceedings and during the interrogation. Social workers also use other professionals such as psychologists, when they believe that the juvenile is emotionally fragile.

Police regard as good practice the presence of youth social services, hoping that it could facilitate the social reintegration of the juvenile offenders. Sometimes prosecutors involve social workers and, if required, also juvenile’s parents, educators and psychologists. In the final recommendations on good practices during focus group interviews, prosecutors indicated a lack of cooperation by lawyers who, in their opinion, should be aiming at the juvenile’s rehabilitation:

"Lawyers, in my opinion, would have much to gain from a specialised view to support and cooperation but often this is lacking. The prosecutor is not the antagonist of the lawyer!".

Lawyers, on the other hand, complain about how often prosecutors delegate interrogations to the police, depriving them of the opportunity to have an overall view of proceedings. Even in the case of the lawyers, the collaboration between specialised individuals would be a key medium for a long-term design of juvenile offenders’ rehabilitation. In addition to social workers, lawyers sometimes make use of criminologists or psychologists. They consider the support of other
professionals useful in order to understand the personality of the juvenile. They identify as desirable the opportunity to avail themselves of such experts, which is often lacking. As one lawyer said:

“The only aim that we all have in common is that the juvenile gets out of the criminal ‘circuit’ he got involved in as soon as possible. (We should be) a team, in which everyone contributes with his own expertise to help the juvenile”.

5. CONCLUSIONS

As reported in the legal analysis which is part of the overall project, the Italian juvenile justice system is highly geared toward the protection of safeguards of the suspect of a crime.12 In this legal and operational framework, the actors involved perceive the phase of the interrogation of young suspects as marginal, which cannot prejudice the existing guarantees.

As emerged both in the various focus groups and in the analysis of written records there are some major problematic areas. The main controversial areas to take into account are: a) the role of the actors involved; b) the communication between institutional and social actors; c) the specialisation of the professionals involved in the interrogation and d) the need to provide a more complete and reliable recording of interrogations.

With regard to point a), the focus groups clearly illustrate that the actors who seem to play a leading and crucial role during the interrogation of a suspected juvenile are prosecutors, police officers (delegated by prosecutors) and lawyers whereas the juvenile himself appears to play a rather passive role. In fact, the juvenile suspect seems to be the ‘object’ of interrogation rather than ‘subject’. The juvenile is seldom, if ever, supported by social workers, as widely noted in this chapter: they intervene only for the most serious cases. Social workers play an ambiguous role insofar they seem to provide more help to the ‘system’ rather than to the juvenile. In fact, they have a marginal role that, according to respondents in the focus groups, should be strengthened. In fact, the absence of social workers during the interrogation is considered a failure in the system of procedural safeguards for juveniles.

Concerning point b), the focus groups showed a lack of communication between institutional actors. For prosecutors, this lack of communication is linked to a distrustful attitude towards the way in which juvenile lawyers exercise their mandate; in contrast, for lawyers, there is a tension between the juvenile’s interests and the need to prepare their defensive strategy: a tension that sometimes may result in ambiguous forms of communication with other actors.

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12 Cesari 2015, p. 181.
With reference to point c), a strong demand emerged for planned and specific training focusing on techniques of interrogation. To date, the training of prosecutors and police mainly consists of gaining experience ‘on the job’ and therefore, the way each actor plays his role is strongly connected to his individual attitudes and predispositions. This is considered problematic by prosecutors and social workers but also by lawyers, who strongly argue the need for a greater specialisation of all colleagues. As public prosecutors claim, they do not participate in specific training or updated programmes, also resulting in specialisation through gaining experience ‘in the field’. With respect to lawyers, the applicable legal framework makes specialisation a problematic issue. The involvement of specialised juvenile lawyers is an asset, but conflicts with the juvenile’s freedom of being assisted by a chosen lawyer, who is not obliged to attend specific training. In Italy, in fact, while juvenile court-appointed lawyers must be enrolled in a special register and follow a specific and validated training, chosen lawyers do not have the same obligation and potentially have not had specific training in the juvenile justice field.

With regard to point d), the interviewed lawyers, juveniles and social workers support the need for more complete and reliable techniques of interrogation recording. The analysis of the written records, in fact, revealed a recording method that is of little to no value, for example, with respect to the question which rights (and how) the juvenile suspect has been informed of. Also, the standardised formula through which the juvenile’s self-reproach is shown, reflects an unreliable picture of interrogations.

**BIBLIOGRAPHY**

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13 In confirmation about that data can be found either in the national centralised training courses agenda of School of the judiciary available at www.scuolamagistratura.it/formazione-permanente.html or in the peripheral training agenda of judiciary (held in one of the twenty-six districts of court of appeal) available at www.scuolamagistratura.it/formazione-decentrata-territoriale.html. For the forthcoming training courses see the website of Superior Council of the judiciary (http://astra.csm.it/incontri/menu1.php), where it is possible to consult which training courses have been held since 1973.
CHAPTER 6
THE NETHERLANDS:
EMPIRICAL FINDINGS

Marc van Oosterhout

1. INTRODUCTION

In the Netherlands little is known about what happens when police interrogate juvenile suspects. Two recent studies have shed some light on the matter, where juvenile interrogations were included in a larger body of work.1 This study aims to fill at least part of this gap. In order to provide a picture of the current Dutch practice of interrogating juveniles, focus group interviews with lawyers, police officers and juveniles were conducted and recorded interrogations with young suspects were analysed.

The focus groups with legal actors were balanced on various criteria in order to obtain a heterogeneous composition of respondents. The focus group with police officers represented a mixture of training backgrounds. The aim was to have a proper balance between male and female respondents but due to unforeseen cancellations four female and one male participants were present. These five participants came from three different regions, covering a large section of the Netherlands. The focus group with lawyers aimed at a balance on general selection criteria, but late cancellations resulted in a small group consisting of two male lawyers and one female lawyer. Although this was only a small group, their views varied widely. Nevertheless, caution is needed when interpreting the findings of such a small group. No focus group with appropriate adults (hereafter: AA) was organised since AAs as such find no basis in Dutch criminal procedural law.2

The focus group with juveniles was conducted at a youth detention centre. Four boys participated of whom one was still a juvenile (17 years old). The other

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1 Blackstock et al. 2014 and Verhoeven and Stevens 2013.
2 Van Oosterhout and De Vocht 2015, p 285.
participants were young adults who had been interrogated when they were juveniles. All participants were convicted for an offence.

The sample of recorded interrogations was based on the general selection criteria. In total 12 recorded interrogations were analysed, of which eight were video-recorded and four were audio-recorded. With regard to 11 of these interrogations, the written record was analysed as well. The interrogations concerned juveniles between 11 and 17 years old of which most juveniles were male (eight). Half of the juveniles were invited to attend the interrogation and the other half were brought to the police station after arrest.

This report roughly consists of three parts. The first part provides a look at the practice based on the empirical results. The second part concerns an overview of encountered vulnerabilities following an overview of good practices and safeguards. Finally some concluding remarks are made. For the look at the practice, the standard chronological order of a juvenile (criminal) case, from the first contact of the juvenile with law enforcement authorities until documentation of the interrogation, has been followed.

2. A LOOK AT THE PRACTICE

2.1. FIRST CONTACT

Juveniles reported that – at first contact – the arresting officers would make comments like: "You’re caught. It was about time". They did not mention that the police would try to extract from them information in relation to the offence, but it does show that arresting (uniformed) police do communicate with juveniles at the arrest. In their focus group interview, the police reported that sometimes these officers then come in with a suspect stating: "He’s already confessed" and then these officers need slowing down, because the police as an organisation are very wary of possible mistakes and loss of evidence. The juvenile can start making statements on a voluntary basis, but police officers stress that it must be clear that the juvenile was informed of his right to remain silent. Police officers do acknowledge the fact that during the hectic situation of an arrest this information might not have fully registered with the juvenile and a statement might not have been made in a fully informed way. Lawyers were the only respondent group who reported that information on the offence is being gathered before their involvement in the case. They did however stress that this happens only exceptionally. In the recorded interrogations, reference to information gathered prior to the interrogation was observed in three (out of the 12) interrogations. These consisted of reference to a
picture being taken at the crime scene and a confession *vis-à-vis* the investigative judge. During the focus group, juveniles did report violence at first contact during the arrest, which can have an impact on the juveniles’ willingness to cooperate, because the juvenile might rebel as a counter measure towards the violent treatment. Interrogations showed no use of violence, but reference to violence was made in one interrogation: the juvenile claimed having been assaulted in her cell when her coat was taken for evidence.

2.2. POLICE PROCEEDINGS

From the moment a juvenile is arrested, several actions are taken: juveniles should be informed about their rights at arrest, a body search can be conducted and – for example – a cell phone can be checked. None of the analysed transcripts mentioned any investigations carried out before the interrogation. It is important to note that, upon arrest, formally the ‘clock starts ticking’ to complete the investigation. Whether this ticking started during the morning, day or night remained unclear in the recorded interrogations. In one interrogation the time of arrest was clear. In all other interrogations where the juvenile was arrested it remained unclear: arrival times at the police station were never documented neither when the juveniles were arrested nor when they arrived at the police station after being invited for interrogation. This makes it impossible to comment on – for instance – transportation time.

2.3. INFORMATION ON RIGHTS

At arrest, juveniles should be informed about their rights: mainly the right to remain silent and the right to legal assistance. Police officers report that juveniles are informed about the right to remain silent and are given the – what they call – *Salduz story*. After the Salduz ruling by the European Court of Human Rights (hereafter: ECtHR) this is used as the term to encapsulate the right to legal assistance before and during police interrogation. If the information on the right to legal assistance is not conveyed at the arrest, it can be provided by the assistant prosecutor at the station and a leaflet with the rights may be handed over to the juvenile. One officer proposed going to the American system of a Miranda warning where a pre-written statement is read out to the juvenile upon arrest. Lawyers are often not present during the arrest, but stress that at the beginning of the interrogation the right to remain silent is indeed conveyed. Quantitative

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3 Finding from the focus group interview with (juvenile) boys.
5 Often a police official, salary rank 9 or higher, who acts as the assistant public prosecutor.
Marc van Oosterhout

analysis shows that in all of the 12 interrogations, the right to remain silent was indeed repeated at the beginning of the interrogation. The right to legal assistance was repeated at the beginning of the interrogation in only five of the 12 interrogations.

According to one lawyer, it makes a difference how the right to remain silent is conveyed, because this has an influence on whether or not this information ‘lands’:

“It’s the tone that makes the music, […]. There’s no use in just tonelessly saying it. If so, you might as well not say it”.

Interrogations show that the variety of ways in which juveniles are informed about their rights, as reported in the focus groups, are accurate. Some officers showed a practice where they more or less stick to the letter of the law, where others used their own wording to, for instance, explain to the juvenile the right to remain silent:

“In the Netherlands it is the case that, when you are suspected of something, you may tell what happened, but you don’t have to. I will not get mad if you say you don’t want to answer something. That’s what is called ‘the right to remain silent’.”

In the interrogations, five officers explained rights to the juvenile suspect in their own wording and two combined the text of the law providing further explanations in their own wording. In the remaining five interrogations, the rights were explained by simply referring to the text of the law.

2.3.1. Checking for understanding

The police officers question if juveniles indeed understand the rights they are informed of, although the right to legal assistance is perceived as common knowledge due to TV. One officer added to this that police officers will use simplified language and will ask the juvenile to explain what is said in their own wording. The interrogations did not illustrate such a practice, but it did show that in three interrogations the juvenile was ‘simply’ asked if the rights were understood. The way understanding can be checked according to the police is by asking questions. One analysed interrogation showed an officer conducting a quiz to check for understanding:

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

The rights are also ‘explained’ in a leaflet, but this document is not always handed out. In addition to this, the document uses quite difficult language such as:
you’ve committed a serious offence’ and it may well be that the juvenile does not understand this terminology. Only in one case of the recorded interrogations did the researcher discern that the juvenile was in the possession of such a letter of rights as it was visible on the desk next to the juvenile. In the other interrogations this letter might have been given to the juvenile, but the official records and recordings did not disclose this information. Police officers in the interview also placed some responsibility on the assistant prosecutor in this respect who should check for understanding and hand out the aforementioned letter of rights. Lawyers clearly see the added value in checking for understanding:

“It would be good to check if it has landed, which often doesn’t happen. Some [police officers] have it in them to do so”.

Here the distinction between repeat offenders and first time offenders is crucial. According to lawyers the recidivists know not to talk to the police, but the ‘newcomers’ look dazed and they do not always understand. This was affirmed by the juveniles in the focus group interview who were now repeat offenders but reported problems in understanding their rights when they first came into contact with the police. According to one lawyer, the ‘common’ way to check for understanding is to ask “Do you understand?” but he explained that he always asks his juvenile clients to explain what was said in their own wording as well.

2.3.2. Information about the right to legal assistance

Juveniles reported being informed about the right to legal assistance, but one of them stressed that the police prefer if they use ‘their lawyer’. Juveniles however do not trust the duty lawyers. Police confirm that the right to legal assistance is conveyed to juveniles, but one officer explained that the fact that it is free of charge is never explained. This can have an impact on whether and to what extent juvenile suspects make use of their right to legal assistance since they might fear having to pay lots of money. Observations of recorded interrogations showed that in more than half of the interrogations information on the right to legal assistance was not conveyed at the beginning of the interrogation, presumably because the suspect might already have been informed about it at an earlier stage of the proceedings. In four interrogations where the right to legal assistance was discussed, it consisted of the interrogator checking whether or not the juvenile suspect had talked to a lawyer. As one would expect, this practice is more common when the lawyer is not present.

Informing invited juveniles about legal assistance seems a more precarious issue. One officer stressed that, conforming to a strictly rule-based approach, the law does not oblige the police to inform the invited (juvenile) suspect about legal assistance and when they do so, it is service ‘on the house’. Two other officers
mentioned however that internal police guidelines do place a responsibility on
the police to inform the invited suspect. The invitation should, according to
them, inform the suspect that a lawyer can be contacted at their own expense.
In just two interrogations out of the six where the juvenile was invited for an
interrogation, it was checked whether the juvenile had indeed talked to a lawyer.

2.3.3. Information about the right to remain silent

According to the lawyers, juveniles are informed about their right to remain
silent and “They know not to talk to the police”. It seems that for the juvenile
respondents this information is known, because the first thing they brought up
when asked about their associations with interrogations was the right to remain
silent. Police officers are trained to inform any suspect of the right to remain silent
and the caution is laid down in the law. Observations indeed show that in all 12
interrogations the right to remain silent was conveyed before the interrogation
commenced. There is not a unified way of informing a juvenile of this right and
one officer explained the way the right to remain silent is explicated by him:

“[…] that means that you don’t have to answer our questions”.

Following this explanation, the assumption of the police officers is that a juvenile
should be able to understand the right. Some variations in explanation were
observed, underlining the absence of a uniform practice. A few officers stressed
that the juvenile was not obliged to answer questions and should the juvenile
wish not to do so, the officer would not get mad. Another officer approached it
as such:

“You don’t have to answer questions. You can say: I invoke my right to remain silent.
That’s a right you have”.

2.3.4. Information about the right to have someone informed of detention

Finally, (juvenile) suspects should be informed about the right to have a person
informed about their detention. Only one juvenile referred to this right and said
his parents should be informed. However, when asked about this right in the focus
group interview, the juveniles said their parents were not informed about their
detention.

2.4. LEGAL ASSISTANCE

Police officers in the focus group generally seemed accepting of legal assistance. In the past, just after the Salduz ruling, legal assistance
during interrogation was seen as possibly having a hampering effect on interrogations\(^6\), but when asked about recent associations with interrogating juveniles, respondents did not report on any difficulties connected to legal assistance and how the lawyer’s presence has changed things. One officer also explained that she would ask why the juvenile had waived this right. She also stressed that she would ask at the beginning of the interrogation not only if the juvenile had talked to his lawyer, but also when and in what way (telephone or face to face). On the other hand, one officer openly questioned the added value of a lawyer:

“But what is the added value of a lawyer? They say you have to remain silent or not. The only thing they’ll say is ‘remain silent’ […].”

Advice given during the juvenile-lawyer consultations was not observed, but observations of interrogations indeed showed one lawyer advising her juvenile client during the interrogation that their chosen strategy was to remain silent.

2.4.1. Decision and possible waiver

Police officers in the focus group interview were reluctant to make general comments about juveniles’ ability to waive rights. According to them it is linked to the age of the juvenile and the seriousness of the offence they’re suspected of. They feel that not every 16-year-old can make this decision, but neither can every 18-year-old. The police officers indicated that there is a link between waiver and insight into possible implications of waiving.\(^7\) When a juvenile is suspected of ‘mere’ shoplifting one officer felt it is allowed that the juvenile is less aware of the implications than when the alleged offence concerns a robbery. Table 1 shows whether juveniles in the recorded interrogations waived the right to legal assistance.

Table 1. Legal assistance

<table>
<thead>
<tr>
<th>Assistance</th>
<th>Yes, chosen lawyer</th>
<th>Yes, appointed lawyer</th>
<th>No</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal assistance at interrogation</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>

Table 1 shows that in half of the interrogations the juvenile was assisted by a lawyer of which the majority was a duty lawyer. One would assume this to be the general practice, because due to their age, juveniles tend to have had fewer encounters with the police and thus might not have a chosen lawyer. This is in

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\(^6\) See for instance Vanderhallen et al. 2014, p. 103.

\(^7\) Read: ‘when less (severity of possible punishment) is on the line, juveniles are more inclined to waive’.
contrast with the juveniles in the focus group who stressed the importance of a chosen lawyer, but they had been in contact with the police more often and were therefore more aware of the system.

One female officer stressed that juveniles should know exactly what is waived. The police respondents were not in agreement on this matter and one officer expressed that he is unsure whether a juvenile is capable of making such considerations at all. Lawyers were also not in agreement with each other regarding the correlation between age and a possible waiver. One lawyer felt that the cut-off point of 18 years makes sense, another one wanted this stretched to 21 years, and the third one felt every suspect should at least have a consultation with a lawyer to make a decision on a possible waiver. One lawyer even called the possibility of waiver preposterous:

"The fact that you can waive is preposterous. It depends, especially with juveniles, how it is conveyed: 'you can speak to a lawyer, but it will take a while'. Therefore it should be standard that you don't have the possibility to waive".

The ideal situation should involve the lawyer being present when legal assistance is waived. Lawyers feel that, before assistance during interrogation is waived, there should at least have been a consultation via telephone, Skype or face to face. In this respect it can be problematic when the duty lawyer has to assist (juvenile) suspects at various stations making it impossible to see them all at the same time.

The juveniles in the focus group seemed well aware of their right to legal assistance and the implications of a waiver. Three out of four had their own lawyer and indicated they would always invoke their right to legal assistance. It should be reminded that these juveniles represented a group of three repeat offenders and one juvenile detained for a serious offence for the first time, but who had been in contact with police before. When asked if waiting for a lawyer is worthwhile, they indicated this was indeed the case. One juvenile said he would wait, even knowing he ‘goes crazy’ doing so.

2.4.2. Pre-interview disclosure and lawyer's advice

Some police officers in the focus group reacted defensively regarding 'giving up evidence'. One officer said she would disclose as little as possible. According to her the interrogation plan could get ruined when the lawyer receives evidence and some lawyers do indeed ruin this plan by contacting the prosecutor. Other officers were more nuanced and indicated it depends on the case: if there is a lot of evidence, one officer said that he would deliberate with the lawyer about cooperation and the juvenile receiving a community service
sentence, with which another officer concurred. This however is not real disclosure, but more negotiating cooperation based on the available evidence:

"[It] depends on the case: sometimes you think 'if I just tell the lawyer what I think...'. I had a case of a boy detained for three days and I thought 'gosh, just tell us what your part was, because it is so little and then immediately you're free to go'. This I consulted with the lawyer".

The same officer stressed that lawyers don't always understand that the police are not "aiming for punishment" and that through deliberation and cooperation, alternative sanctioning such as HALT\(^8\) can be achieved. Lawyers however can push clients to remain silent until full disclosure has occurred. A similar picture was painted by the lawyers: sometimes additional information can be asked and received from the police officer, but it depends on how 'open' about the investigation the officer is:

"If the detective is relaxed this [getting additional information] is no problem and you often have the same goal in mind: HALT for less serious offences".

The lawyers indicated they prefer to have the entire case file and at minimum information about the suspicion. When a juvenile has no lawyer, the situation becomes different: no disclosure occurs and the juvenile is confronted with evidence at the interrogation.\(^9\) The juveniles in the focus group interview explained that their lawyer normally does not know exactly what evidence the police hold, but there must be something otherwise the police cannot interrogate. Lawyers feel that in general a lawyer should be active in acquiring the relevant documents and when accelerated proceedings, for instance ZSM (Zo Snel Mogelijk)\(^10\), are applied, all documents should be made available immediately to the juvenile and lawyer. According to one lawyer, now it remains "a drama".

2.4.3. Consultation

In the Netherlands it rarely happens that suspect-lawyer consultations are carried out over the phone which is corroborated by the observations of recorded interrogations (see Table 2). A telephone consultation occurred in only one case because the juvenile was invited to attend the police station. The

\(^8\) HALT is an out of court disposal where the juvenile commits to community service or a learning sentence. For more information, see Panzavolta et al. 2015, p. 260.

\(^9\) Focus group with lawyers and police.

\(^10\) Accelerated proceedings: the criminal case is dealt with and disposed at the police station by the prosecutor. For more information, see Van Oosterhout and De Vocht 2015, p. 256.
majority of consultations are marked ‘unknown’ because the written record did not state the type of consultation and it was not discussed during the interrogation.

Table 2. Consultation

<table>
<thead>
<tr>
<th>Assistance</th>
<th>Yes, by telephone</th>
<th>Yes, unknown how</th>
<th>No, right waived</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal assistance during consultation</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>5</td>
<td>12</td>
</tr>
</tbody>
</table>

Because analysed written records do not shed light on the matter, it cannot be ascertained how long consultations with lawyers lasted. Other studies\(^\text{11}\) have shown that close to half of the allocated 30 minutes\(^\text{12}\) seems to be used. As for the content of the consultation: this was also not observed in our study. An observation of one interrogation showed the lawyer advising her client to remain silent "as [we] discussed during the consultation".

One juvenile reported that when he consults with his lawyer, the lawyer will ask what he is suspected of. According to the same juvenile, the lawyer does not need to know whether or not he has committed the alleged offence. The juveniles see legal assistance as business as usual, but it also gives them support. Lawyers in the focus group interview confirmed the aforementioned practice and one said that he always asks if they know what they are arrested for.

When asked if the lawyer also asks the juvenile what has happened, the juveniles answered affirmatively. For them it also depends on the relationship of trust, something the juveniles only seem to have with a chosen lawyer. According to the female lawyer juveniles can beat around the bush in the beginning, but during the consultation it can become apparent that they know more than they are letting on and then she will ask probing questions to get the full story.

As mentioned above, some of the police officers feel that lawyers will instruct their juvenile client to remain silent in all interrogations. Another officer thought lawyers will propose options\(^\text{13}\) during the consultation for the juvenile to choose

\(^{11}\) See Verhoeven and Stevens 2013, p. 190 (average 18 minutes) and Blackstock et al. 2014, p. 313 (average 21 minutes).

\(^{12}\) In the Netherlands, according to a temporary instruction by the public prosecution’s office (*Staatscourant* 2010 nr. 4003), suspects are allowed to consult with a lawyer for 30 minutes before the first interrogation.

\(^{13}\) Cooperate, partially cooperate, remain silent, *et cetera*.
from and questioned whether a juvenile is capable of making a decision on those options to begin with. According to lawyers leaving options open is inherent to a consultation where there is no information available yet and one explained how he consults with a juvenile client:

"I do the same as with adult suspects, 'you have three options: lie, tell the truth or remain silent'. To lie is not an option because I don't know what will happen".

The same lawyer went on to explain that he lets the juvenile choose. If the juvenile wishes to remain silent, he attends the interrogation. When the juvenile wishes to talk, the lawyer decides on attending based on the severity of the offence: the less serious, the less likely he is to attend. This practice was espoused by another lawyer and seems in stark contrast with the police perception that during consultations the lawyer will tell the juvenile to remain silent. One lawyer also explained that he informs the juvenile that he works for him and working in the clients best interest is what he is paid to do. According to him, juveniles find that comforting to hear, because they are deprived of their freedom and constantly told what to do; under these circumstances it is pleasant to have someone on their side to advise them. Finally, another important aspect of the consultation, according to the lawyers, is to inform a juvenile about their legal status and following procedure. The latter encompasses estimating how long police detention will last, which juveniles are concerned about, as well as the possible sentence that can be imposed.

2.4.4. Assistance during interrogation

The recorded interrogations generally showed lawyers sitting next to the juvenile suspect during the interrogation. This is a formal and common approach when the interrogation is conducted in a normal interrogation room: four people sitting opposite each other behind a rectangular desk. When the interrogation was conducted in the so-called child friendly interrogation studio, the set-up was different: the table is oval and the people are more ‘loosely’ seated. When assistance was provided by a trusted person, he or she was seated behind the juvenile suspect.

2.4.4.1. Content of legal assistance during interrogation

In the focus group interview, lawyers did not reflect upon intervening from a perspective of preventing unwanted interrogation techniques or pressure, but more from a viewpoint of making sure the full picture is grasped by the police. One lawyer explained that he would ask additional questions in order to make sure all necessary information is presented during the interrogation. Another lawyer confirmed this practice, but added that he tends not to
intervene, because they are not supposed to. All lawyers agreed that a better practice would be to allow for a more active role of the lawyer during an interrogation. According to the interviewed police officers, the lawyer should in principle be passive during the interrogation. Police reported instances where the lawyer would prevent the client from talking for instance by using predetermined signals such as knocking on the table. This can lead to them calling the prosecutor and the lawyer being expelled from the interrogation. The police are wary though, because getting the lawyer “kicked out” can affirm the juvenile suspect’s belief that something is at stake and remaining silent is important.

When asked if, in line with upcoming European standards, a lawyer should have a more active role during the interrogation the police officers’ opinions differed. One felt it would hamper the police’s work, but would also require them to do their job even more thoroughly. Another officer reflected upon the question from the English situation and felt that disclosure and an active lawyer could be beneficial and would not necessarily lead to fewer confessions. A third view was expressed by another officer who felt that disclosing the case-file would only allow the lawyer and suspect to make up a story in line with the evidence held. This shows the considerations made by the police from the perspective of ‘being able to do their job’.

2.4.4.2. Lawyer interventions

Part of effective legal assistance should be that the lawyer is capable to intervene, meaning: the police allowing interventions and the lawyer understanding when to do so. To test what was said in the focus groups, a section of the observation scheme dealt with classifying lawyer interventions. First, the study sought to see if lawyers would intervene when the juvenile is confronted in any way by the police. In two interrogations this happened, but in the remaining ten either no lawyer was present or no confrontations occurred. At least one other type of intervention by lawyers, not caused by a police-confrontation, was observed in all interrogations when a lawyer was present, for instance explaining something to the juvenile. These interventions are clustered in five categories: 1–2 times (happened once), 3–5 times (happened three times), > 5 times (happened two times) not applicable (happened six times) and no (did not occur).

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14 For more information on assistance and disclosure in England and Wales, see Kemp and Hodgson 2015, p. 158–165.
### Table 3. Lawyer interventions

<table>
<thead>
<tr>
<th>Intervention</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyer makes a comment to the police</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer provides additional information</td>
<td>4</td>
<td>2</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer advises juvenile to be silent</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer advises juvenile (other advice)</td>
<td>4</td>
<td>2</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer explains something to the juvenile</td>
<td>0</td>
<td>6</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer comments on written statement</td>
<td>4</td>
<td>2</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer asks for a consultation</td>
<td>0</td>
<td>6</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer makes another intervention</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>12</td>
</tr>
</tbody>
</table>

Table 3 shows that in none of the interrogations observed, further consultation was requested and neither did a lawyer have to explain something to the juvenile. Of course, this does not necessarily mean everything was clear to the juvenile but the lack of these interventions might be caused by an intricate exchange of factors such as the level of activeness of the lawyer, the juvenile's level of understanding and the amount of effort the interrogator puts into making sure the juvenile understands. In general the lawyers intervened in a way that was polite and therefore the police were willing to accept the interventions. Whenever changes to the written record were required, the police were willing to make them.

#### 2.4.4.3. Advising during the interrogation

When asked about their lawyer's behaviour during the interrogation, juveniles sketched a very passive image. They explained that the lawyer cannot advise during the interrogation and has to remain silent. According to the juveniles the lawyer is there simply to check how the police are treating them. Lawyers did mention that, when a juvenile has chosen to remain silent, but during the interrogation it will become apparent that the police hold an overwhelming case against the juvenile, they can ask for another consultation to redefine their strategy. This represents a different practice than the juveniles reported, because lawyers said they have not encountered problems being active during the interrogation. As Table 3 shows, four instances were observed where the lawyer advised the juvenile during the interrogation, not counting advising the juvenile to remain silent. This varied from a mere supportive role to an instance where the lawyer urged the juvenile twice to carefully read the statement to make sure everything was noted down correctly. The lawyer told the juvenile: “After you have read this through you can – and I advise you to – sign the statement”. A more elaborate but very interesting example comes from a case where the juvenile was suspected of attempted manslaughter. The case occurred within the family and...
the lawyer wanted her to make it very clear that she acted out of self-defence. Therefore he told her she should bring up the fact that she was pushed down and is suffering from a headache and that her father has a gun which he used to threaten her and her mother with. This is something the focus group lawyers also stressed: making sure the juvenile conveys what is relevant, from a legal perspective, for, in this case, arguing self-defence.

2.4.4.4. Checking the statement

Lawyers see an important role for themselves in checking the content of the written record. The role they allocate to themselves is rather passive and when the written record is enacted they feel they have to become more active. Four interrogations were encountered where the lawyer did comment on the written record and in one instance urged the juvenile to carefully check the statement. If they do not, the written record might reflect a very ‘clean’ confession when in fact the situation was more complex. Here, juveniles see a task for their lawyers as well: they will read it through and some of them will sign it also. One juvenile said he himself always signs the record in order to make sure nothing can be added later.

2.4.4.5. Advising to remain silent

As mentioned above, since the Salduz ruling of the ECtHR16 there has been considerable discussion about legal assistance during police detention. An often-voiced fear of the police is that lawyers would advise invoking the right to remain silent to every client. Our observational study did not focus on the content of the consultation prior to the interrogation, but it did show that only in one case when the lawyer was present during the interrogation, she advised the juvenile to remain silent. Similar results on the occurrence of the advice to remain silent were found in another EU study on police custody.17 The one lawyer that was seen advising invoking the right to remain silent was very active overall and intervened six times. At first, when asked during the introduction if the lawyer had any remarks she used the opportunity to explain that the strategy, decided upon by the defence, was to remain silent. This shows this had been discussed during the consultation and her comment is both a remark to the police as well as an indirect advice to the juvenile (to remain silent and stick to their previously decided upon strategy). Later, when one of the interrogators told the juvenile that he should constantly deliberate with his lawyer about answering, she intervened again and said to the juvenile: “We decided that you wouldn’t answer questions,
Multiple facets of juvenile interrogations are at play here, but this example illustrates that, when a strategy is chosen, implementing this strategy may require the assistance of a lawyer.

2.4.4.6. Juvenile perceptions on the lawyer’s role during interrogation

The opinions of the juveniles in the focus group on the role of a lawyer during the interrogation was rather bleak. Most of the respondents indicate they do not need the assistance of a lawyer during interrogation, because they are experienced in interrogations and just remain silent anyway. One said:

“He doesn’t need to be there for me. He can remain silent with me, haha”.

Another juvenile expressed a slightly different view: he found the presence of a lawyer helpful when he was interrogated for the first time because he did not understand everything. The lawyer also helped him to understand proceedings.

2.5. ASSISTANCE BY A TRUSTED PERSON

In the Netherlands, involving an AA is not standard procedure and there is for instance no formal scheme for involving AAs like in England and Wales. A trusted person can attend the interrogation – and in some ways this is the functional equivalent of the AA – but due to a lack of applicable rules variations in practice were observed. For instance in the place where the adult would sit in the interrogation room (this varied from next to behind the juvenile or not in the room at all – one adult was asked to leave when the actual interrogation commenced). In comparison, when a lawyer is present at the interrogation, he or she would normally sit next to the client. Notwithstanding the fact that adult assistance is not officially accounted for in the Netherlands, eight interrogations were observed where the juvenile had a trusted person present.

2.5.1. Experiences with trusted persons

One of the juveniles in the focus group interview mentioned that he was once interrogated in the presence of his mother. When asked how he felt about that, he was indecisive: on the one hand he liked seeing his mother, but on the other hand he did not feel for her hearing “all he had done”. The other juveniles also did not feel much for assistance other than legal assistance. Police officers supported the same view and indicated they would rather have a lawyer assist the juvenile and – in this respect – one officer remarked that it is very difficult to confess with your parent(s) present. The same officer explained that a lawyer will have a better perspective of what is best for the juvenile in light of legal outcome, rather than
the parents. Furthermore, they are more neutral than the parents, as a lawyer
stressed in the focus group interview as well. The trusted person, often being
a relative, is seen as not ideal and a professional trained to assist juveniles is
welcomed by the police as the preferred option. One officer did warn that, when
allowed in the interrogation, the trusted person\(^{18}\) should be warned in advance
that they can be privy to delicate and sometimes troubling information.

Lawyers were more open to the involvement of trusted persons such as parent(s)
than the police. One lawyer explained that he would sometimes contact the
parents of the juvenile suspect and make arrangements about their attending the
interrogation(s) because he cannot attend all. The same lawyer felt that parents
should be able to assist, but all lawyers agree that the involvement of the family
should remain complementary to the lawyer’s role, because family members do
not possess specialist knowledge. Lawyers agreed with the police on this point
and also on the fact that sometimes having the parent there can hamper the
juvenile’s cooperation. Lawyers feel it should be possible to involve both a parent
and lawyer, should the juvenile want this.

2.5.1.1. Trusted person interventions during interrogation

As table 4 shows, seven types of interventions, directed at the juvenile, lawyer or
police, were noted.

<table>
<thead>
<tr>
<th>Intervention</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult makes a comment to the police</td>
<td>5</td>
<td>2</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Adult provides additional information</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Adult makes a comment to the lawyer</td>
<td>0</td>
<td>1</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Adult advises juvenile</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Adult supports the juvenile</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Adult comments on written statement</td>
<td>1</td>
<td>6</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Adult makes another intervention</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>12</td>
</tr>
</tbody>
</table>

In comparison to the interventions by the lawyer, this table shows that trusted
persons are not nearly as much involved in the interrogation as lawyers are. In
four instances the lawyer commented on the written statement compared to
it happening only once by an attending adult. As mentioned above, assistance
in the Netherlands is generally provided by an adult or a lawyer and the
interrogations conform this: in 11 interrogations the adult was unable to make

\(^{18}\) Be it an official AA or a relative (trusted adult).
a comment to the lawyer because both are not allowed in the interrogation. The interrogations further showed the trusted persons present to be quite active: in five interrogations the present adult intervened 3 > 5+ times.

2.5.1.2. Making a comment to the police

Table 4 shows that the attending adults were overall not too shy to make a comment to the police which happened in five interrogations. In one interrogation for instance the mother of the interrogated juvenile explained that the co-suspect was a girl who had issues at home and was reported for running away from home. In general the interrogations showed officers willing to accept interventions by trusted persons. Only in one interrogation the intervention was unaccepted by the officer. The mother asked if she could make an official statement to the police at the end of the interrogation, which was declined and the officer told her that it was not her role to make a statement.

2.5.1.3. The trusted person supporting and advising the juvenile

Maybe even more so than the lawyer, it is within the trusted person’s role and ability to provide emotional support to the juvenile. Table 4 shows that in five interrogations the adult did exactly that. In one interrogation the juvenile was very upset about being suspected of a robbery and she did not seem to comprehend why she was suspected in the first place and started crying about being detained at the police station. It was then that her mother provided comfort and support by gently stroking her head and explaining what it means to fit the police description of a suspect. In another case the mother made arrangements for her son’s work, which he appeared to be worried about during the interrogation. In one interrogation the trusted person advised her son to carefully look at the written record. The juvenile scanned through the statement when it was printed and said “I believe what is written down”. His mother urged him to take his time and carefully check it. This shows that, even though in general a lawyer might be more suited to point out the importance of checking the statement, some adults do this as well. This only happened once.

2.6. ASSESSMENT

When the police officers in the focus group interview were asked about assessing the ‘fitness’ of the juvenile to be interrogated, at first they reported on ‘sizing a suspect up’ and looking for an effective way of dealing with the suspect from that point onwards. Police officers as well as lawyers describe this ‘sizing up’ for a large part as acting upon their gut-feeling. According to a police officer, this gut-feeling is something detectives possess, but the uniformed police lack. The
assessment seems to be done in an unstructured way and some officers explained that they ask questions about education, use of medication and some follow-up questions if they feel this is needed. Due to the time-pressure uniformed police are under\textsuperscript{19}, they do not have the time to ask these questions and invest time in the assessment of a juvenile suspect. When asked if they have ever encountered a juvenile who they felt was unfit to be interrogated, one officer immediately answered ‘no’. Lawyers will make the assessment during the consultation and when asked about a good way of doing so, they said it is best to just have a talk with the juvenile and show an interest in their well-being. One lawyer once assisted a client who appeared to be ‘confused’ but – in general – lawyers seemed to be okay with juveniles being interrogated and they indicated that most of them are capable of being interrogated. The lawyer who had experience with a ‘confused’ client, did advocate a system of standard contact with the Child protection service to see if the juvenile is known there and if this Service is aware of any problematic situations, causing the juvenile to be unfit for interrogation. When asked if the juveniles feel that the police care for them, one juvenile immediately said this is not the case and the others nodded in agreement.

2.6.1. Assessment of mental state and intoxication

Police officers in the focus group interview mentioned juveniles often suffer from mental disabilities such as Asperger’s or Attention Deficit Hyperactivity Disorder (hereafter: ADHD). This shows that at least some officers are familiar with these kinds of disabilities/impairments and that they might include this in the assessment of what kind of juvenile they are dealing with. One officer said that an assessment is something to be careful with because, due to limited contact with the juvenile, they might not be able to do this at such an early stage of proceedings. If mental health issues have not become apparent during the so-called ‘social talk’, it can become apparent throughout the interrogation. When the officers think of examples possibly causing a problematic interrogation, they mention mental disabilities. This is even dubbed “the story of mental disability”. Only situations were mentioned wherein the juvenile was obviously retarded and one officer said about that:

\textit{“I will stop the interrogation, because he will even confess to having killed Kennedy.”}

When the interrogation commences, the assumption is that an assessment has been made. Therefore, on camera and during the interrogations, assessments were not encountered. Nonetheless, interrogations were observed where the juvenile seemed to be suffering from some form of mental illness. The written

\textsuperscript{19} In the Netherlands, uniformed police often deal with minor cases in which – as a rule – they will only be able to detain the juvenile for a limited number of hours.
record in one of these interrogations indeed showed mentioning of the juvenile suspect being diagnosed with ADHD and receiving medication for it. One apparent cause for a juvenile being unfit for interrogation is intoxication with medication, alcohol or drugs. This example was also raised by a juvenile in the focus group interview who said he was picked up from home whilst under the influence of someone else’s medication:

“I had taken medication from someone else and I told them [the police] at the station. Then they took me to hospital but not for another three hours. They left me in a cell first.”

2.6.2. Assessing compliance

The recorded interrogations show that some interrogators also try to assess the juvenile’s level of compliance and if they would speak up when something is not understood. The way this happens in practice may vary widely, but one form of checking this was reoccurring: the officer going over a standard question as shown in the example below.

Interrogator:  “If you don’t understand something, you can tell me okay? In order to make sure you understand this, we will go over a control question: when I ask you what your domicile is, you say?”
Suspect:  “That I don’t understand the question.”
Interrogator:  “Very good. I asked where you live.”

2.7. INTERROGATION

2.7.1. Characteristics

2.7.1.1. Timing and duration of interrogations

In the Netherlands, according to police guidelines, suspects should not be interrogated at night. According to one officer in the focus group interview a change in relevant guidelines has been prepared allowing for interrogations of juveniles aged 12 to 15 years old at night as long as this is approved by a prosecutor. When juveniles are arrested late in the evening the standard is that they will be retained in a cell overnight and this is something which the new guidelines will aim to reduce. This can lead to the circumvention of application of the right to legal assistance though, because assistance at night will mostly be unfeasible as legal aid schemes do not operate after 20:00h. Of course, this practice can also be changed in accordance with upcoming changes in procedures.

20 A similar approach was also observed in another case.
Observations show that the interrogations were mostly conducted during the day. Two interrogations were held in the evening and for the remaining interrogations such information was missing. Lawyers said that when juveniles are very young, they will be sent home instead of being kept overnight. In the Netherlands this can be done by using the possibility of ‘home detention’, something which according to one lawyer is not used often enough. It does depend on the alleged offence as well, but – according to the lawyers – juveniles are generally sent home after interrogations in cases of minor offence.

None of the interrogations observed were of an excessive length. The longest interrogation lasted 153 minutes and the shortest lasted 17 minutes. The mean of all interrogations is 72.42 minutes. The reason one interrogation took more than two and a half hours was because the juvenile was accused of rape and the officers took their time to carefully get his version of events. In comparison, the shortest interrogation was interrupted and therefore only lasted 17 minutes. In this case, the investigation was still underway and the interrogation was interrupted by the assistant prosecutor who entered the interrogation room to officially remand the juvenile in detention. When this interrogation is interrupted, the suspect is allowed to consult with a lawyer again, which – in the aforementioned case – the juvenile wished to do, causing the interrogation to be stopped.

2.7.1.2. Interrogators

The number of interrogators and the gender of the interrogators varied. The maximum number of interrogators conducting an interrogation was two. Out of the 12 interrogations observed, nine interrogations were conducted by two interrogators and the remaining three by one interrogator (see Table 5).

Table 5. Sex of interrogator(s)

<table>
<thead>
<tr>
<th>Sex of the interrogator(s)</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>1</td>
<td>8.3</td>
</tr>
<tr>
<td>Female</td>
<td>2</td>
<td>16.7</td>
</tr>
<tr>
<td>Male-male</td>
<td>3</td>
<td>25.0</td>
</tr>
<tr>
<td>Male-female</td>
<td>5</td>
<td>41.7</td>
</tr>
<tr>
<td>Female-female</td>
<td>1</td>
<td>8.3</td>
</tr>
<tr>
<td>Total</td>
<td>12</td>
<td>100</td>
</tr>
</tbody>
</table>

As Table 5 shows, most interrogations were conducted by a male and female officer pair. When there were two officers, often one would ask questions and the other would type along. However, this does not mean that one of the

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21 When the first six hours of the investigation have passed and further investigation is needed, the suspect can be remanded in detention.
Interrogators is completely silent as for example in one interrogation the officer documenting the interrogation was also answering the questions posed by the attending trusted person and in another both interrogators were calmly explaining to the juvenile why she was at the police station for interrogation. In general, when there were two interrogators, one more or less took the lead in the interrogation. The interrogations conducted by one interrogator took place in the so-called child-friendly studio instead of a normal interrogation room and setting.

2.7.1.3. Interrogation setup and interruptions

In six of the interrogations observed there was an interruption of some sort. One interrogation was interrupted because one of the officers left the room to ask a colleague if any additional questions needed to be asked. In yet another interrogation the interruption occurred when a mother was escorted out of the room. This interrogation was conducted in a special studio, the so-called ‘living room’ setting and during the introduction both the mother and the lawyer were present. After the introductions finished and the lawyer had stressed that her client wished to remain silent, the male interrogator escorted the mother out of the room\textsuperscript{22} and the interrogation commenced nonetheless. As for the setup of an interrogation; when a lawyer or AA was present and the interrogation was conducted in a normal interrogation room, the police officer(s) would sit across the desk from the juvenile and their lawyer or trusted person. As figure one shows the adult would sit with the juvenile as well, opposite from the officers.

Figure 1. Standard setup during interrogation

\textsuperscript{22} It is not clear why, but presumably because the lawyer was also present.
2.7.2. **Interrogation model**

2.7.2.1. Providing the juvenile with information before the interrogation starts

Before an interrogation commences it is crucial that the juvenile is provided with relevant information. Doing so in a comprehensible way is an important part of safeguarding the juvenile suspect at interrogation. Additionally, in order to make sure the juvenile is aware of relevant information, a check for understanding is advised.

Table 6. Information conveyed at the beginning of the interrogation

<table>
<thead>
<tr>
<th>Information on:</th>
<th>Yes</th>
<th>No</th>
<th>Not applicable</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason for interrogation</td>
<td>9</td>
<td>3</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Goal of the interrogation</td>
<td>3</td>
<td>9</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Being a suspect</td>
<td>8</td>
<td>4</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Proceedings</td>
<td>6</td>
<td>6</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Recording</td>
<td>10</td>
<td>2</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Role of the lawyer</td>
<td>1</td>
<td>5</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Role of the trusted person</td>
<td>3</td>
<td>5</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Role of the interpreter</td>
<td>0</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Interrogators</td>
<td>10</td>
<td>2</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>The right to legal assistance</td>
<td>5</td>
<td>7</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>The right to remain silent</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>The right not to incriminate oneself</td>
<td>0</td>
<td>12</td>
<td>0</td>
<td>12</td>
</tr>
<tr>
<td>Other rights</td>
<td>2</td>
<td>10</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>

Table 6 shows that in all interrogations the right to remain silent was conveyed. The law does not explicitly mention that the right not to incriminate oneself should be explicated and results show that indeed this does not happen. Furthermore when a lawyer is present, the interrogators hardly ever explain the role of this lawyer. As far as informing about other rights goes: in one case the juvenile was informed about the right to read through the statement and make changes at the end.

One interrogation involved a zealous officer who explained a lot to the juvenile, from the proceedings during the interrogation and the possible proceedings of a police investigation to the role of the lawyer:

"You talk to a lawyer and you can tell the lawyer what happened. He can assist you in this case and advise you what to do, because you don’t know exactly what to do. That is very nice, that a lawyer can assist you with that."
Finally, the table shows that ten interrogations police officers explain about the recording. This ranged from a brief mentioning that the interrogation was being audio-recorded to an officer showing where the cameras and microphone are located and informing the juvenile about the fact that the interrogation would be continuously recorded.

2.7.2.2. The way information is conveyed

Aside from providing all relevant information another relevant part of proper informing a juvenile suspect is the way the information is conveyed (written, verbally or both). When information is given verbally, it matters whether the interrogator tries to make sure the information is understandable for the juvenile or just uses the literal legal wording. The fact that the juvenile had received a letter of rights before the interrogation was only discernible in one case. Analysis showed officers using their own wording in five interrogations and a literal approach in the same amount of interrogations. In the remaining interrogations the officer(s) used a combined approach. An example of the ‘own wording approach’ is seen in the case of a very young (11-year-old) male suspect who was suspected of molestation. The juvenile was interrogated by one female officer in a special child-friendly interrogation studio who calmly explained rights and procedure. She told him that he has the right to remain silent, which means he can choose not to answer questions.

2.7.2.3. Checking if the information is understood

A final important aspect of effective participation in the interrogation by juveniles is making sure that the information conveyed to them is actually understood. In the previously mentioned case where the juvenile was suspected of molestation, the interrogator checked for understanding by asking the juvenile what was meant by what she had just explained. She also assessed whether the implications of this right were clear and what he should do if he did not want to answer a question. When the juvenile said that he would tell her when he wished not to answer, she was satisfied. In more general terms one officer asked the suspect, after explaining the rights and providing information, whether she had understood everything and if she had any questions for them. On the other hand, five interrogations were encountered in which there was no check for understanding. In three of these interrogations the information was provided by literally following the text of the law which can be difficult for juveniles to understand.

2.7.2.4. Approach

(Theoretically) placing a juvenile on a continuum between (vulnerable) juvenile and adult (suspect) has an impact on the interrogation-approach and the way the
juvenile is treated. Lawyers prefer young suspects to be placed near the vulnerable juvenile end of this continuum, but according to them this does not hold for every juvenile. First time offenders should be treated as juveniles and the way this is actually dealt with depends, according to the lawyers, on the interrogator, the seriousness of the offence and the age of the juvenile. In general police will have consideration for a first offender. However, one lawyer did report on a case where first offenders had robbed a supermarket and the severity of the offence seemed to trump the vulnerability of the juvenile suspects. In the interrogations the police officers were found to treat the interrogated suspect as a juvenile in half of the interrogations and more like an adult in the other half. The latter was the case in interrogations such as (armed/street) robbery, rape and attempt to assault a police officer. Police officers did note that the behaviour of juveniles in the interrogation could vary from a ‘scared dog’ to a ‘nonchalant kid’ and this should be taken into consideration when approaching a juvenile in the interrogation.

Police officers expressed a dichotomy of views. One officer was more of a ‘crime fighting type’ and felt that “If a juvenile can commit a crime, he can be interrogated”. According to the same officer, protection should not overreach. Another officer agreed with this view and stated that “Not all juveniles should be approached with kid gloves”. For her it depends on the severity of the offence. When juveniles are interrogated, it seems that some officers will invest more into the social talk at the beginning, but in the end they feel that applying pressure is allowed. However, another officer expressed a more concerned view (about what a juvenile encounters when at the police station and immediately prompted an exemplar case):

“Case of a first offender who bought a stolen moped: is confronted with two police officers, assistant prosecutor, interrogated, lawyer. Later has a meeting with a servant from the Child Protection Service who get questions from the juvenile because he thinks he is there for him and eventually the juvenile leaves the station completely traumatised.”

According to the police officers in the focus group interview, it depends on the severity of the offence and the available amount of time how much is invested in the social talk (acquiring information about the situation at home and in school). Especially uniformed police, having to deal with a case in a limited amount of time, may well not have much time to invest. The juveniles in the focus group interview were repeat offenders and they did not see the interrogation as problematic. For them it is a game that the police also play:

“That’s a game, you know that, right? One is very friendly acting like your friend and the other… well he wants you dead.”

The experiences of juveniles in the focus group show a view which is more in line with treating them as an adult, than as a vulnerable juvenile. Aside from the
divide in treatment between juveniles and adults, it is interesting to see what the approach to the interrogation is for related topics such as trying to establish a rapport and adjusting the language level. Rapport means: trust-building, mutual respect and understanding.\textsuperscript{23} This is a complicated dynamic where the treatment is calm and where the interrogators try to ensure understanding. As far as one can build trust in an interrogation setting, this is nonetheless part of rapport-building. Table 7 shows the results from the interrogations regarding both.

Table 7. Establishing a rapport and language adjustment

<table>
<thead>
<tr>
<th>Establish rapport</th>
<th>To a very large extent</th>
<th>To a large extent</th>
<th>To a small extent</th>
<th>To a very small extent</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>

The table shows that in half of the interrogations the interrogator(s) tried to establish a rapport of some kind. In the other half of the interrogations the officer(s) showed less effort to establish a rapport. In five interrogations where the juvenile was treated as an adult there was minimal effort to establish rapport. In one of these interrogations the interrogators did take their time to explain rights and procedure, probably also because the suspect was 11 years old, but did confront him with the suspected crime and evidence nonetheless. In that interrogation they tried to establish rapport though through safeguarding understanding and to get the juvenile to trust the officers so he would tell the truth. The officers also showed a rather good adjustment of their language to the level of the juvenile, but sometimes still used terms unclear to the 11 year old, such as: ‘atmosphere’. They then explained this by using examples:

"Was it fun, or was it a fight?"

Table 8 shows that in eight of the interrogations the police officer(s) tried to adjust the language used to the level of the juvenile. This was done by using words understandable to the juvenile and providing explanation for a term when the juvenile seemed to have trouble discerning the meaning of it.

Table 8. Establishing a rapport and language adjustment

<table>
<thead>
<tr>
<th>Adjust the level of language used</th>
<th>Yes, very much</th>
<th>Yes, rather much</th>
<th>Hardly not at all</th>
<th>Almost not at all</th>
<th>Not necessary</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>
2.7.2.5. Information gathering or accusatory interview-style

Another aspect of the interrogation approach and linked to whether a suspect is treated as a juvenile or an adult, is the style of the interrogation. In nine of the 12 recorded interrogations the officer(s) took mostly an information-gathering style. In the other interrogations the style was still focussed on gathering information, but to a lesser extent. In none of the interrogations an accusatory style was used by the interrogator(s). The predominant method applied in the interrogations was ‘questions and answers’ and only one interrogation was the conducted based on the conversational model. Similar results derive from the fact that only in four interrogations the juvenile was allowed to give an extensive account of his story. In three interrogations the officer(s) allowed for this in a very limited way and in the remaining ones there was no room for free recall at all. It seems that some improvement to interrogations with the aim of producing relevant, accurate investigative information may be needed.

2.7.2.6. Interrogation techniques

More specific aspects of the interrogation are the techniques that officers use which can elicit more or less viable information and/or false information. These techniques are listed below in Table 9.24

<table>
<thead>
<tr>
<th>Technique</th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimisation</td>
<td>2</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Maximisation</td>
<td>4</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Accusing juvenile</td>
<td>4</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Good cop / bad cop</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Suggestive questioning</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Persuasive techniques</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Showing empathy</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Active listening</td>
<td>5</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Other technique</td>
<td>2</td>
<td>10</td>
<td>12</td>
</tr>
</tbody>
</table>

Even though minimisation, maximisation, accusing and suggestive questioning ideally are refrained from when conducting any interrogation, some instances where these techniques were used were encountered. In one case the officer minimised the juvenile’s act: he was suspected of putting his finger in the

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24 For information on these different techniques and how they can influence the information it elicits, see chapter 2.
victim’s anus, but she minimised this to “touching his buttocks”. Maximisation happened twice as much compared to minimisation and in all interrogations this entailed stressing the severity of the alleged offence. In one interrogation the interrogator explained to the juvenile that filming underage people having sex can be child pornography. Another officer tried to make sure the juvenile was aware of the seriousness of what was going on and said:

“\textit{It's your story and you can tell what you want, but a Blackberry and money are taken and someone went to hospital. What happened here is a crime for which 12 years imprisonment can be imposed. If it were adults, all would be lifted off their beds and placed in a cell for three days.}”

Accusation also happened in several instances, the most noteworthy being an interrogation in which the interrogating officer told the suspect a few times that she suspected him of the alleged theft. At a certain moment she said:

“\textit{I think you committed this theft because you know where [the victim] lives and that she has money.”}

Suggestive questioning was observed in one of the two regions in the study: in one of these interrogations the officer asked several suggestive questions such as “\textit{When they came in, were they wearing something on their head, you know like a hat?” and “The key to the bike, where was that and what was lying next to it?” The first question clearly implies they were wearing a hat and the second that something had to be lying next to the bike. In another interrogation the officer asked “\textit{Did you see that [victim] was missing teeth after you head-butted him?” This implies that damage happened to the teeth, the suspect head-butted the victim and it invites the juvenile to go along in this narrative.

Persuasion was used in three interrogations and this occurred when, for instance, the answer to a question seemed unsatisfactory. Repeatedly asking the same question is not forbidden in Dutch interrogations and examples of this kind of technique were found.

Even though some instances of less productive and possibly harmful interrogation techniques were encountered, this only occurred in small amounts. The same can also be said about the more productive techniques with showing empathy seen in three out of 12 interrogations and active listening in five interrogations. The fact that empathy was shown in ‘only’ three interrogations may have to do with the fact that juveniles were also seen as suspects (more than juvenile) in six interrogations. When empathy was shown, the interrogated juvenile was treated more as a juvenile. Elements of active listening that were observed involved verbal recognition by making agreeing sounds such as ‘hmm hmm’ and ‘yes, go
Some officers also echoed the final part of what the juvenile had just said and continued questioning. Aside from verbal affirmation, some officers also nodded in agreement, combined with the aforementioned verbal stimulation.

2.7.2.7. Confrontations

Another aspect of the police's interrogation strategy is confrontations. Table 10 shows that the confrontations did not occur in the majority of interrogations.

Table 10. Confrontations

<table>
<thead>
<tr>
<th>Confrontation:</th>
<th>Yes</th>
<th>No</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrepancies in own statement</td>
<td>4</td>
<td>8</td>
<td>12</td>
</tr>
<tr>
<td>Witness statement</td>
<td>5</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Victim statement</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Co-suspect statement</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Forensic evidence</td>
<td>2</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>CCTV evidence</td>
<td>1</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Other documents</td>
<td>2</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Hypothetical evidence</td>
<td>1</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Other evidence</td>
<td>0</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Other confrontations</td>
<td>1</td>
<td>11</td>
<td>12</td>
</tr>
</tbody>
</table>

In one interrogation the juvenile was confronted with something other than evidence, discrepancies or other statements, namely with the fact that the interrogators did not believe his version of events. This is linked to the accusation technique and the officer applied this several times during the interrogation. The officer stressed several times that lying was not desirable:

“[…] then you will have a problem. This is on video what you are saying now.”

The same interrogator combined this confrontation with a hypothetical co-suspect statement: he explained that the police will also talk to a co-suspect and if then his name is mentioned and he has to revise his statement “it will not make a good impression on the prosecutor”. Other documents juveniles were confronted with were official police reports. One such report stated that the juvenile was seen outside by 23:00h whilst he claimed to have been indoor at a friend’s place.

2.7.2.8. Confrontation with statements

Juveniles were most often confronted with witness statements. One juvenile for example was confronted with the fact that one of the witnesses placed him at the
scene of the crime while he denied having been there. In another interrogation the suspect was confronted with witness statements saying the juvenile suspect was in the possession of a knife during the robbery:

Officer: “Has one of you dropped a knife?”
Suspect: “No.”
Officer: “There are witnesses that say one of you dropped a knife and stopped to pick it up.”

In similar fashion, but less often, juveniles were confronted with victim statements. In one interrogation the juvenile was told that the victim had named him as the person stopping him in the street before he was robbed. In another interrogation the juvenile was confronted with the statement by the victim who said that he knew that the suspect had done to other kids what he had also done to him. Confronting a juvenile with what a co-suspect has said happened in three interrogations and in one interrogation this was combined with accusing the suspect of lying:

“In an earlier talk you said that you don’t know where the victim lives. How come [co-suspect] says he drove past the house with you and showed you where the victim lives then?”

2.7.2.9. Confrontation with discrepancies in own statement

When a juvenile was believed to be lying or at least providing an inconsistent statement, the officers would confront him or her with that. These confrontations occurred in one third of the interrogations. The juvenile in one interrogation was treated as a suspect who was confronted with various types of evidence (seven in total) and confrontation with discrepancies in his own statement was one of them. When asked why others placed him at the scene of the crime while he was insisting he had not been there, the following exchange took place:

Suspect: “Because maybe someone wants to screw me over?”
Officer: “Why?”
Suspect: “I don’t know. Because I am in a fight with them?”
Officer: “With whom are you fighting?”
Suspect: “Nobody.”
Officer: “Then that is a strange answer.”

In another interrogation the juvenile was confronted with an alleged discrepancy in his statement which – according to the juvenile – was not correct. The officer asked the juvenile why he had said that he did not know why the co-suspect had called him. The juvenile retorted by correcting the officer, because the officer had not previously asked about this. This shows that not every juvenile is willing to
‘go along’ with what is put forth as evidence. This exchange however, never made it to the written record of the interrogation.

2.7.2.10. The end of the interrogation: juvenile-interrogator interaction

During the phase of closure of the interrogation, three relevant aspects should be distinguished, namely: if the officer(s) explains further procedures, whether the juvenile is invited and allowed to ask questions, and whether the interrogation ended in a positive atmosphere. The first two were rather factual aspects which could easily be documented in a quantitative fashion, and both occurred in eight interrogations. The latter, atmosphere, is a more difficult factor to define and analyse. In the Netherlands two of the observed interrogations were labelled “not ending in a positive atmosphere”. In one interrogation the juvenile was crying at the end of the interrogation and she was very upset for having to go back to her cell after having spent seven hours at the police station already. In the other interrogation where the atmosphere cannot be labelled as positive, even though the officers remained calm, the juvenile was confronted with a lot of evidence and treated mainly as a suspect. The undertone was one of disbelief which seemed to linger on at the end of the interrogation.

2.7.3. Juvenile suspect behaviour

2.7.3.1. Strategy

In relation to the strategy followed by juveniles a finding from this research is that, when asked about associations with police interrogations, juveniles prompted ‘chocolate milk’ as a first answer. When asked what they meant by this, they explained that they would not talk to the police at all unless they were given chocolate milk first, because in general they only get tea or coffee. This was in contradiction to the overall ‘feeling’ during the focus group interview though, because the juveniles seemed reluctant to talk to the police at all: the preferred strategy of the juveniles appears to be remaining silent. A different picture emerges from the recorded interrogations where juveniles exercised the right to remain silent in only two out of 12 interrogations. In those two interrogations the juveniles were very uncooperative. In seven interrogations the juvenile was very cooperative and in the remaining three interrogations the juvenile was cooperative to a certain extent. In the focus group all juveniles said that they would invoke the right to remain silent and when asked why they do this, one said:

“Because it makes them [police] feel like shit.”

Another juvenile said it brings him an acquittal nine times out of ten. When asked if the juveniles sometimes provide the police with a nonsense story during
the interrogation, that was dismissed. In one recorded interrogation the officers appeared to feel as if the juvenile was telling lies and they kept stressing that lying would not look favourable.

### 2.7.3.2. Dominus litis

When the juveniles were asked if they trusted their own lawyer, trusting the lawyer seemed ‘a bridge too far’, but they would generally follow the advice given. Police officers said that juveniles tend to remain silent following the advice of their lawyer. According to them, the situation after Salduz is that (juvenile) suspects remain silent more often due to the fact that they can consult a lawyer prior to the interrogation. Police officers did feel that juveniles are not capable of assessing the possible consequences of this strategy and it also seemed to annoy the police as one female detective explained:

“I’ve had that they wouldn’t even say if they still live with their parents and ‘my lawyer has said that I don’t have to answer’. They sit there and remain silent”.

In the recorded interrogations this annoyance became apparent in one interrogation, where the lawyer intervened a few times during the introduction to express the fact that her client had decided not to answer questions. The officers tried to get the juvenile to speak nonetheless and when the lawyer reaffirmed the strategy chosen by the defence, the officers seemed displeased. The female officer, who during most of the introduction had only been typing, even addressed the trusted person who was still in the room and told her that she was the one who had contacted the police and said that her son was ready to give a statement. She expressed bafflement at the change in strategy “after they had talked to a lawyer”.

Who really is dominus litis in juvenile interrogations when the lawyer is present did not become apparent in the interrogations, but in five interrogations the juvenile was compliant towards the lawyer’s interventions. According to the interviewed lawyers however, juveniles are dominus litis in spite of their young age.

### 2.7.3.3. Providing a version of events

According to lawyers, most juveniles want to give their version of events. If a juvenile chooses to remain silent though, lawyers will explain the possible implications:

“You point out that remaining silent is playing it hardball. This can mean three days at the station, the police will dislike you and they don’t like it.”
The juveniles in the focus group know this but they are prepared to undergo the full police detention and want to upset the police. One of the lawyers in the focus group said that – if according to him the juvenile makes ‘a wrong choice’ – he will tell the juvenile.

Police officers felt that juveniles exercise the right to remain silent often, because of various reasons. That a lawyer will advise invoking the right to remain silent is because the lawyer lacks information into the evidence the police hold (case-file disclosure). Another reason, as seen by the police, is the fact that juveniles are informed about this right three times (at arrest, by the assistant prosecutor and before interrogation). One officer seemed fed up with this:

"The juvenile was advised to remain silent and I asked what he thought to gain. The lawyer was there and almost fell of his chair, but both didn't know."

This shows that the police often do not agree with the chosen strategy of remaining silent. According to the police, juveniles see it as an obligation to remain silent and it is not their right to remain silent, but their duty, often imposed upon them by the lawyer.

One officer told about a case of a 17-year-old suspect, a repeat offender who 'knew the ropes', and revised his strategy based on the evidence the police held and started giving a statement instead of remaining silent like his lawyer had advised him. The police say they are interested in uncovering the truth, also for the victim(s) of a crime, and in light of that goal silence does not fit them. For them the ideal situation would be to uncover the truth without needing (to question) the suspect.

In the recorded interrogations though, the juveniles provided their own version of events in an extensive manner in five of the 12 interrogations and to a limited extent in two interrogations. Furthermore, when asked questions, in ten interrogations the juvenile answered them. Therefore, the perception of police officers in the focus group interview – that juveniles often exercise the right to remain silent – seems unfounded by the actual interrogations. Of course it does depend on the type of juvenile and it might be expected that repeat offending juveniles who are assisted by chosen lawyers are less cooperative. Nonetheless, this category of juvenile suspects did not represent a majority in the sampled interrogations.

2.7.3.4. Looking for support

What makes the assistance of a trusted person special, certainly within the Dutch system, is the bond that often exists between the juvenile suspect and the adult. Because AAs in the Netherlands are mostly adults known to the juvenile (relative,
friend, school official), they can provide more emotional support. Assumedly, this adds to the feeling of support that can possibly lead to juveniles seeking such assistance more often. Two interrogations were encountered in which the juvenile did look for support from a trusted person during interrogation. In one interrogation the juvenile relied upon his mother when he could not come up with the name of his lawyer and he also showed his mother the wound on his foot. When one of the interrogators had left the room to talk to the assistant prosecutor and the remaining interrogator was typing the written statement, the juvenile was also looking for non-verbal support: making eye-contact with his mother. In another interrogation the juvenile was relying on her mother to provide some names she could not come up with and starting complaining to her mother that she had been in police custody for quite a long time, seemingly wanting confirmation that her situation was dire and unwarranted:

"It's another hour mom. I've been here since f*cking 10 o'clock. Seven hours mom: that is f*cking unreal."

In comparison, in none of the interrogations where the juvenile was assisted by a lawyer support was sought by the juvenile during the interrogation since none of the juvenile suspects turned towards the lawyer. Nevertheless, lawyers will actively support the juvenile and intervene when they feel the need to.

2.8. RECORDING OF INTERROGATION

2.8.1. Written record

Lawyers feel that they have an important role in checking the written record and when they do, they feel the quality (content and style) of the written record improves. For instance they often encounter spelling mistakes and one lawyer explained that she tries to refrain from correcting them, because it can be pedantic to do so, but her presence is documented in the statement and therefore she feels that she should not let it slide. Two complaints voiced by lawyers on content are: the fact that sometimes only the gist is captured and secondly the juvenile's own words are never used:

"It is never written in own wording. I don't understand that. [...] Example: 'Yes I hit him, with balled fist and force in his face. Nobody talks like that.'"

Because lawyers reported complaints about the quality of written records and Dutch criminal proceedings are largely carried out on paper, an analysis of the accompanying written records per case was conducted comparing the content of the interrogation and the way the written record reflects this. In all interrogations
where written records were available, the actual interrogation content was reflected sufficiently to well.\textsuperscript{25} Thus it seems that the voiced complaint by the lawyers was at minimum not supported. However, the events of the interrogation were reflected not so well. In only three interrogations they were reflected well, in two sufficiently (in one interrogation it was unknown due to lack of records) and in the remaining six interrogations the events were reflected insufficiently. Examples of such were: a very business-like representation of proceedings and focus on the content of the interrogation when a lot of time during the interrogation was actually invested on establishing rapport and asking about the juvenile's well-being and a written record that made no mentioning of the fact that the mother was present during the introduction and was later escorted out of the interrogation room.

Juveniles did not comment on the quality of the written record, only that sometimes they sign the document to make sure nothing can be added later. Observations of recorded interrogations showed the record being signed by the juvenile in eight out of the 12 interrogations. In two interrogations the juvenile did not sign and it was unknown in the remaining interrogations.

2.8.1.1. Standard information in written record

As for standard information in the written record: none of the written records indicated a letter of rights being provided. Standardised information on the right to remain silent was documented in the written record in eight interrogations (see Table 11).

Table 11. Standardised information in written record

\begin{tabular}{|c|c|c|c|}
\hline
Standardised information: & Yes & No & Unknown & Total \\
\hline
On letter of rights & 0 & 11 & 1 & 12 \\
On rights given orally & 9 & 2 & 1 & 12 \\
On other procedures & 6 & 5 & 1 & 12 \\
Other issues & 0 & 11 & 1 & 12 \\
\hline
\end{tabular}

2.8.1.2. Format of the written record

The actual content of the interrogation was, as mentioned above, reflected sufficiently or well in all 11 interrogations in which the written record was available. Table 12 shows the format in which the written records were drafted. Obviously a \textit{verbatim} representation of both questions asked and answers given

\textsuperscript{25} Based on the prior tested observation scheme and gradations of reflection of content prior discussed by the project management team and the researchers during the researchers training meeting (see chapter 2, paragraph 2.1.1).
provides the most accurate picture of the content of the interrogation, which occurred in five written records.

Table 12. Format written record

<table>
<thead>
<tr>
<th>Format of the written record</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Question and answer literally</td>
<td>5</td>
</tr>
<tr>
<td>Monologue mentioning question and answer</td>
<td>4</td>
</tr>
<tr>
<td>Monologue</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>12</td>
</tr>
</tbody>
</table>

In Table 12 none of the information is unknown, in comparison to Table 11, where this happened once. This is because it was known that a verbatim transcript of the interrogation existed, but this was not available at the time of the observations and thus information on what else is captured in the written record remained unknown. The two accounts of other written record formats in Table 12 were both verbatim transcriptions made after the interrogation conducted in a special child-friendly studio. These reflect the content of what is said maybe best out of all formats.

2.8.1.3. Allowing checking of the written record

In eight interrogations the juvenile was allowed to read the statement and propose changes. When a lawyer was involved he was always allowed to do so as well. This is in stark contrast to when a trusted person was involved: the adult was allowed to read the statement and propose changes only in one interrogation. When remarks were made by the juvenile or the lawyer, these were integrated in the statement. The former happened four times and the latter five times. In one interrogation the lawyer explained that his client would remain silent as well in a following interrogation and he wanted this integrated in the statement. The officers did so, but it was represented as a comment made by the juvenile. The fact that remarks made by lawyers were integrated in five out of six interrogations attended by a lawyer shows that lawyers were active at the end of interrogations when the written record is finalised.

2.8.2. Audio or audio-visual recording of interrogation

During the focus group interview two juveniles reported that their interrogation was audio-visually recorded, but they didn't have any comments regarding the

26 In these interrogations, the video-recorded interrogations were transcribed on the basis of the recording after the interrogation took place.
quality of this recording. When asked what they thought about it being recorded, one said that it is okay, but none of them seemed to have strong feelings towards it. The quality of the selected recorded interrogations, both audio and audio-visual, was excellent in all recordings providing a perfect view of what is going on and who is present (showing all attendants of the interrogation) and the microphone clearly registering what is said. In two interrogations the camera zoomed in and in one interrogation this was to show what the juvenile had drawn when asked to make a drawing of where he had put his fingers on the victim's buttocks.

2.8.2.1. Producing reliable recordings of the interrogation

Having said that quality of recordings is high, some issues may arise when recording the interrogation which may well have an effect on the reliability of the recording. For example: starting the recording at the correct time. Observations showed that the recording started at the beginning in half of the interrogations. In the remaining number of interrogations this was not the case. It goes without saying that the latter situation is problematic. On the plus side, in none of the interrogations the recording was interrupted. Only in one interrogation the video was stopped when the interrogation was interrupted, but this was because the interruption also meant the end of the interrogation. As mentioned in the previous paragraph, all attendant to all interrogations were visible on camera. For quality reasons and checking purposes afterwards this is advisable as a good practice.

3. VULNERABILITIES

3.1. VULNERABILITIES RELATED TO AGE

Age can cause vulnerability for multiple reasons and in the Netherlands this is a complex issue due to the different age-categories acknowledged by law and the different safeguards that are applicable.27 First of all, one lawyer expressed the opinion that juveniles are more vulnerable because they are less capable of taking care of themselves. If it were up to him, the age-threshold would be expanded:

"I find that everybody is vulnerable. Merely being at the [police] station and locked up makes you vulnerable. I always say: 'I will confess to anything'. [...] Juveniles are less capable of taking care of themselves. I would expand it to 21. How many 18 year olds can function as an adult? 18 is only 18 and they are dependent on their parents".

27 For a more detailed account of age-categories in criminal proceedings in the Netherlands, see: Van Oosterhout and De Vocht 2015, p. 246–248.
A police officer underlined this belief and said that juveniles in interrogation are vulnerable simply due to the imbalance in power. Another lawyer did see a difference in vulnerability related to various age categories. According to him, the difference between very young ‘kids’ (13–14 year old) and the older ‘youngsters’ (16–17 year old) is far greater than the difference between the ‘youngsters’ and the ‘adolescents’ (18–19 year old). According to him there are always exceptions, but the really vulnerable juveniles are those below the age of 16 years. The juveniles in the focus group interview confirmed this: when they were first arrested or in contact with police, they were between 12 and 14 years old. When asked if they understood everything the first time, one juvenile said that this was not the case.

3.1.1. Mental, emotional ability and cognitive development

A lot of juveniles are seen, by both the police and lawyers, as extra vulnerable not only due to a lack of mental ability but also due to other reasons. An example which was prompted a few times was Asperger’s which has an impact on handling emotions and on the mental abilities of a juvenile. ADHD can have a similar effect on a juvenile. In some analysed interrogations the juvenile was suffering from some form of ADHD, autism, lowered IQ or a learning disability. Furthermore, some juveniles seemed very emotional, mainly the girls in the observed interrogations, and distressed about their situation. An important factor of effective participation in (criminal) proceedings is understanding and it seems that the younger the juvenile, the less understanding due to cognitive underdevelopment. As mentioned above the juveniles reported this and said that when they were at the police station for the first time at a young age, they did not understand everything that was going on. Lawyers reported instances where they indeed felt that their juvenile client does not understand proceedings and they had to interrupt the interrogation to explain procedures. The interrogations showed that less developed cognitive abilities also have an impact on the way juveniles are able to express themselves.

3.1.2. Social context

Due to the social context some juveniles grow up in, they can be more prone to criminal behaviour. The social context, in light of vulnerability, is important and the family configuration, the level of education, and neighbourhood they live in may all be of influence. In general, juveniles will have less control over

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28 This was either discussed during the interrogation or noted down in the written record.
29 Shown in the way they were either crying or verbalising how they were emotional about being in the interrogation and at the police station.
31 The younger juveniles showed difficulty in expressing themselves (both shown through the wordings used as well as controlling their emotions).
these situational factors than an adult and this can cause them to be more vulnerable merely due to the lack of control and the impossibility of ‘escaping’ the situation. Police officers feel juveniles from less privileged backgrounds come across as arrogant and this causes police officers to treat them as adult suspects. In the focus group interview the juveniles did seem to come from a certain environment where crime flourishes and they seemed to be recidivists. This may cause them to be more vulnerable because – under these circumstances – the fact that they are juvenile or adolescent might be forgotten by the police.

3.1.3. Short term reasoning

Finally, short term reasoning can cause vulnerability, because some juveniles would rather focus on the short term gain of getting out of police custody than on long term implications: punishment.\textsuperscript{32} Lawyers reported this and said that sometimes their clients ask how long detention will take, but some also enquire about the possible sentence. The juveniles sometimes focussed on the outcome of the case: hoping for community service sentence or dismissal, but they also admitted that having to wait at the police station can make them ‘go crazy’. Another example of short term reasoning, in combination with addiction, is juveniles ‘kicking off’ because they want a cigarette, not seeing how this demeanour can affect treatment during time at the police station. This makes them vulnerable, because the desire to smoke a cigarette can overrule the long term considerations as one juvenile also said:

“If you stay calm it’s okay, but I start knocking on the door because I want a cigarette, because that calms me down”.

3.2. VULNERABILITY DUE TO A LACK OF LEGAL ASSISTANCE

The first thing that came to mind when lawyers were asked about the associations they have with the interrogation of juveniles is: “that we can be present”. Unfortunately, a lawyer is not always present and when he or she is not present the juvenile can be in a more vulnerable position, because some procedural safeguards that are applied in practice seem to be linked to the involvement of a lawyer. For instance, disclosure might happen when a lawyer asks for this. When a juvenile is not assisted, the police say that the evidence will be discussed during the interrogation.

Additionally, less attention may be given to the official documentation of the interrogation when no lawyer is involved. The recorded interrogations showed that when a juvenile is not assisted by a lawyer there are far less comments made

\textsuperscript{32} Owen-Kostelnik \textit{et al.} 2006, p. 286–304.
about the official documentation in the written record. It is uncertain whether
the juveniles without legal assistance were more vulnerable, but the two juveniles
who chose to remain silent were backed up by their lawyer who was present and
helped them affirm this stance by expressing their client’s will.

3.3. VULNERABILITIES RELATED TO TYPES OF
JUVENILES

3.3.1. First offender vs. recidivist

Neither recidivists nor first time offenders were viewed as more or less vulnerable
by respondents. The level of vulnerability is dependent on various aspects and
situations. It can be the case that repeat offenders are better aware of proceedings
and his procedural rights, as shown by the level of knowledge of the juveniles
in the focus group, but the opposite can also be true. For instance one juvenile
(repeat offender) showed misperceptions in relation to the criminal justice system.
One can also argue that these repeat offenders are more vulnerable because
they are labelled criminal causing them to be treated as such by the police.
Furthermore, because it is a repeat offender the assumption of understanding can
arise, whilst this is not completely the case. Police can feel that a repeat offending
juvenile ‘knows the ropes’, but our study has shown that even those with prior
contact with the juvenile justice system make mistakes about their rights and
legal procedures. It was not clear in all recorded interrogations whether or not the
juvenile was a repeat offender, but in the majority of interrogations the juvenile
required more explanation because this was provided upon request.

3.3.2. Arrested vs. invited

Answers given by the police uncover a vulnerable position of juveniles who are
invited to attend the police station: they can suffer from a lack of legal assistance
because they either were unaware of this option or were not told that it can be
free of charge. These unassisted juveniles will be confronted with evidence for
the first time during the interrogation without having thought about possible
evidence against them whereas a lawyer can deliberate about (possible) evidence
with a juvenile suspect before the interrogation and base strategy upon that
deliberation. Juveniles in the focus group were repeat offenders who had legal
assistance, but they confirmed that their lawyer needs to defend them based on
the case-file and the lawyer should have access to this. One juvenile even said his
lawyer was very good, because:

“A while ago I was kicked out of my girlfriend mother’s house and all my stuff is still in
my lawyer’s car. [...] She keeps carrying around my case-files”.
Lawyers prefer the juvenile not to be arrested, but then they should be given the same rights as arrested suspects and it should be pointed out that they can (and maybe should) get legal assistance, in contradiction to the police calling it ‘a service of the house’. Inviting a juvenile can be used to circumvent invoking the right to legal assistance and precaution is advised because invited juveniles may be less aware of such right. As mentioned at the beginning of this paragraph, unassisted juveniles may be in a less safeguarded position as opposed to when they are assisted by a lawyer. Juveniles can also be sent home for detention but when the juvenile attends the police station later on it can happen that this is without the assistance of a lawyer due to a lack of awareness of such right.

3.4. VULNERABILITY DUE TO A LACK OF PERCEPTION OF TIME

Another important (but not so much juvenile specific) factor causing vulnerability is the lack of a sense of time. The juveniles reported that they lost all track of time and could also not judge how long they had to wait for the lawyer to arrive or the interrogation to commence and its duration. Juveniles being prone to short term reasoning and having a lesser attention span can cause for vulnerability because it can lead to decisions being made on wrong perceptions of time. One recorded interrogation illustrated this enhanced vulnerability because the young suspect was completely stressed and heavily emotional about being at the police station for “already seven hours” and she was very upset about probably having to spend more time there. She was completely cooperative and often expressed her desire to just go home.

4. SAFEGUARDS AND GOOD PRACTICE

4.1. PROVIDING INFORMATION AND CHECKING FOR UNDERSTANDING

During the interrogations a lot of instances were encountered where information was provided.33 Most of the interrogating officers used an approach where they would use their own wording or combine this with legal terminology to provide information. This could be an important good practice together with checking if juveniles understand what they are informed about. Additionally this information should best be provided on a leaflet, which happened in one interrogation. Possibly this letter was provided in more interrogations, but this remains unknown. Nonetheless, as an additional way
of safeguarding juveniles understanding their rights, this letter should be available in a clear language and provided to the juvenile at an early stage of the proceedings.

4.2. SPECIALISATION AND TRAINING

Specialisation and training are important issues which are recognised by both police and lawyers in the focus groups. Specialisation can happen through working experience, something which a considerable part of police officers in the Netherlands do not have: the majority of interrogations concerning juveniles are dealt with by uniformed police officers who are often young:

“We have colleagues who are still adolescent. We have 17–18 year old colleagues who are opposite peers in age. The majority of people that work with juveniles are uniformed officers”.

Aside from experience, the police officers in the focus group are detectives and they have received training which their uniformed colleagues have not. This was immediately prompted as an issue. They argued for more training, because only a small portion of training is devoted to questioning juveniles and the majority is basic interrogation training. One officer explained that she would like to receive more training but is not allowed to do so. The officers expressed wanting more training also in relation to mental disabilities: how to recognise them and deal with suspects suffering from them. Sometimes the officers can tell that the juvenile is suffering from an illness by the medication he is on and then a specialised officer should be contacted. One officer said she received one day of training on vulnerable suspects and this had proven to be very helpful, but in general the officers see a need for more training:

“It would be good if we were given more insight into what a person with autism or a person suffering from Asperger’s does. We keep asking questions but we shouldn’t ask about emotions, because they don’t have them. We keep asking because that’s what we’re trained to do”.

The recorded interrogations also revealed that juveniles with Asperger’s can be encountered and more training may indeed be needed.34 Aside from training and experience it should be noted that both lawyers and police feel that interrogating juveniles is not something everyone is able to do. According to them, empathy should be a character trait of the interrogator and affinity with interrogation of juveniles a pre.

34 In one case the juvenile suffered from Asperger’s as was documented in the written record.
4.2.1. Availability of specialised personnel

Training is one thing, but the officers also considered the need for specialised personnel to perform specialist tasks. One officer expressed the fear that even specially trained personnel can become ‘sucked up’ in the everyday hectic atmosphere of police investigations. When asked who interrogates juveniles, the answer was: the person who is available. The need for specialisation and the variability in officers is also expressed by lawyers. Detectives in more complex interrogations take their time whereas other officers quickly go through an interrogation to get it out of the way.

4.2.2. Specialisation and training for lawyers

One lawyer did not see a need for training for himself, because he felt things are going well as they are. He feels that he is perfectly capable of making a connection with his juvenile clients. He was supported by another lawyer who felt being able to relate to a juvenile, establish a rapport and properly interrogate a juvenile is in a person and not per se in education. Yet another lawyer felt more education would be good, because at the moment the registration demands for lawyer to be able to assist juveniles simply entail: having assisted in a few juvenile interrogations. This lawyer also felt that in her region too many lawyers are enrolled in the duty list and therefore the interrogations are spread too thinly. She feels that lawyers need to get more experience which is hampered by this. Setting education demands can lead to “the bottom of the bunch being eliminated”. When asked what the specialisation for lawyers should entail, respondents placed emphasis on criminal law:

“Criminal law is very important because only then can you give proper advice. The person is suspected of a crime”.

Another lawyer agreed, but added that the lawyer should also have expertise in youth protection measures. Even more so, because there are developments in the Netherlands that may lead to combined court hearings (i.e. a combination of criminal and civil proceedings). This is already being carried out in The Hague and according to the lawyer practicing in that region this works, because the juvenile can be assisted by one lawyer in both legal domains.

Police officers feel lawyers should also be specialised, but according to them they give the advice to remain silent nonetheless. This is because their goal is different. For juveniles specialisation and training of lawyers and police personnel is not on their mind, but they were very adamant that only their own lawyer is willing to work hard for their cause and can be trusted to do a good job. One juvenile
said this when asked if you notice a difference between a chosen lawyer and a pro deo lawyer:

“Yes definitely, immediately. You pay so they go for exoneration, community service or a provisional sentence. They work hard to get you out. Pro deo is...” To which another juvenile added: “an imposter”.

This juvenile explained that a previous duty lawyer had even told the police he felt the juvenile should stay another two weeks because he felt the juvenile should feel what it was like to be locked up. For police personnel the juveniles had little respect. The police were constantly treating them with disrespect and juveniles reported a lot of instances of violence used against them. Juveniles feel that police officers should approach them calmly and respectfully during the interrogation and then they are relaxed as well.

4.3. LEGAL ASSISTANCE

Lawyers and police officers in the focus groups placed a lot of importance on legal assistance. The interviewed juveniles value legal assistance a lot and feel that it should be of certain quality. The juveniles felt they know how to assess whether a lawyer is good and for them it comes down to the lawyer’s willingness to fight for them and the outcome they can arrange: the lowest possible sentence. The interrogations did show active lawyers willing to reaffirm the juvenile’s strategy during the interrogation.

Lawyers place great importance on their role as well, because they possess specialist knowledge and skills required to assist (juvenile) suspects. This was indeed shown during the final stage of the interrogation of checking the written record. Lawyers were actively involved and suggested changes. In line with upcoming European guidelines, lawyers envision a more active role for themselves during interrogations. Police officers see the importance of legal assistance as well, but only for those vulnerable young first offenders. the police is still wary of the impact a lawyer can have and some officers think lawyers will always advise silence, hampering the investigation. Both police and lawyers agree that, in order to provide the juvenile with legal assistance, logistical arrangements should be in place. Both to inform juvenile suspects, especially when they are invited, about their Salduz right to have a lawyer present free of charge. According to police officers, the two hours it takes lawyers to arrive should be lessened which juveniles supported by saying that sometimes they had to wait until the next day or quite some time for the lawyer to arrive.
4.4. ASSISTANCE BY A TRUSTED PERSON

An encountered safeguard in practice, but not touched upon during focus groups, is assistance by the AA. Juveniles in the recorded interrogations seemed to find much support in the presence of an adult, often a parent. The adult in turn was also active in most interrogations, providing support and even interacting with the police. As far as emotional support is concerned, this may well be best provided by a trusted person known to the juvenile such as (for instance) a parent, other relative or school teacher.

4.5. JUVENILE FRIENDLY INTERROGATION AND WELL-BEING

Both police and lawyers reported on the fact that, when interrogating a juvenile, the way pressure is built and the amount of pressure used should be kept in mind. Juveniles in the focus group interview said that they respond better to an interrogator who approaches them calmly and respectfully. Juveniles reported on situations where a lawyer was not present and force was used by the police. As examples of unlawful actions by the police in interrogation, one came up with entrapment and violence. However, when the lawyer is present the interrogators would be very nice and even give extra chocolate milk according to the juveniles. It should be kept in mind that these are views expressed by juveniles who are familiar with the system and seem to have developed some degree of dissatisfaction towards the police but nonetheless – to prevent this from ever happening – some form of legal assistance at the interrogation could be a valid option as a safeguard. Another important aspect of a juvenile-friendly interrogation is the way officers view and treat juveniles: as a juvenile or an (adult) suspect. Differing treatment based on these competing visions on youth was observed in practice. Those officers that treated the young suspect predominantly as a juvenile also invested more time in providing explanations, calm treatment and a less accusatory interrogation approach. If the goal of an interrogation is to extract reliable information and not to punish the juvenile by hardened interrogating, the juvenile-friendly approach may well be preferable. In comparison to this child-friendly approach an interrogation was observed were the 11-year-old suspect was confronted with the fact that his story was not believed and the officer said “Listen, it’s your story and if I were you, I would think long and hard about what you say”. This can be too confrontational for a juvenile that young. In relation to this, a final aspect of a child-friendly approach becomes accepting the juvenile’s procedural stance: allowing the use of the right to remain silent.
Some interrogations showed the interrogating officers cared for the well-being of the juvenile. For instance one juvenile had a laceration on his foot which the officers showed interest in. They asked him if a doctor had looked at it yet. Furthermore the officers wanted to know if he had already eaten and if he needed a change of clothes from his mother. Even though lawyers have a different view of their role and some do not see themselves as social workers, assisting juveniles in criminal proceedings may well involve more than mere legal assistance and looking out for well-being during police detention and the interrogation could be an important aspect of their role. In the focus group interview one juvenile expressed a similar view and it seemed that he just wanted to be approached as a normal human being and with some interest in his situation. This approach directed towards the needs of the juvenile will most likely produce better interrogations.

Lawyers feel that as a good practice, the interrogation of juveniles should be conducted quicker and proceedings may well be sped up to make sure juveniles spend as little time as needed in police detention. Juveniles agreed and prefer to spend as less time as possible in police detention. The flip side of that coin is of course that speeding up proceedings may have a detrimental effect on the possibility to invoke rights and safeguards. Lawyers and police often reason from a case by case approach: they feel that not one juvenile is the same and no interrogations are alike and they all require different approaches and considerations.

4.5.1. Pedagogical approach

The lawyers see a possible good practice in a more pedagogical approach to the interrogation and one lawyer prefers a trained interrogator:

“The angle should be more pedagogical. Sometimes I find it ghastly how they interrogate. There should be special interrogators with pedagogical training”.

Lawyers feel that a more pedagogical approach should also reflect upon the kind of proceedings chosen. Often they encounter interrogations of juveniles involving brawls, violence in school or simple shoplifting and a large percentage of the juveniles they assist are first time offenders suspected of these petty crimes. They feel these cases should not be dealt with through criminal law. Police officers in the focus group made this distinction as well and it seems that they too feel that some juveniles, mainly the first offenders suspected of minor offences, can be helped by imposing a diversion mechanism like a HALT trajectory.\(^{35}\) The repeat offenders are considered ‘a lost cause’ by the police though. Lawyers expressed

\(^{35}\) See \textit{supra} footnote 8.
understanding and feel that sometimes being a juvenile lawyer requires being able to adjust to situations quickly and look at the possible outcome in the best interest of the juvenile, which can (and often does) indeed entail HALT.

4.6. ASSESSMENT

A standardised assessment does not exist in the Netherlands, but in the interrogations some references to mental disability, such as ADHD, were made. This does however not seem to be a structured procedure. One lawyer said that in his region juveniles do have to fill out a list about personal circumstances: school, home situation, et cetera and this is used as a screening tool and in deliberation with the Child Protection Service the prosecutor can decide upon launching a formal investigation into the social context of the juvenile. Such screening can be used to divert the less serious interrogations to another trajectory than criminal law. According to police, involving Child Protection Services may well be beneficial, because in some interrogations they might have prior knowledge on the juvenile and they are there for the protection of the child. However, in order for that to be effective, juveniles should be better aware of these social worker’s statute, because in the focus group juveniles were very suspicious of these social servants. It may be wise if juveniles are made better aware of what a social servant can and cannot do, who they work for, who the report to and what is done with the information shared between them.

4.6.1. Assessing compliance

Another good practice encountered is checking the way in which the juvenile is compliant. In two recorded interrogations officers asked the juvenile what their domicile is, triggering them to speak up and indicate that they did not understand the meaning of the word ‘domicile’.

4.7. RECORDING OF INTERROGATION

Lawyers feel all interrogations should at least be audio-recorded. One lawyer did not understand why it does not always happen, because you can then hear the tone in which questions are asked and later it can be listened to if something is attested. Aside from audio-recording, the lawyers suggested audio-visual recording in all serious cases. Police officers see a change in the lawyer’s attitude towards recordings and apparently lawyers are more active nowadays in looking at the videos to see if the written record reflects what happened in the actual interrogation. This is not something all officers appreciate, but audio recording
of interrogations is well-received by the respondents and according to them can serve as a tool:

“If they [the defence] say that there was coercion, audio-recording is a beautiful means. They can listen back to it”.

Proper documentation of interrogations, both recordings and the written records, should rank high in order for it to be an effective safeguard in criminal proceedings. This means, for the Netherlands, that especially the written records should be very well constructed giving a decent insight into the content of the interrogation, because court proceedings are most often based on paper documents. Other recordings, as of now, still serve as a back-up.

4.8. FACILITIES AND CHILD-FRIENDLY INTERROGATION STUDIO

The juveniles did not see a need for child friendly facilities such as a special holding cell or a child friendly interrogation room, but that is most likely due to the fact that they are familiar with the system. One juvenile even expressed the view that, if you are caught, you just have to face the consequences. Police officers share this opinion, but for the very young suspects this situation should differ and for instance home detention could well be used as a better option for ‘detaining’ a juvenile until the moment of interrogation. According to one officer, the Netherlands are number one in Europe when it comes to putting suspects in pre-trial detention and he found this very problematic for juveniles. This issue was also raised by a lawyer in the focus group interview and when it concerns juveniles and interrogations in cases of minor offences, the juveniles should be detained at home. Juveniles in the focus group interview found it important to be able to listen to music, to frequently go outside for a cigarette and to be given chocolate milk. One juvenile said that he was given cake once, did not know what was happening to him and enjoyed the cake for the rest of the day. These juveniles have seen a lot of police stations and reported quite some variation in practices and detention standards.

A limited number of the recorded interrogations were conducted in a so-called child-friendly interrogation studio in which there are many things to keep a juvenile busy such as coloring books and toys. Additionally an interrogation was observed where a 14 year old juvenile was interrogated in a living-room setting with a couch which is meant to put the juvenile at ease.
5. CONCLUSIONS

A first and foremost general conclusion should be that in the Netherlands many good practices were found in the empirical study. Overall, interrogations were conducted in a calm manner and many juveniles were assisted by a lawyer or a trusted person. Lawyers, police and juveniles all stressed the importance of legal assistance. The possible risk of a growing number of uncooperative juveniles resulting from this newly introduced right to assistance is, at least in this observational study, unfounded. Most juveniles cooperated fully or to a large extent in the interrogations. Only the juveniles in the focus group interview, who represented a group of repeat offenders, said they would remain silent during police interrogations.

Some dichotomies such as: arrested vs. invited juvenile suspects, repeat offenders vs. first timers and assisted vs. unassisted juvenile suspects exist in legal doctrine and were also encountered during the empirical research. Under which category a juvenile ‘falls’ has an impact on the way he is treated and the extent to which proceedings seem to be safeguarded. At the moment of arrest a series of procedural safeguards are triggered, including: providing information about legal assistance, the right to legal assistance, the right to remain silent, et cetera. An invited juvenile suspect however may well not receive all this information, because legislation does not make it mandatory to convey information about legal assistance to that suspect. Repeat offenders are believed to have a better notion of proceedings and what is at stake, which can cause different treatment in comparison to first offenders. The latter could well be informed more extensively about proceedings and rights. Finally, the interrogations showed lawyers actively assisting juveniles when present. Compared to unassisted juvenile suspects, the assisted juvenile may thus well be in a lesser safeguarded legal position, because there is no specialised lawyer ‘fighting’ their cause during the interrogation.

A possibly very important part of effective participation in proceedings is: a general sense of understanding. Empirically it can be said that, in general, police officers and lawyers indeed try to make sure juveniles understand what they are informed about. Nevertheless, the letter of rights was only seen in one interrogation. It might be safe to say that application of safeguards can be improved and regardless of how a juvenile is seen, as a juvenile or as an adult suspect, all children deserve to receive appropriate procedural protection in such intrusive procedures as criminal proceedings and in particular during a police interrogation.

36 Meaning that the juvenile has an understanding of what his/her rights are, but also what procedures are to be followed and what is generally going on during the time in police detention and specifically during the interrogation.
Chapter 6. The Netherlands: Empirical Findings

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CHAPTER 7
POLAND: EMPIRICAL FINDINGS

Barbara Stańdo-Kawecka and Justyna Kusztal

1. INTRODUCTION

In Poland there is an increasing amount of literature on the interrogation of child witnesses. Forensic scientists commonly share the opinion that interrogating a child witness is one of the most difficult tasks in the course of criminal proceedings\(^1\) and for this reason special interrogation techniques, such as techniques of cognitive interview, are recommended.\(^2\) Recent amendments to the Code of Criminal Procedure aimed at enhanced protection of child witnesses, and particularly child victims in criminal proceedings\(^3\) contributed to numerous publications on special conditions of interrogating child witnesses. These include special qualifications for interrogators in order to minimise disorders of memory processes and to avoid negative effects of stressful situations connected with the interrogation.\(^4\) However, research focusing on the practice of interrogating of child witnesses is very limited. With respect to the interrogation of juvenile suspects it should be stated that this has been neglected in Polish forensic science. The few existing publications on the interrogation of juvenile suspects are mainly focused on the analysis of legal provisions regulating such actions taken by the police and by the courts.\(^5\) As a result, little is known about the practice of interrogating juvenile suspects in Poland.

This chapter will discuss the practice of interrogating young suspects in Poland based upon empirical findings. Three focus group interviews were carried out with police officers, juvenile boys and juvenile girls. Two individual interviews with lawyers were conducted and 20 written records of police interrogations with young suspects by the police were analysed. It should be noted that the results

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3. These amendments are described in detail in volume I of this study: see Stańdo-Kawecka and Kusztal 2015.
presented in this chapter reflect the practice of interrogating juveniles before the change in juvenile law which came into force on 2 January 2014.6

The focus group with police officers was limited to four officers working in the unit for juveniles in a major city. Participants were male with one exception and all had experience in the interrogation of juveniles suspected of committing criminal offences. The focus groups with juveniles consisted of one with girls and one with boys. Eight girls participated, of which only one was 17 years old and the other girls were 18 or 19 years old, but had been interrogated as juveniles. The focus group interview took place in one of the three correctional institutions for girls in Poland. The group of eight juvenile boys were aged between 15 and 17 years old and had experienced many contacts with the police (from 5 to 35). The group consisted of a mix of boys with regard to first or repeat offences. Since a focus group with lawyers was not feasible because of the very small number of lawyers with experience in assisting juveniles, two semi-structured interviews were conducted with lawyers who had some experience in juveniles cases. Only one of them had actually been present during interrogations of young suspects by the police. The other participated in juvenile cases exclusively at later stages of proceedings but had received second hand information on the interrogation from his juvenile clients.

For the analysis of interrogations, a sample of 20 written records of police interrogations with young suspects was compiled. Interrogations were conducted at five different police stations in a major city location and two police stations located outside that city. The written records related to interrogations of 16 boys and four girls between the ages of 13 to 16 years, suspected of different types of crimes. Most of them were interrogated by the police for the first time; only three juvenile boys had been interrogated before in other cases. Written records of interrogations (protokoły przesłuchania) are formalised documents. Their content is regulated by the Code of Criminal Procedure7 and include: the determination of the time, the place and the persons participating in the interrogation; the course of the interrogation and statements and conclusions of participants; information on the decisions taken and orders issued during the interrogation and if necessary, the determination of any other circumstances concerning the course of the interrogation. These written records are not verbatim accounts of questions and answers. On the basis of these constructed records it is not possible to determine to what extent they reflected the content of the interrogation and behaviours of particular actors. Hence, caution is also required with regard to the findings of this analysis.

6 Ustawa o zmianie ustawy o postępowaniu w sprawach nieletnich oraz niektórych innych ustaw, 30 August 2013, Official Legal Bulletin 2013, pos. 1165.
The results of the focus groups uncovered the need to conduct more in-depth research on the interrogation of young suspects by the police. On the one hand the prevailing opinion of legal actors was that not all juvenile suspects are vulnerable but only some of them have this 'status' because of their emotional state or the level of their mental development. On the other hand narratives of most juveniles in the focus groups indicate that juveniles hold very negative attitudes towards the police. They mention insults and the use of physical violence. Although on the basis of such narratives it is difficult to determine to what extent they reflect the reality and daily work of the police, it stresses the need for further research on what actually happens during the interrogation of juveniles.

This chapter starts with an overview of the interrogation practice from the first contact with the police to the written record of the interrogation. After this, the vulnerabilities of juveniles in relation to the different steps in the procedure are discussed, including differences related to age, mental abilities and other personal factors and the effects of legal assistance. Finally, following the consideration of safeguards and good practices, some concluding comments will be made.

2. DESCRIBING THE PRACTICE

2.1. FIRST CONTACT

Some juvenile suspects had their first contact with the police while being interrogated after the family judge had instituted the explanatory (preparatory) proceeding due to a punishable act and ordered the police to interrogate the juvenile suspect. In the focus group, police officers stated that this happened very rarely, because information about alleged offences and juvenile suspects were – as a rule – obtained by the police earlier than by family judges. Police officers who received such information from victims, witnesses or other sources usually took evidence gathering actions, including the interrogation of a juvenile suspect, and then referred the case to a family judge who decided on the institution of explanatory proceedings. Thus, a vast majority of juvenile suspects had their first contact with police officers acting in 'urgent cases' in order to

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8 According to Polish law punishable acts are acts prohibited by criminal law as offences, fiscal offences and certain petty crimes (contraventions). In 1982 the legislator chose a different terminology in order to stress that it was no longer the goal of juvenile proceedings to establish the culpability of a juvenile.

9 Preparatory proceedings were abolished by the 2013 amendment to the Juvenile Act. See in more detail: Stańdo-Kawecka and Kusztal 2015.
gather and preserve evidence before the institution of explanatory proceedings by the family judge.

Such practice described by police officers in the focus group was confirmed by several earlier empirical studies. In 1998 Korcyl-Wolska studied 291 cases of juveniles adjudicated in several district courts in 1997. She concluded that 88.7 per cent of juvenile suspects had been interrogated for the first time by the police within the framework of actions taken in urgent cases.10 A study by Czarnecka-Dzialuk, Drapała and Więcek-Durańska consisted of the analysis of court files in cases concerning 15 and 16 years old perpetrators of serious offences who were adjudicated in the years 2004–2008 by criminal courts under adult criminal law (on the basis of art. 10 para. 2 of the Criminal Code) or by family courts in care-educational or correctional proceedings.11 In the group of juveniles who were adjudicated by family courts, three out of four were interrogated for the first time by the police.12 These results are consistent with findings of a recent study carried out in 2013 by the Helsinki Foundation for Human Rights within the project ‘Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform’ that involved an analysis of court files in 35 juvenile cases due to punishable acts adjudicated in care-educational proceedings and the same number of cases adjudicated in correctional proceedings in 2012. The analysed court files originated from seven different district courts located in cities. The analysis revealed that it was a rule to interrogate juvenile suspects by the police in order to gather and preserve evidence of alleged offences before referring the case to a family judge. In 32 out of the 35 cases which were later adjudicated in care-educational proceedings the police took evidence gathering actions in ‘urgent cases’, including interrogating the juvenile suspects in 30 cases. With regard to 35 juvenile cases adjudicated in correctional proceedings, police actions in ‘urgent cases’ were conducted in 31 of them. In a vast majority of those cases (27) the juvenile suspect was interrogated by the police.13 Interrogations of juvenile suspects by the police took place after arrest or invitation. Police officers in the focus group were of the opinion that about half of juvenile suspects were arrested in order to be interrogated while the other half would be invited for the interrogation on a specific day.

The Juvenile Act (hereafter: JA) in force before 2 January 2014 provided that the juvenile who is arrested in order to be temporarily detained in the police institution for children should be informed about the reason for his detention and his rights to lodge a complaint against the police activities and to contact his

11 The division of juvenile court proceedings into care-educational and correctional was abandoned in January 2014. See in more detail: Stańdo-Kawecka and Kusztal 2015.
12 Czarnecka-Dzialuk, Drapała and Więcek-Durańska 2011, p. 90–91.
13 Jasiński and Pietryka 2014, p. 69 and 78.
lawyer.\textsuperscript{14} The JA did not include any provisions on the obligation of the police to give information to the juvenile who was arrested not in order to be placed in the police institution for children but in order to be interrogated by the police and then transferred to the care of parents. Police officers in the focus group stated that in practice, although there was no clear legal basis, at the time of arrest they always applied to juveniles provisions of the Code of Criminal Procedure relating to arrested adults. As a result of this practice, they informed arrested juveniles about the reason for their arrest and their rights to inform parents about the arrest, contact a lawyer, lodge complaint against the arrest and make comments concerning the arrest. It was a right of juveniles – and not an obligation – to make comments concerning the arrest.

Police officers also explained that they made notes concerning the circumstances of the incident (\textit{notatka urzędowa}) at the scene of an alleged offence. Such notes were not treated as evidence by family courts adjudicating the juvenile in correctional proceedings (governed mainly by provisions of the Code of Criminal Procedure) but the notes could be revealed and taken into account in care-educational proceedings governed by provisions of civil procedure.

According to police officers they did not put pressure on the juveniles to talk at the time of arrest or before the interrogation. The lawyer with experience in juvenile interrogations remarked that if any efforts to influence a juvenile by the police took place, it could happen at this stage, because police officers could tell juveniles that they already knew everything and it would be enough to confess. He did not report such cases from his practice though. According to his personal experience, whenever it happened that a juvenile talked to police after his arrest but before his interrogation, no written notes were made.

The picture of the first contact between a juvenile suspect and the police in the narrative of the juveniles is not clear, because they had many contacts with police officers due to different reasons; not only because of being suspected of a punishable act but also because of living on the streets, drinking alcohol, taking drugs or running away from educational or correctional institutions. Particularly juvenile boys seemed not to remember whether they were contacted by the police because of the suspicion that they committed punishable acts or because of some other reason. In response to the question on the first contact with the police they mainly referred to the first contact they ever had with the police (in their life). Usually their first contacts with the police took place in their early childhood when they were 10–13 years old, or even as young as eight years old. One boy did not remember his first contact with the police because he had been drunk and under the influence of drugs.

\textsuperscript{14} Art. 40 of the Juvenile Act before the 2013 amendment.
It seems that most juvenile boys did not distinguish between the legal grounds for being arrested and did not know when they had the first contact with the police because they were suspected of a punishable act. They laughed and said the police always ran after them, chased them, interrogated them and tried to obtain their confession to punishable acts. Most interviewed boys were arrested by the police on the street. Some boys recalled that they had been asked several questions already in the police car but they did not exactly remember the content of these questions. They said that usually the police officers only wrote down personal data, told them to get into the car, and started asking questions at the police station. One boy noticed that:

“\textit{In the [police] car they [police officers] normally ask us questions, but not always, sometimes they say nothing.}”

Interviewed boys added that when a juvenile had run away from the institution, the police did not say anything and only took him back to the institution.

Unlike interviewed boys, almost all girls knew that they were suspects during the interrogation by the police. While talking about their experiences associated with their first contact with the police they alleged that they were threatened by police officers who used dirty language or hit them. According to girls, the way police officers behave depends on the reason for the contact: if a girl was suspected of committing a criminal act, the police wanted to get her to confess, and then used threats, invectives and violence, but juveniles interrogated as witnesses were treated politely. One of the interviewed girls recalled her first contact with the police with mixed feelings. It took place when she was a junior high school student and the police was called after she had threatened a friend with a knife. The police officer took the girl to the teacher’s office and told her to give him her mobile phone. She refused to do so and subsequently the officer started to grapple with her and handcuffed her to the radiator. For the respondent the whole incident was both a bit scary as well as a bit funny because the policeman was short in stature. It seems that from her point of view that incident was more important than the questions asked by the police officer which she could not remember.

Overall the experiences reported by juveniles in the focus groups seem to indicate that their first contacts with police were formal and stressful. It has to be kept in mind that juveniles placed in educational and correctional institutions represent a small group of all juveniles adjudicated due to punishable acts\(^\text{15}\) and only about one out of ten juveniles in both institutions agreed to participate.

\(^{15}\) According to the Statistical Yearbook of the Republic of Poland 2014 (www.stat.gov.pl) in 2012 family courts applied measures to 20,980 juveniles adjudicated due to punishable acts; placement in a youth educational centre was imposed on 852 juveniles and unsuspended placement in a correctional institution – on 250 juveniles.
Additionally, the focus group did not allow verifying allegations of ill-treatment raised by respondents against the police. Thus, no general conclusions regarding juveniles’ experiences with police can be drawn from that. Results of monitoring of police institutions for children by the National Preventive Mechanism do not confirm allegations concerning the use of violence and abusive words by police officers. In 2013 members of the National Preventive Mechanism visited four police institutions for children and did not find forms of ill-treatment of juveniles by police officers. The European Committee for the Prevention of Torture (hereafter: CPT) after its last visit to Poland in 2013 stated that the majority of the persons met by the delegation who were, or had recently been, detained by the police, indicated that they had been treated correctly. Nevertheless, the CPT delegation received a significant number of allegations of physical ill-treatment of persons detained by the police, including juveniles, both at the time of arrest and during subsequent questioning.

2.2. INFORMATION ON RIGHTS

2.2.1. Right to remain silent

As was mentioned in the description of first contacts with the police, juvenile suspects were not informed about the right to remain silent at the time of arrest. In the opinion shared by all police officers, information on the right to remain silent was given by the police at the beginning of the interrogation. In addition to a verbal instruction, an accompanying leaflet referring to these rights was handed over to the juvenile. This practice was confirmed by the lawyer who had experience in assisting juveniles during interrogation. The lawyer drew attention to the fact that in practice it was better for the juvenile to give some explanations. In his opinion, while in cases of adult suspects it is considered better – at least at the beginning – to refrain from presenting an own version of events, he did not perceive this to be the case in juvenile proceedings since family judges treated the juveniles’ right to remain silent with reluctance.

In all written records of interrogations standard information was included that the juveniles had been instructed about their rights. All juveniles confirmed by signature included in the written records that they had received such an instruction. Additionally, they also signed a paper containing a set of rights for interrogated juveniles and this was attached to the transcript.

17 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2014, p. 11.
The standard written set of rights includes information that the juvenile is entitled to:

a) give explanations,
b) refuse to give explanations or answer particular questions,
c) require the police and the family court to take certain actions\(^{18}\),
d) use the assistance of a defence lawyer in the course of proceedings,
e) request an interrogation in the presence of an appointed defence lawyer although it does not impede the interrogation if the appointed lawyer does not appear,
f) lodge a complaint against actions of the police which violated his rights.

Additionally, the juveniles are informed on their duties, such as having to undergo necessary psychological and psychiatric examinations as well as external examination of the body or other examinations not connected with the violation of the integrity of the body.

The interviewed boys presented views contrary to the findings emerging from the analysed written records of interrogations and from the statements made by police officers and the lawyer. They unanimously claimed that police officers had never told them anything about their rights before questioning them: they had only talked about giving false testimony and the consequences thereof, including imprisonment. All boys knew that they had the right to remain silent, but police officers did not remind them of this right, they mentioned it only in the presence of a guardian, a teacher or a psychologist at the end of the interrogation. To some extent these views were consistent with the opinions of girls. The majority of girls stated that the police had not told them what had been going on and had not informed them about their rights during the interrogation. Two girls confirmed that they had been informed by the police of their right to refuse to testify and one girl stated she had been given a leaflet with such information. Some girls said that they had learned about their rights from the girls they had met in educational centres.

Allegations of lack of information on the right to remain silent raised by juveniles in the focus groups have not been confirmed by empirical studies. Although Korcyl-Wolska concluded in 1998 that juveniles were not informed about their rights and duties before the interrogation, including the information on the right to remain silent and the right to refuse to answer a particular question,\(^ {19}\)

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\(^{18}\) The interrogated juvenile suspect has the right to require the police, and at the later stages of proceedings also the family court, to take some evidentiary actions, such as for example to interrogate persons indicated by him as witnesses, to seek expertise, et cetera.

\(^{19}\) Korcyl-Wolska 2001, p. 173.
the situation seemed to improve during the following years as was illustrated by the research carried out in two district courts by a student preparing her master thesis in 2004. Juveniles were informed about their rights by the police before the interrogation and received a written notice concerning their rights. According to court files studied by Czarnecka-Działuk, Drapała and Więcek-Durańska, juveniles adjudicated in the years 2004–2008 were – before being interrogated – informed on their rights, including their right to remain silent. Similar conclusions were drawn from research conducted by the Helsinki Foundation for Human Rights. According to this study juvenile suspects were – as a rule – informed by police officers about their rights before the interrogation, including the right to remain silent. Also an instruction about the rights was signed by the juvenile and attached to the case file.

2.2.1.1. Understanding of the right to remain silent

It seems that juveniles’ allegations concerning the lack of information on their right to remain silent may result from their limited capacity to understand the instructions given to them by the police. The interviewed police officers stated that most juveniles did not understand information on their rights, so the police often repeated it. They also declared they answered questions concerning the rights of juvenile suspects in cases in which the juvenile asked such questions. The boys in the focus group who claimed not to have been informed on their rights admitted at the same time that they did not ask the police officers to explain their rights to them because they shared the opinion that talking to the police was a mistake. Analysed written records of interrogations did not contain any information on questions or explanations related to the merits of juveniles’ rights.

2.2.2. Right to legal assistance

It should be kept in mind that the focus groups and analysis of written records of interrogations related to the practice under provisions of the JA before the 2013 amendment. According to police officers, arrested juveniles were informed about their right to contact a lawyer chosen by them or their parents as early as at the time of arrest. The information on the right to be interrogated in the presence of a chosen lawyer was also given at the beginning of the interrogation when juveniles additionally received a leaflet containing information on their rights. The JA in force before January 2014 did not provide the obligation to inform juvenile suspects about their right to apply for the assistance of a lawyer free of charge if they or their parents did not have sufficient means to pay for a lawyer.

21 Czarnecka-Działuk, Drapała and Więcek-Durańska 2011, p. 94.
22 Jasiński and Pietryka 2014, p. 69 and 78–79.
The standard written set of rights received by juvenile suspects also did not contain such a right. If juveniles decided to use legal assistance of a chosen lawyer it was the obligation of the police to contact the lawyer and inform him about the interrogation. Interviewed police officers stated they were obliged to wait for the lawyer but it was not determined by law how long they should wait. If the lawyer appointed by parents did not come it did not impede the interrogation. The interrogated juvenile had the right to refuse to give explanations in the absence of the lawyer.

Views expressed by police officers were consistent with the results of the analysis of the written records and statements made by the lawyer who has experience in assisting juveniles during interrogations. However, juvenile boys stated they had never been informed about their right to be interrogated in the presence of a chosen lawyer. The interviewed girls generally claimed that whether the police informed them about their rights depended on the interrogating officer’s mood. In practice, only one girl was assisted at the police station by a lawyer appointed by her parents. The other girls stated that none of them had ever asked for a lawyer, because they feared it would be too expensive.

2.2.3. Right to have someone informed of detention

Police officers agreed that arrested juveniles have the right to inform their parents or guardian about being arrested immediately upon arrest. They stressed that the police have the legal obligation to inform parents or guardians about the arrest of a juvenile. In their opinion most parents came to the police station after being informed, but it also happened that the parent replied to the police that he was not interested in the fact his child was arrested and the juvenile was not welcome at home. According to interviewed police officers, parents came to the police station at various times, depending on the distance they had to travel. For instance, it happened that a parent had to come from a city far away and thus it took him several hours to arrive. The focus group boys claimed they had never been asked whether they would like to inform someone about them being detained. However, they stated that a teacher from the children’s home or youth educational centre in which they had been placed was summoned by the police, but they had no influence on who had been summoned. Opinions expressed by girls confirmed that their parents or guardians were informed by the police about the arrest. All girls stated that they had waited for their parents or guardians to arrive at the police station, because they wanted to feel safe.

2.2.4. Information on the offence

According to police officers and the interviewed lawyer, information concerning allegations was given to juveniles at the beginning of the interrogation. In
addition to this, juveniles were informed about the fact that the evidence gathered during the interrogation would be send to the family court. When it comes to the essence of the allegations against them, juveniles usually, in the opinion of police officers, understand these because the allegations mostly represent ordinary crimes. In cases concerning crimes legally defined in a more complex way, the police formulated the allegations in a simple, non-legal language. Following this simplified information on the allegation, the interrogating police officer would ask the juveniles whether they understood the allegation. According to the experience of police officers, juveniles usually understand the allegations, but they tend not to focus on the content of the allegation but on other (related) issues such as whether the information about the arrest would be referred to their school or whether it would be stored in the police registers. In all written records of interrogations the statement that the juvenile understood the content of the allegations was incorporated.

In the experience of the lawyer who participated in interrogations of juveniles by the police, information concerning allegations was provided by the police at the beginning of the interrogation. As for juvenile’s understanding, the respondent did not meet juveniles who had not understood such information.

Views expressed by police officers and the lawyer are partly different from the opinions of juveniles. The interviewed girls claimed that the police had not told them what was going on at all. According to juvenile boys though, at the time of the arrest the police did not inform them on the reason for their arrest, but at the police station they were informed about what the allegation contained.

2.3. LEGAL ASSISTANCE

2.3.1. Decision and possible waiver

It was confirmed by all groups of respondents that juveniles were very rarely assisted by lawyers at the time of the interrogation by the police. One police officer pointed out that during several years of his work with juveniles it happened only once that he interrogated a juvenile in the presence of a lawyer. Another police officer added that for juveniles a lawyer was associated with costs.

Out of the focus group with juvenile girls, only two out of eight were assisted by a lawyer during the interrogation at the police station. One of these two girls was usually assisted by a lawyer appointed (and paid) by her parent, but one time she had been assisted at the police station by a lawyer appointed by the family court (ex officio lawyer appointed in cases in which the presence of a defence lawyer is mandatory). She refused to cooperate with the ex officio defence lawyer,
because she was waiting for her own lawyer who arrived later together with her father. She had a low opinion of ex officio lawyers. The interviewed boys were not assisted by lawyers and therefore had no experience with lawyers being present during police interrogations.

Both interviewed lawyers agreed that in Poland, in practice, lawyers were appointed (and paid) by the juveniles’ parents and that they took part in proceedings at later stages after the police had referred the case to a family court. In some cases a juvenile had to have a lawyer (mandatory defence), but in the opinion of one of the lawyers the procedure to appoint an ex officio lawyer for juveniles who did not have a lawyer appointed by their parents was instigated by the court and not the police. He mentioned that in more serious cases the police would refer the juveniles to the court quickly because of the need to temporarily deprive them of liberty, for example to place the juvenile in a youth detention institution. In such cases the family court appointed an ex officio lawyer immediately. It happened to the interviewed lawyer that, when he arrived at the police station as the chosen lawyer, he met an ex officio lawyer who was informed by the court by telephone to assist the juvenile during the interrogation. The recent study conducted by the Helsinki Foundation for Human Rights on the right to a fair trial in juvenile cases also confirmed that the presence of a lawyer during interrogations of juveniles by the police in ‘urgent cases’ (that is within evidence gathering actions taken by the police before referring the case to family judges) was very exceptional.23

Views presented by police officers and lawyers on legal assistance for juveniles were consistent with the experiences of juvenile girls. They were adjudicated by family courts in so-called correctional proceedings in which legal assistance was mandatory24, and as a result juveniles who were not assisted by a lawyer appointed by their parents were provided with an ex officio lawyer appointed by the court. Six out of eight girls explained they had seen their lawyers for the first time when entered the courtroom. When they were being escorted to the court, they did not know that they would meet with a lawyer there.

The lawyers expressed different views on the (hypothetical) possibility to waive the right to legal assistance by a juvenile. The lawyer with experience in juvenile proceedings at the stage of the interrogation stated that juveniles were able to take such a decision reasonably, although perhaps not all juveniles, because according to him it should depend on their emotional state, life experience, et cetera. In his opinion it would also be possible that a juvenile does not like a particular lawyer and according to him they should have the possibility to waive this right. The second interviewed lawyer believed it unreasonable to waive the

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23 Jasiński and Pietryka 2014, p. 69 and 78.
24 Correctional proceedings were abolished by the 2013 amendment to the JA.
right to legal assistance if it would be possible to have access to legal assistance paid by the state. Juvenile law did not provide all juvenile suspects with the right to legal assistance free of charge. In the opinion of the second lawyer, assuming that the law provides legal assistance free of charge for juvenile suspects, juveniles should not waive this right without consulting their parents, because it is possible that a child is not aware of the consequences of such a decision.

2.3.2. Pre-interview disclosure

Police officers in the focus group did not remember any situation in which they had talked with a lawyer before the interrogation of a juvenile because the presence of a lawyer at this stage of proceedings was extremely exceptional. Respondents stressed that, according to Polish legislation, a juvenile who is not yet a suspect has no right to access to the investigative materials before the first interrogation. According to the lawyer who participated in the interrogation of juveniles at the police station the police usually do tell him what is going on and before the interrogation the police gave him some general information on gathered materials. From his point of view, it was more important to talk with the juveniles and to hear their version of what had happened.

2.3.3. Consultation

The practice of consultations between a juvenile and a lawyer was discussed by police officers only hypothetically because of their lack of personal experience with lawyers at this stage of proceedings. The respondents agreed that it would be possible to enable the juvenile to consult with a lawyer without overhearing what is said, however, they would like to see (i.e. to control visually) what happened because they would be responsible for the safety of both the juvenile as well as the lawyer.

The lawyer who has assisted juveniles during police interrogation explained that according to legal provisions in force at the time of the interview a policeman could agree to a consultation between the juvenile and a lawyer in private before the beginning of the interrogation but he might also refuse it. So far, reported practice differed; some police officers agreed to the consultation and some refused lawyers to assist the juvenile in such manner.

Juvenile boys were never assisted by a lawyer during the interrogation at the police station and therefore had no information on the content and proceedings of a consultation prior to the police interrogation. One of the juvenile girls who

\[\text{\footnotesize See supra paragraph 2.3.1.}\]
was assisted by a lawyer talked to her lawyer before the interrogation for two to three minutes in private.

2.3.4. Assistance during interrogation

The lawyer experienced in assisting juveniles during police interrogations perceived the role of a defence lawyer in juvenile cases in exactly the same manner as his role during adult proceedings. He informed the juvenile what could be done and what would be best to do, but it was the juvenile who finally decided upon the strategy. He added that his behaviour during the interrogation of juvenile suspects was not different from his behaviour during the interrogation of adult suspects. He also stated that remarks and comments made by him during the police interrogation of a juvenile as well as later during the interrogation by the court were included in the written records of the interrogations without problems. According to this lawyer, it is most important to watch over written records which are drafted in the course of interrogations conducted by family courts because these records are “moderately in accordance with actual course of events”.

Some girls talked positively about their lawyers but they mentioned the lawyers’ limited ability to change their actual life situation resulting from different family factors. Their narratives indicate that for some of them it was more important to receive help in difficult life conditions than legal assistance in pending proceedings. One girl clearly stated:

“I had a lawyer once, he was nice, he did everything, I left [the institution] but I did not have any place to go”.

Generally, interviewed girls believed that a lawyer was necessary when a serious crime had been committed, but after their encounters with ex officio lawyers they thought that lawyers did nothing they could not do themselves. Juvenile boys on the other hand were never assisted by lawyers during the interrogation by the police and could not reflect upon this matter. It seems they were also not assisted by lawyers during court proceedings. A general observation must be that juveniles see little added value in assistance by a mandatory appointed lawyer.

As established in the focus group and interviews with lawyers, the analysis of written records confirm that the interrogations of juveniles were carried out without the assistance of a lawyer, aside from very few exceptions. A defence lawyer was present only during one out of 20 interrogations. The written record of the interrogation did not contain information on consultations between the lawyer and his client before the interrogation. No information on the time of arrival of the defence lawyer to the police station was available. Only the time at
which the interrogation started and completed was documented in the transcript. The transcript signed by the lawyer did not contain any remarks made by him.

2.4. THE APPROPRIATE ADULT

2.4.1. Who can act as appropriate adult?

Among the people who can act as an appropriate adult (hereafter: AA) in juvenile cases are the parents, guardians as well as teachers or psychologists working in institutions in which the juvenile is staying. Focus group interviews showed that girls were interrogated many times by the police, mostly at the police station, but sometimes also in a school or an educational institution. One girl was interrogated at the educational centre, where she was living at that time, and the interrogation took place in the presence of a psychologist working there. Another girl was interrogated at school and she stated she had been alone during it and without any adult present. During the interrogation at the police station they were usually accompanied by a teacher or psychologist from children homes, educational or correctional institutions. It may be assumed that in cases in which girls were suspected of committing punishable acts while running away from institutions it was not possible to ensure the presence of a parent/parents living in distant places. Some girls added that it happened to them that their parents were called only at the very end of the interrogation. They also stressed that they always waited for their parents or guardians at the police station, as they wanted to feel safe, and they wanted to be treated better. In their opinion, when parents were present, police behaved in a more 'humane' way.

According to the juvenile boys, no one accompanied them at the police station during an interrogation. A teacher from the children's home or school, or a psychologist from the educational centre would be called only at the end and asked to sign documents. Hardly any of interviewed boys were interrogated outside the police station. One said that according to his knowledge sometimes a juvenile is interrogated in the youth educational centre in the presence of a teacher, but it does not happen very often.

Police officers stressed they had the legal obligation to inform parents about the arrest of a juvenile as well as to ensure the presence of parents, a guardian or another AA during the interrogation of a juvenile. According to them the police informed parents immediately after arresting a juvenile. Most parents came to the police station but not in all cases. It happened also that parents refused to come to the police station. The right to have a parent or another AA present during the interrogation has been implemented in such a way that a juvenile
can wait for parents at the police station or in the police institution for children (policyjna izba dziecka). In situations in which it was not possible to ensure the presence of a parent/parents because it was not possible to contact them, they refused to participate in the police interrogation or they were living in distant places, it was the obligation of the police to provide for the presence of another adult person (for example a teacher). In the end, police are not able to force parents to come to the police station to attend the interrogation of their child.

According to the written records, all juvenile suspects were interrogated in the presence of an AA. In 19 out of 20 analysed cases, the adult person present during the interrogation was a parent or another close relative of the juvenile. One juvenile was interrogated in the presence of an adult not related to him (the psychologist working at the local governmental service). The juvenile was arrested after escaping from a youth educational centre. The written transcript did not provide information on whether the police also made efforts to contact his parents.

In research conducted by the Helsinki Foundation for Human Rights, juveniles were interrogated by the police in ‘urgent cases’ at police stations in the presence of their parent/parents, and only exceptionally the interrogation took place in the presence of other AAs (other relatives, teachers, psychologists, an educator from a care institution, a probation officer).26

Without access to court files it is impossible to verify the statements made by boys in the focus group interviews concerning their interrogation in the absence of an adult. It may be assumed that at least some juvenile boys were not able to distinguish between being interrogated by the police because of the suspicion of committing a punishable act and being asked questions concerning their identity and place of residence when they were found by the police after running away from institutions. In the latter cases a teacher or educator from the institution was contacted by the police in order to take the juvenile back after signing a suitable document.

2.4.2. Role of the appropriate adult

In the perception of the girls in the focus group interview an adult is someone who protects children against ill-treatment by the police. This was confirmed by one of the interviewed lawyers. He stated that juveniles interrogated by the police as witnesses also wanted to be interrogated in the presence of a lawyer. Initially the lawyer could not understand why a witness needed a lawyer but

26 In all analysed cases except for one juveniles were interrogated by the police in the presence of an AA. In this one exceptional case there were two juvenile suspects; one of them was interrogated in the presence of his mother, but there was no AA present during the interrogation of the second suspect. See Jasiński and Piętryka 2014, p. 69 and 78.
later he expressed the view that the presence of a lawyer could give the witness a feeling of safety. In his opinion the perception of juveniles is not fiction, because the police often ‘gently use violence’ during the arrest, for example by speaking louder, in order to structure the relationships between them and the arrested person, and to cause a psychological effect.

Police officers emphasised their obligation to interrogate juveniles in the presence of parents or another AA. They stressed that AAs have the right to be present during the interrogation of juveniles. Moreover, police considered the presence of AAs beneficial for both juveniles and the police because the AA can support the juvenile during the interrogations, and at the same time their presence protects the police against allegations of ill-treatment of children. Nevertheless, in the opinion of police officers AAs should not interfere with the content of explanations given by their children during the interrogation. They were critical of parents’ efforts to interfere with the content of children’s explanations.  

2.4.3. Experiences with the appropriate adult

Only police officers reflected upon their experiences with AAs. They were critical of the role of parents during the interrogation of juveniles. According to them, the presence of parents often resulted in difficulties. In practice, parents often tried to convince the interrogating officer that their child was innocent even if, for instance, the recordings of a store security system clearly showed that the child had stolen something. In the opinion of respondents, parents were often lying in the presence of their children during interrogation and tried to convince the police that their children were ‘wonderful’. Respondents gave many examples of such situations, including the following:

a) One of the juvenile girls was interrogated and she was informed about the allegations which she admitted to. Her mother who was present during the interrogation stated: “You, child, did not do it, what you are talking about”;
b) A juvenile was arrested red handed at a market for theft, which was video-recorded. At the beginning of the interrogation the juvenile denied having committed the alleged offence and stated it was not him, but someone else recorded by the camera. The police officer asked the juvenile’s mother: “Is it your son?” and the mother answered: “My son says it is not him so it is not him”.

In the opinion of the respondents, in the presence of their children parents often behave in such a way as to convince the police officers that the officer was crazy. Respondents also mentioned that parents often informed their children before the interrogation that the first rule was not to admit to the offence.

27 See infra paragraph 2.4.3.
2.5. ASSESSMENT OF JUVENILES

2.5.1. Initial assessment of juvenile suspects

The written records of interrogations are not a useful source of knowledge on the practice of assessing juveniles. In these written records there is no information on whether and by whom it was assessed that the juvenile was fit for the interrogation. In all written records there is a statement made by the interrogating police officer that the juvenile understood the content of the allegations. Additionally, there is a statement that the interrogated juvenile was in a good state of health. The practice of assessing juveniles can be illustrated exclusively on the basis of respondents’ statements.

Respondents taking part in the focus group interviews generally agreed that the initial assessment of juvenile suspects is made by police officers during the arrest. The subject of this assessment is the juvenile’s general state of health and possible intoxication with alcohol or drugs. Police officers stated that intoxicated juveniles and juveniles having visible injuries would be brought to a physician. Additionally, they brought a juvenile to a physician if the juvenile requested it. If the juvenile did not request the consult of a doctor, police officers assessed the need to consult a physician on the basis of their professional knowledge and questions about health problems asked during the arrest. According to them, some juveniles who were arrested under the suspicion of committing a punishable act were drunk. Mostly in the evenings it also happened that some arrested juveniles were under the influence of drugs.

The girls in the focus group interviews stated they were asked by police officers whether they were under the influence of alcohol or drugs. Juvenile boys confirmed that if a juvenile had been arrested under the influence of intoxicating substances, they would been taken to a sobering centre or a casualty department in hospital. One respondent recalled that he had been taken to the police station after spending a night in a detoxification centre. The boys, however, claimed that questions about their health had been asked at the very end when the written record of interrogation was prepared, sometimes even the next day or after several days.

One police officer added that except for physical health and intoxication with alcohol or drugs the emotional state of a juvenile was assessed. He explained that some juveniles may be in a poor emotional state caused by fear or by other situational factors and they need special attention and time to calm down before the interrogation.

One of the lawyers did not know of any case in which the juvenile was unfit for interrogation. He assumed that the police pay attention to some evident cases
of juveniles being mentally disabled or being in a particular emotional state which makes it difficult for them to communicate, but it was difficult for him to generalise on this matter. The other lawyer mentioned mental development of a child and whether the child is able to communicate as an important factor which needs to be assessed, but since she did not participate in the interrogation of juveniles by the police she did not have knowledge on the practice of assessment.

2.5.2. *By whom is the assessment done?*

As mentioned above, the initial assessment is made by the police officers who decide whether a juvenile should be consulted by a physician or not. In cases concerning intoxicated juveniles and juveniles having other health problems it was the decision of a physician whether the juvenile might be placed in the police institution for children, in a sobering centre or should be placed in a hospital. Juveniles placed in the police institution for children or in a sobering centre were interrogated the next day.

One of the two interviewed lawyers stated that – with the exception of obvious cases, such as a child who is mentally disabled or mute – she could not imagine anyone except for a psychologist being able to assess a juvenile. She did not agree that the police were able to assess a juvenile with the exception of situations when a police officer is a psychologist at the same time. She saw a conflict of interests if the police who wanted to interrogate a juvenile should assess the juvenile’s ability to be interrogated. According to her, a lawyer is also not able to assess a juvenile, because while a lawyer can advise a juvenile not to give explanations in the juvenile’s interests regarding the outcome of the process (*interesy procesowe*), a lawyer is not necessary skilled in assessing a juvenile.

2.6. INTERROGATION

The written records of interrogations which have the form of a juvenile suspect’s monologue do not reflect the actual course of the interrogation. They contain – in addition to statements made by the interrogated juvenile – information about formal issues such as the time of the interrogation or the personal data of the persons participating in it. According to these written records all juvenile suspects were interrogated during the day between 08:00h and 21:00h. The shortest interrogation lasted about 15 minutes and the longest over three hours. There was no information available on breaks during interrogations. In all analysed cases juveniles were interrogated by one police officer. Among the police officers interrogating juveniles there were six women and 14 men. Most

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\(^{28}\) See supra paragraph 1.
(18) interrogations took place at police stations situated in the city. Only two interrogations were carried out at police stations located at a rural location.

Problems relating to the behaviour of the persons taking part in the interrogation may be shown mainly on the basis of statements made by respondents.

2.6.1. Suspect strategy

Particular groups of respondents differed in opinions on juvenile suspects’ strategy. According to police officers, the juvenile suspects’ strategy depended on whether they were interrogated by the police for the first time. First time offenders differ from juveniles who have been arrested before and have longer ‘criminal’ careers, because the latter mostly refused to give explanations whereas the first time offenders are more cooperative. The lawyer experienced in the interrogation of juveniles by the police advised his clients to present their own version of the events during the police interrogation because – in his opinion – making use of the right to remain silent was perceived by the family court as undesirable.

One of the interviewed girls declared that during her numerous interrogations she had sometimes answered the questions and sometimes she had not; it depended on her mood. Other girls seemed to agree with her. The interviewed boys rejected the idea of confessing. They were much more supportive of behaviour consistent with:

“You do not answer, you do not admit anything, starting a discussion is a mistake”.

According to the written records, interrogated juveniles admitted to the alleged punishable acts; there was no information on a juvenile who refused to give explanations or to answer particular questions. Such findings are consistent with information received from the adult respondents, because the vast majority of analysed written records related to juveniles interrogated by the police for the first time.\textsuperscript{29} It should be added that although the interviewed boys strongly rejected the possibility of talking with the police and admitting to alleged offences such declarations might be influenced by contextual factors such as the presence of other boys in the focus group and concern of losing status in the informal structure of the institution.

2.6.2. Interrogation model

No police officer had heard of a special model of interrogation used for all juvenile suspects. Police officers interrogating juveniles intuitively chose one of

\textsuperscript{29} See \textit{supra} paragraph 1.
several general models or strategies. Generally, respondents did not differentiate between ‘models’, ‘strategies’ or ‘methods’ of interrogation. They stressed that the interrogation of a juvenile does not have the structure of ‘question-answer followed by another question and answer’. It was more common to have a social talk with the juvenile. For example, the juvenile would be asked: ‘What school do you attend?’, ‘What are your living conditions?’ and ‘How are you doing in school?’ According to one of respondents, the interrogation of a juvenile is considerably different from that of an adult suspect, because the latter is treated more formally.

2.6.3. Record of interrogation

Interrogations were recorded in a written form. The lawyers stated it was their task to watch over the content of the written records. The lawyer experienced in interrogations did not experience any problems with adding remarks into the written record. The interviewed boys confirmed they had read the interrogation report, but, as they claimed, none had admitted anything, and the only comment written in the report was that they had refused to give explanations. As for juvenile girls, one girl whose lawyer had been present during her police interrogation said that the lawyer had read the report. Other girls stated that in most cases the police had only read the report, because even if the girl wanted to read it herself, it was read out to her by a police officer.

In the written records of interrogations there were no remarks made by the juvenile or other persons. All written records were signed by the interrogated juveniles. In one case where the defence lawyer was present during the interrogation the written record was also signed by him. Additionally, each written record was signed by an adult present during the interrogation, mainly by a parent or another close relative, and in one case by a psychologist.

3. VULNERABILITIES

In the context of juvenile proceedings, the term ‘vulnerabilities’ does not exist in Polish as such, and so far this concept has not been studied by Polish psychologists, educators or lawyers. Following dictionary definitions, it is defined as being easily hurt, weakness, being sensitive to something, or being prone to something (an influence, infections et cetera).30

However, equivalents of this term do appear in both psychological as well as legal literature and descriptions of interrogations of juvenile witnesses, where it is assumed that a juvenile is a special category of witness and a special category

of victim and requires special protection due to his vulnerability to being hurt, being abused and becoming a victim (of violating his human rights or of being abused by other people, institutions and state organs).31 Practical measures aimed at juvenile witnesses have been undertaken by various non-governmental organisations and state institutions, whose aim it is to protect juveniles’ rights in state institutions and to protect juveniles whose harmonious development is threatened and who are prone to social maladjustment.32

Within forensic psychology, which deals with the interrogations of witnesses, including juvenile witnesses, and is based on the findings of developmental and educational psychology, it is assumed that “a child does not possess fully developed defence mechanisms needed to deal with trauma and with the lack of control over the situation”.33 Although vulnerability as a concept has not been empirically studied in Poland yet, certain psychological studies investigating its selected aspects can be found.34

A study by Korcyl-Wolska presents the analyses of court files conducted from the legal perspective. Its aim was to determine the scope of evidentiary proceedings undertaken by a family court and the police in juvenile cases according to legal regulations. The study focused on the practice of police and concluded that these practices significantly differed from prescribed legal regulations making police interrogations of juveniles similar to interrogations of adults.35 Interrogations of juveniles have not been the subject of such thorough empirical analysis since this published study from 2001.

At present, in connection with amendments in criminal procedural law related to the interrogation of juvenile witnesses36, the special vulnerability of a child faced with various institutions of the justice system has become an important yet controversial issue in social discourse and in mass media. The publication of the Guidelines on child-friendly justice by the Council of Europe in 2010 marked an important step towards awakening social awareness regarding children’s rights within the justice system.37 It seems necessary to investigate this area empirically in order to obtain representative results allowing for their generalisation on a national scale.

32 See the activities of Fundacja Dzieci Niczyje (Nobody’s Children Foundation) available online: www.dzieckoswiadek.fdn.pl.
33 Dukała 2011, p. 283.
35 Korcyl-Wolska 2001a, p. 67.
37 Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies.
3.1. VULNERABILITIES RELATED TO AGE

3.1.1. Mental ability and cognitive development

The police officers and lawyers in the focus groups did not treat mental ability and cognitive development as two separate issues. They rather indicated that juveniles were vulnerable because of being in the stage of (mental) development and lacked life experience when compared to adults. As a result, according to them, some juveniles did not precisely understand the information on their rights given to them by the police. At the same time police officers and one of the lawyers added that some adults also did not fully understand information and instructions given to them by the police or courts in official language. Thus, the problem was not limited exclusively to juveniles but it was considered more important by them in the latter case. Police officers also noticed that if a juvenile in their opinion was mentally disabled they would inform the family court of their concerns.

One lawyer perceived juveniles as a group which generally should not be treated the same way as adults because adults assess their rights in a different way and are more resistant to pressure. She stated on a basis of her experience in court that because some adults had problems with understanding information and instructions, juveniles could have even more problems with understanding and could be afraid to use the rights they were informed about. Another lawyer, however, did not perceive juveniles as a group generally different from adult suspects. He was of the opinion that not all juveniles were vulnerable because of their mental development. According to him juveniles were vulnerable in the same way as some adult suspects. The most important difference between juveniles and adults in his view was that juveniles were more ruthless, and as result the stay in a youth detention institution was something significantly worse than a stay in remand prison for adults because of higher levels of violence between detainees and exposure to beatings or theft.

Focus group interviews with juvenile boys and girls revealed that many of them were not able to distinguish the interrogation from other types of questioning by the police. Because of age and lack of life experience as well as the level of psychological or social development, they were not able to judge their situation. As noted by Dukała: “Whether a juvenile acts as a witness or a victim, he finds the situation difficult and incomprehensible.”38 They also did not know about differences in procedure applied by the police in cases concerning punishable acts and, for example, running away from institutions. Even if juveniles were informed by the police about their rights as well as about the reasons for being

38 Dukała 2011, p. 283.
Particularly juvenile boys had the tendency to perceive all police activities in a very simplified way; according to them, the police always ran after them, chased them and interrogated them, and none of them was able to tell a difference in treatment because of different reasons for arrest. They also claimed that they did not understand the procedures at the police station. The boys did not ask police officers to explain their rights to them because they shared the opinion that talking to the police was a mistake.

It should be stressed, however, that juveniles who participated in the focus group interviews differed significantly from the whole population of juvenile offenders in Poland and because of this the possibility to formulate general conclusions on the juveniles’ level of understanding on the basis of what respondents said is limited. Nonetheless, within the sample it is clear that juveniles have problems distinguishing between various categories of interrogations and proceedings.

In 20 analysed written records of interrogations there was no information connected with vulnerabilities due to their psychological and cognitive development depending on age. The juveniles interrogated were between 13 and 16 years old. From a developmental point of view, it is important to adjust the form of questions to the juvenile’s age and psychological and cognitive development. On the basis of these written records, which are highly structured and resemble a monologue, it is not possible to re-create the exact questions and juveniles’ answers, which makes impossible to find the proper indicators for the research.

3.1.2. Emotional ability

Some respondents explicitly mentioned the emotional state of juveniles during their arrest and during their stay at the police station as causing vulnerability, but opinions on this matter varied. One lawyer could personally not remember any situation in which a juvenile was not able to talk, understand questions and communicate. He perceived juveniles as able to make reasonable decisions, although in some cases the emotional state of a specific juvenile might impede this.

The other lawyer stated that in her experience children interrogated by the police are often afraid. Police officers commented that sometimes it happens that children cry at the police station because they are afraid, but other children did not seem afraid; on the contrary they seemed to be proud of their arrest because...
it allowed them to improve their position within their group of peers. To some extent such a view was confirmed by juvenile girls who said that when they were younger, it used to be quite sensational for them and their peers when someone had been arrested by the police and when this person described how they had been dealt with the police afterwards. Additionally, police officers pointed out that the emotional state of a juvenile might be connected with particular situational factors such as – for example – when a juvenile was left intentionally at the scene of the crime by colleagues.

The interviewed boys did not admit they had felt fear or anxiety. One of them explained that they knew they would be ill treated by the police and it was enough not to be afraid. Some girls expressed similar, but more diverse opinions. Some of them said they were scared of the police whereas others with older siblings or friends knew that the police were going to treat them badly and were prepared for this.

Irrespective of declarations made by juvenile girls and boys who referred to fear in their contacts with the police, most of them admitted they felt better if an adult was with them as a warrant of their rights. Some of them also stressed that in the presence of an adult, police officers behaved in a different and better way.

In the opinion of some juvenile respondents their emotional state at the police station was worsened by the fact that they could not leave that station as well as by the sense of loneliness.

On the basis of the analysis of the written records, it is not possible to infer the juveniles' emotional state during interrogations.

3.1.3. Alcohol and drug abuse

Lawyers did not mention experience with juveniles who at the time of arrest were intoxicated with alcohol or drugs. On the other hand, one police officer said that some juveniles, arrested on suspicion of having committed a ‘punishable act’, were drunk, and additionally it happened, mostly in the evenings, that some arrested juveniles were intoxicated with drugs. In accordance with procedural rules, intoxicated juveniles were taken to a health care institution. A physician then makes the decision whether the juvenile should be placed in a hospital, sobering centre or in a police institution for children. None of the police officers mentioned intoxication with alcohol or other similar substances as a specific ‘vulnerability’ for juvenile suspects. It is obvious that also adult suspects may be intoxicated. This specific vulnerability means that if the police officer is convinced (i.e. can see) that a juvenile is under the influence of alcohol or drugs, the police officer should not conduct the interrogation, and everything this
juvenile says or does should not be taken into consideration during evidentiary proceedings.

Juvenile girls confirmed they were asked by police officers whether they were suffering from health issues or under the influence of alcohol or drugs. These opinions were to some extent consistent with views expressed by juvenile boys. The boys claimed that questions about their health had been asked at the very end when the interrogation report was prepared, sometimes even the next day or after several days. They admitted, however, that if they were arrested under the influence of intoxicating substances, they were taken to a detoxification centre or a casualty department in hospital. One respondent recalled that he had been taken to the police station after spending a night at a detoxification centre where a doctor had examined him.

With reference to the 20 analysed written records of interrogations, it is not possible to determine whether the juveniles were under the influence of alcohol or drugs before or during these interrogations.

3.1.4. Limited possibility to consider long-term perspectives

One of two interviewed lawyers stated that if the law provides for legal assistance for juvenile suspects, they should not be able to waive this right without consulting their parents first. She paid attention to the fact that a child is not aware of the consequences of such a decision.

In the focus group interviews, one girl explained that she did not want the appeal procedure suggested by her lawyer because she wanted to be placed in a correctional institution instead of staying in a youth detention centre. The reason was that in a correctional institution she might have the possibility to meet family and friends. Her explanations also suggest that at least some juveniles do not think in a long-term perspective, but rather focus on short-term comfort like being able to see relatives. The girls emphasised that they were ‘different’ when they had been interrogated for the first time at the age of 12–13 and could not think about the consequences of their decisions, but now they say they would behave differently, in a more sensible way.

The other interviewed lawyer was of the opinion that juveniles did not differ as a group from adult suspects and if some of them were vulnerable it was because of the same reasons for which adults might be vulnerable. In his opinion, most juveniles are – as a rule – able to make decisions reasonably, although some might have problems in doing so, depending on their emotional state or life experience. The issue whether juveniles differ from adult suspects because of lesser ability to think in long-term perspectives was not discussed by police officers.
3.2. TYPES OF JUVENILES

3.2.1. Boy / girl

Only juvenile girls talked about vulnerabilities connected with their gender. In the opinion of a vast majority of girls, the police used vulgar language while talking to them and suggested sexual favours. One of the girls recalled that her period had begun during an interrogation and that it had not been possible to use sanitary towels, which had made her very embarrassed and stressed. Another girl was pregnant while being interrogated and said that the police had not cared about her pregnancy and she was not treated in a better way such as being offered a warm blanket or other forms of comfort a pregnant woman might require. Some girls expressed concerns related to strip searches: they said that during their first interrogation they did not know that a strip search could be performed only by persons of the same gender, that was why they were scared they would be strip searched by a male police officer, as this was something they had been threatened with by the police. It is difficult to reflect upon the findings of the current research from the perspective of any other Polish empirical studies. In 2010 Woźniakowska-Fajst studied the relation between possible reasons for juvenile girls' criminal behaviour and how the family court respond to it, but this empirical analysis did not take into consideration the involvement of the police in juvenile proceedings.41

3.2.2. First offender / recidivist

Generally, respondents did not differentiate between first offenders and recidivists in the context of vulnerabilities. Police officers only expressed the opinion that juveniles interrogated for the first time differ from juveniles having previous arrests and longer ‘criminal’ careers, because the latter mostly refuse to give explanations. Polish literature does not address this issue, since, as it was mentioned earlier,42 vulnerabilities have not yet been the subject of empirical research. Written records of interrogations of first offenders and those of recidivists differed with regard to the length of the transcript because recidivists talked about previous offences or answered questions referring to these priors.

3.2.3. Nationality

Only police officers paid attention to the fact that sometimes the police had to provide a juvenile with the assistance of an interpreter. This was particularly the case for juveniles who visited the cities as tourists and were suspected to

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41 Woźniakowska-Fajst 2010.
42 See supra paragraph 3.
be involved in committing offences. However, juvenile foreigners were rarely arrested by the police. No police officer had any experience in interrogating juveniles who were not Polish citizens.

4. SAFEGUARDS AND GOOD PRACTICE

4.1. SPECIALISATION

The lawyers in the semi-structured interviews believed that because of the small number of juvenile cases in which lawyers participate, it is practically not worthwhile for them to specialise in juvenile proceedings. One of them added he did not want to specialise in such proceedings and noticed that although the profession (advokatura) aimed to specialisation, the interdisciplinary approach gave broader perspectives. He also expressed the opinion that specialisation of the police in juvenile cases was not necessary because each police officer, if necessary, was able to interrogate a juvenile.

On the basis of the written records it is difficult to draw conclusions regarding on whether police officers who conducted the interrogations were well-prepared for this task. According to the law, every police officer is able to do it although police officers from special juvenile units should do it first of all. The already mentioned study by Korcyl-Wolska who studied police procedures connected with juveniles did not address the issue of police officers’ preparation for these preliminary procedures.

The view that interrogating juvenile suspects is a task which can be carried out by all police officers seems to be consistent with the opinions of interviewed police officers. They drew attention to the fact that in practice juveniles are interrogated not only by police officers working in special juvenile units but also by police officers working in other departments or units. They stated that, according to them, it is not necessary to have a specialised training in order to interrogate juveniles. In their opinion, each police officer is able to interrogate juveniles. At the same time they noted that the interrogation of a juvenile is a difficult activity and not every police officer wants to do it.

Police officers did not specify why it was difficult, they only stated that not all of them wanted to do it, even though they were allowed to do so. Police officers emphasised the ambiguity of the procedures connected with dealing with juveniles at the police stations. While the present empirical study was carried

43 See supra paragraph 3.
out, the aforementioned amendment to the Juvenile Act was implemented, so police officers had been working under new legal regulations only for several months. For this reason, they may have felt insecure in this area. It seems that in the opinion of police officer respondents clear provisions and procedures applied to juveniles represent a more important safeguard for juvenile suspects than specialisation of the police.

4.2. ASSESSMENT

It was explained by police officers that when a juvenile is arrested, they assess whether the juvenile is intoxicated with alcohol or other substances. They also ask the juveniles questions concerning their state of health and possible illnesses. The assessment of juveniles is thus made on the basis of their professional experience and the answers the juveniles provide regarding their health. Whenever the police has doubts concerning the mental disability or mental impairment of a juvenile they inform the family court. In such situations, a juvenile’s interrogation can be conducted by a family court, which may order the police to collect the information necessary to conduct the case.

Such practice of assessment of juveniles by the police was confirmed by juveniles in the focus group interview, although juvenile boys claimed it was only at the end of the interrogation that they were asked about their state of health. Lawyers did not have experience in the assessment of juveniles by the police before the interrogation. As mentioned before, one of them had never been present during such an interrogation. The other had never met a juvenile who – according to him – was unfit for interrogation. He also assumed that the police would pay attention to some evident cases of juveniles possibly being mentally disabled or in a particular emotional state preventing the possibility to communicate.

The lawyer experienced in family cases considered the need to make more comprehensive assessments of juvenile suspects. However, she stated that a comprehensive assessment of a juvenile can only be made by a psychologist, because neither police officers nor lawyers have the required expertise to do it. According to her it would be desirable to interrogate all juveniles in the presence of a psychologist but she was aware that this would involve costs and thus it was not a feasible option. However, she added that she did not want to consider the problem of resources during her interview.

On the basis of the analysed written records of interrogations, it is not possible to state whether and how the juveniles’ readiness to be interrogated was checked.

45 See supra paragraph 2.5.
Information of their health is laconic and placed at the beginning of the interrogation form. In all forms the state of health was described as: ‘good’. The written records did not contain any information about how the juvenile’s state of health was evaluated by a police officer or by anyone else.

4.3. PRESENCE OF CARETAKER

All interviewed juveniles would like their parents or guardians to be present during the interrogation, because they would feel safer with them there. As mentioned above, juvenile girls always waited for their parents at the police station, as they wanted to feel safe and because it would safeguard better treatment by police officers. In practice they were usually accompanied by a teacher or a psychologist (from a children’s home or an educational or correctional institution). Juvenile boys stated that no one was present during the police interrogation, because a teacher from their children’s home or school, or a psychologist from the educational institution was called for only at the end of the interrogation. At the same time they alleged they were ill treated by the police and speculated that most probably the interrogations would be different if they were conducted in the presence of an adult person. Juveniles treated the presence of an adult as a kind of a safeguard against the police, whom they perceived as a threat.

One of the lawyers confirmed that according to his experience an adult was perceived by children as someone who protected them against ill treatment by the police. In the view of the other lawyer, presence of parents is supportive for juveniles and it gives them the feeling that they are not alone in an unknown environment.

Police officers stated that they acted according to procedural rules and interrogated juveniles in the presence of parents or, if it was not possible to ensure the presence of parents, caregivers, teachers or psychologists from institutions in which juveniles stayed were called in order to assist juvenile suspects during their interrogation.

Unlike juveniles, police officers were critical of the behaviour of some parents who told lies at the police station in the presence of their children. It seems that police officers perceived such behaviour of parents as having a negative influence on their children and undermining the authority of the police.

The results obtained lead to the conclusion that in the opinion of both juveniles and defence lawyers the presence of an adult during an interrogation was a

46 See supra paragraph 2.4.3.
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safeguard guaranteeing safety, while in the police officers’ opinion on the one hand it protected the police from allegations of ill-treatment of children but on the other hand the behaviour of parents obstructed police procedures.

In all analysed written records of interrogations except one, a parent or another close relative of a juvenile took part. However, these records did not allow to determine at what time exactly the parent/close relative came to the police station and what he said (if anything) because there is only a signature of the parent/close relative included in the transcript as well as an indication of the time at which they took the child from the police station.

The presence of a psychologist or an educator could improve the juvenile’s feeling of safety and diminish their psychological discomfort connected with both absence of parents and the fact of being interrogated by the police. The only case when the police called a psychologist employed in the local governmental service (urząd gminy) was in connection with the interrogation of a juvenile who had escaped from a youth educational centre and was suspected of committing a punishable act. The juvenile was interrogated by the police from 7.00–11.00h. In the written record of this interrogation there is notice concerning the presence of the psychologist during the interrogation and her signature is at the end of the transcript. However, the transcript does not contain any information whether the juvenile was allowed to talk to the psychologist before the interrogation.

4.4. ASSISTANCE BY A LAWYER FREE OF CHARGE

Generally juveniles were not assisted by lawyers during the police interrogation, and in the only case when a juvenile girl was assisted by a lawyer, he was appointed and paid by her parents. According to most juveniles, a lawyer is associated with costs which they cannot afford to pay. Some of them stated they would like a lawyer during the interrogation only if the lawyer was free of charge. It seems significant that juvenile girls admit they would like to have a lawyer present during the interrogation free of charge, but they did not explain why. Juvenile girls only learnt about a possibility of having a lawyer free of charge in a youth educational centre. Before and during an interrogation at the police station they were not informed of this right. However, juvenile girls believed that a lawyer was only necessary if they had been suspected of a serious offence.

While the right of a juvenile to be interrogated in the presence of a lawyer is a safeguard, the lack of systematic solutions concerning easy access to legal assistance free of charge for juveniles interrogated by the police can be pointed to as a serious weakness of the juvenile justice system.
The lawyer experienced in criminal proceedings was of the opinion that some juveniles needed a lawyer and others did not as it was also the case with adult suspects.

Lawyers did not provide specific examples of situations when, in their opinion, a juvenile did not need a defence lawyer. Interviewed police officers did not have experience with lawyers at the stage of the interrogation of juveniles and even more so did not feel like speculating on this issue.

Only in one out of 20 analysed cases the presence of a defence lawyer was recorded in the transcript of the interrogation. At the beginning it was noted that the interrogation took place in the presence of the juvenile's mother and a defence lawyer. The content of the transcript does not include any statement made by the defence lawyer and only his signature is visible at the end of the transcript.

4.5. AUDIO- AND AUDIO-VISUAL RECORDING OF INTERROGATIONS

Police officers did not want to speculate on audio- or audio-visual recording of juvenile interrogations. They stated that because of office conditions and lack of appropriate arrangements making such recordings was impossible for them.

Police officers were not against audio-visual recording of juvenile interrogations, yet they mentioned logistic and housing problems and ill-suited police stations, which are located in old buildings and in which it is not possible to assign special rooms with recording equipment.

Other respondents were supportive of recording. Lawyers said it would be the best way to document interrogations in order to preserve an accurate picture of the interrogation. Juvenile boys and girls emphasised the need of audio-visual recording of interrogations not only in order to avoid distortions in the written record of an interrogation but also to protect them against ill treatment by the police. The girls suggested mounting cameras in police interrogation rooms, so that policemen would not shout, beat and force someone to confess. As one girl said:

"It should be more controlled, so the cameras should be everywhere, so it would not be unpunished".

One of the interrogated boys said that he wanted to record his interrogation on his mobile phone in order to demonstrate to someone what the interrogation
looked like and what words the police officers used while talking to him, but his phone had been taken away together with all his other personal belongings. Generally, juvenile boys unambiguously expressed very negative opinions about police officers. Some of them suggested radical solutions, such as “we want to do away with Polish police” or “a good policeman is a dead policeman”. However, they stated that unfortunately the police force would remain and they could do nothing about that. All juvenile respondents claimed that it would be enough if the police abide by the law, did not use violence and behave calmly. In their opinion, audio-visual recording of interrogations could contribute to this cause.

4.6. CLEAR PROCEDURAL RULES

Police officers paid attention to the fact that in their work with juveniles there are many situations which are not properly regulated by law. Respondents indicated the unclear legal status of juveniles who de facto were not a ‘suspect’ in the meaning of criminal procedural law. They had rights not as a ‘suspect’ in the meaning of criminal procedural law but as a ‘juvenile suspected of being a perpetrator of a punishable act’. In the opinion of respondents such a juvenile’s rights are more limited than the rights of an adult suspect. Some respondents also paid attention to inconsistent provisions according to which the person would at the same time be treated as an adult suspect according to the Code of Criminal Procedure and as a ‘juvenile’, because of measures previously imposed by the family court. In the opinion of police officers, lack of clear regulations related to juveniles at the pre-court stage resulted in uncertainty for the police, too much bureaucracy and sometimes interpretations going too far. It seems that police officers were strongly focused on the need to follow legal provisions in their activities and the perceived deficiency of such regulations in juvenile cases they considered disadvantageous not only for juveniles, but also for themselves.

One of the lawyers stated that in practice safeguards are lacking at the stage of juvenile court proceedings. Personally, he would prefer the application of the Code of Criminal Procedure to juvenile proceedings, which – at present – are regulated mainly by provisions of civil procedure. However, the Code of Criminal Procedure does apply to interrogations of juveniles by the police, so he did not have objections to these interrogations. He was of the opinion that the whole system of dealing with juveniles does ultimately not provide them with a fair trial. It depends on particular judges, but in family courts there is a large proportion of judges who have a ‘flexible’ approach to procedural rules. This approach sometimes works to the advantage of the juvenile, and sometimes to his disadvantage. According to him, juvenile proceedings should become regulated
in more detailed way similarly to adult criminal proceedings and particularly in some specific matters such as the approach to preliminary detention, frequency of court sessions, accurate determination of the facts, seeking expert evidence or the interrogation of witnesses. He said:

"Maybe it is a matter of habit, maybe it results from dealing with criminal cases, but it seems to me I would prefer to be detained in a prison as an adult and be dealt with in adult criminal proceedings than in juvenile proceedings".

4.7. EDUCATION OF CHILDREN ON THEIR RIGHTS

The interviewed girls suggested educating children in schools in the area of their rights, including in rights of juvenile suspects. They saw the need of such education because, as they admitted, they had very limited knowledge of their legal rights before being placed in care or educational institutions where they learned about their rights, mostly from peers.

5. CONCLUSIONS

Since the very beginning of creating the separate juvenile justice system in Poland the legislature acknowledged juvenile offenders as being different from adults because of their state of development. For the same reason in 1982 the legislature decided to remove alleged juvenile offenders under 17 years of age from the criminal justice system and set up the juvenile justice system based on the dominant role of family judges and, as a rule, on rules of civil procedure. The use of provisions of criminal procedure in juvenile cases became very limited, and took place, *inter alia*, in so called correctional proceedings when the family judge was of the opinion that the most severe measure of placement of a juvenile in a correctional institution should be applied. Thus, the legislature decided to provide older juveniles, to whom this most serious measure might be imposed, with better procedural safeguards as would be the case under the rules of civil procedure.

Generally, ensuring ‘adult’ procedural safeguards was the exception rather than the rule in juvenile proceedings. In a vast majority of juvenile proceedings the legislature preferred the applicability of rules of civil procedure which gave family judges broader discretionary power than the more formalised rules of criminal procedure. At the same time it was assumed that the same family judge would deal with a case of a particular juvenile in all (preparatory, adjudicating and enforcement) stages of proceedings in order to maintain contact with the juveniles, to get to know them and their family, and take consistent decisions focusing on their needs. According to the legislator, actions taken by the police
in juvenile cases should be strictly limited and allowed only on the order of a family judge and – before referring the case to the family judge – when it was necessary to secure the evidence against loss. At the same time it was assumed that juveniles dealt with by the police in such exceptional situations would be sufficiently protected by the application of provisions of criminal procedure and, additionally, by the required presence of parents or guardians during their interrogation.

The results of the empirical research presented in this chapter, supported by earlier research, indicate that the practice developed under the 1982 JA has been far from the concept of the family court dealing with juvenile cases at all stages of proceedings. Information on juvenile suspects is usually obtained at first by the police and in most cases the police take evidence gathering actions, including the interrogation of a juvenile suspect, before referring the case to the family court. In such situations superficial regulations of police activities before the institution of juvenile proceedings by a family court47 cause problems for both the juvenile suspects as well as the police. The police officers respondents admitted that the lack of sufficiently clear legal regulations for police actions before referring the case to a family court impeded their work because it causes a state of uncertainty as to their proper functioning. In addition to this, existing legal regulations are inadequate to provide all juvenile suspects with the possibility of understanding their rights and meaningful participation in proceedings.

The focus group interviews with juvenile boys and girls in educational and correctional institutions should be treated as a pilot study because of their limited scope and they indicate the need for further research on the course of police actions in juvenile cases. They also reveal the need for discussions on changes to the law in order to provide juvenile suspects with an adequate standard of child-friendly justice from the very beginning of proceedings. So far, problems concerning the functioning of the juvenile justice system have been neglected not only in legal discussions in Poland, but also in psychological literature. In recent years, the latter has mainly focused on the interrogation of juvenile witnesses, and particularly victims of certain crimes below the age of 15 years. Hopefully, research conducted within this project will contribute to the revival of scientific discussions on child-friendly justice for juvenile suspects in Poland.

47 By a family judge before the 2013 amendment to the JA.
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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. 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

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

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

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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. In practice, however, as we shall see later, 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.

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. 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. 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. Rather, they are an inconvenience and are often understood to run counter to the legitimate needs of the investigation. It should

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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. 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.

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, 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 counterparts. 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. In addition, the inquisitorial roots of the Italian process surface in practitioners’ emphasis on finding the truth.

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.

Blackstock et al. 2014.

Panzavolta et al. 2015, p. 380–382.

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. 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. 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.

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. 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. 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).

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. 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 rights to the way in which interrogations are conducted.

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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

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23 Panzavolta et al. 2015, p. 390 and further.
24 Blackstock et al. 2014.
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 rights 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 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,

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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.
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 inculpating 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. 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 compliance, 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

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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 underway\textsuperscript{39}, their lessened attention span\textsuperscript{40} and because they are more prone to short term reasoning.\textsuperscript{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 legislators\textsuperscript{42} – 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.\textsuperscript{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

\textsuperscript{39} Viljoen and Roesch 2005.
\textsuperscript{40} Pearse \textit{et al.} 1998.
\textsuperscript{41} Feld 2013.
\textsuperscript{42} Panzavolta \textit{et al.} 2015, p. 407.
\textsuperscript{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. 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. 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 wording 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. 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. 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.

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. 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.

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. 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.

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

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51 See Feld 2006. On interrogation tactics, see infra paragraph 6.2.
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.
interrogation.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{57} Harpin and Young 2012.
\textsuperscript{58} Harpin and Young 2012 and Feld 2013.
\textsuperscript{59} See Young et al. 2013.
\textsuperscript{60} Panzavolta \textit{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. 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. 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.

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. 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. 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.

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61 Bradley 2009.
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. 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. 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. 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. The police commented on the ‘HALT trajectory’ as providing a diversion mechanism for juveniles, particularly those arrested for the first time. 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. 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 on mental health crises in an environment and with policing tools, skills and knowledge that are wholly unsuited to the task.” (HMIC 2015, p. 20).

See also supra paragraph 3.2 and 3.3.

Feld 2013, p. 25.

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

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

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.

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.
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 study\(^{82}\), 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.
Michele Panzavolta, Dorris de Vocht, Jackie Hodgson, Vicky Kemp, Miet Vanderhallen and Marc van Oosterhout

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. 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

Even in countries where waiver is impermissible, like \textit{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 station\footnote{Blackstock \textit{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.}, or because they were concerned that other people (lawyer, parents)
would know about their misdeed. In \textit{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, \textit{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.\footnote{Panzavolta \textit{et al.} 2015, p. 396 and further.}

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.

\subsection{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 \textit{the}
Chapter 8. Integrated Analysis

In the 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. 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.

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

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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

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98 See supra paragraph 8.3.
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.\textsuperscript{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.\textsuperscript{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’.\textsuperscript{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

\textsuperscript{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.

\textsuperscript{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’).

\textsuperscript{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

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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

108 On the importance of face-to-face contact with a lawyer at the police station contact for suspects in general: Skinns 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 themself. 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 degree\textsuperscript{109} 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 studies\textsuperscript{110}, 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

\textsuperscript{109} Panzavolta et al. 2015, p. 413.

\textsuperscript{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. Practitioners in one country may consider as highly interventionist behaviour that in other jurisdictions would be viewed as a mild intervention.

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


\[112\] 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.\textsuperscript{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

\textsuperscript{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

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117 Grisso and Ring 1979, p. 224.
can be overcome by their emotional involvement with their child, let alone that parents often do not have adequate understanding of legal procedures. 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.

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. 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, 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

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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.\textsuperscript{124} From the research findings it would appear that this can be more the case with trained/specialised AAs.\textsuperscript{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

\textsuperscript{124} Medford, Gudjonsson and Pearse 2003, p. 262.
\textsuperscript{125} See on this matter (how the distinction between professional/voluntary AA’s on the one hand and relatives as AAs 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. In the meantime, the juvenile is forced to

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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.\footnote{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.} 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.\footnote{Nelken 2012.} 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.\footnote{Panzavolta et al. 2015, p. 405.} 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
minutes\textsuperscript{130}, and also in \textit{Italy} the available data show interrogations that would normally not last more than one hour.

Nonetheless concerns were expressed by AAs in \textit{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.\textsuperscript{131} However, lawyers in \textit{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 \textit{Poland} all interrogations were carried out during the day (at least according to the official transcripts), in \textit{the Netherlands}, 8 of the 12 interrogations observed were conducted during the day, but 5 of the 12 interrogations observed in \textit{England and Wales} were conducted after 7pm, including one at 11pm, five hours after arrest.\textsuperscript{132} A couple of young people in the focus group interview in \textit{England and Wales} reported having been questioned by the police in the early hours of the morning. Also in \textit{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 \textit{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 \textit{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 \textit{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 “\textit{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.

\textsuperscript{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.

\textsuperscript{131} See supra paragraph 3.3, footnote 40.

\textsuperscript{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. 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.

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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 them and that several Italian lawyers expressed a clear preference for them to adopt a cooperative behaviour. 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.

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."

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. 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. 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

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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.\textsuperscript{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 \textit{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 \textit{the Netherlands} said that, despite their young age, juveniles are considered to be \textit{dominus litis} in the sense that they make the ultimate decision on invoking the right to remain silent. Observations \textit{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.\textsuperscript{141}

6.2. INTERROGATION APPROACH AND STYLE

The legal study highlighted that there are few rules on how exactly to conduct an interrogation.\textsuperscript{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 \textit{Poland} and \textit{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

\textsuperscript{140} Gross \textit{et al.} 2005.
\textsuperscript{141} See supra 5.2.
\textsuperscript{142} Panzavolta \textit{et al.} 2015, p. 405 and further.
Michele Panzavolta, Dorris de Vocht, Jackie Hodgson, Vicky Kemp, Miet Vanderhallen and Marc van Oosterhout

The 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’), 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, 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).

In England and Wales 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). 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

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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 techniques 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

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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. 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. 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. 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. 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. This combined

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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. 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. 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 Kassin et al. 2007, p. 394.
155 Kassin 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. 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.

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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 juveniles 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. 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. 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. 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. Accordingly, it is useful to consider developing a model of interrogation for juvenile suspects.

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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)\textsuperscript{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.\textsuperscript{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 it 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,

\textsuperscript{162} Below the age of 12, juveniles can be interrogated in the Netherlands, but cannot be prosecuted.

\textsuperscript{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 interrupted\textsuperscript{164} 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.

\textsuperscript{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. 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. 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
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. 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

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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

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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 interrogation and, if so, it was accepted that they would generally continuequestioning 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. 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.

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. 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. This has led to practical measures being required which seek to address such issues when juvenile witnesses are interviewed by the police. 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. Without a model of interrogation based on juvenile suspects it is not surprising that the police adopt individualised approaches. 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.

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

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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. 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.

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 reaccredited
every five years if they wish to continue as members. 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.

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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 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

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188 Blackstock et al. 2014.
190 Blackstock et al. 2014, p. 476.
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. 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

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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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CHAPTER 9
THE GUIDELINES

1. INTRODUCTION

The present guidelines represent the result of the legal and empirical study conducted by the research group. The drafting of the guidelines is the step that complements the legal and empirical findings of the research. They move from the commonalities and take into account the differences highlighted in the legal study. Within this legal framework they build upon the empirical findings, to suggest improvements with regard to the present state of affairs in three respects: 1) in order to reduce gaps between the law in action and the legal principles affirmed in the law in books; 2) in order to counter the risk of bad or negligent practices; 3) in order to promote the good practices emerging from the empirical study.

The guidelines take the well-being of the juvenile as their polar star, in accordance with the principles of all of the key supranational legal sources. Their aim is to contribute to shaping, defining and improving the well-being of juveniles who come into contact with juvenile punitive justice. They are drafted from a supranational perspective and are addressed to State authorities. Their purpose is to serve as an impulse for improving the protection and the well-being of juveniles during the interrogation of juvenile suspects.

The guidelines have been discussed by the entire research team and represent a collective effort. Like in all collective efforts the guidelines do not represent the personal view of the single members, who at times have been forced to surrender to a majoritarian view.

The guidelines are complemented by a brief explanation (in italics), in order to clarify the meaning of a rule (mostly in light of the legal and empirical study) or to highlight some of the problematic issues that have emerged during the discussion.

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1 Consisting of (in alphabetical order): C. Cesari, D. De Felice, J. Hodgson, V. Kemp, J. Kusztal, J. Meese, M. van Oosterhout, M. Panzavolta, V. Patané, M. Vanderhallen, D. de Vocht and B. Stando-Kawecka in close consultation with the members of the steering committee. Thanks to M. Panzavolta for materially drafting the guidelines upon which the research group had agreed.
Chapter 9. The Guidelines

The guidelines are divided into ten parts, whose headings are as follows:


2. THE GUIDELINES

The treatment of young suspects shall comply with the following guidelines.

1. DEFINITIONS

1.1. A juvenile (or a child) is a young person below the age of 18 at the moment of first contact with the public (police or judicial) authorities.

A young adult is a person between 18 and 25.

Additional explanatory remarks

In every context related to the protection of juvenile safeguards it is first crucial to define the general category of juveniles (or children). While the terms juvenile or child seem to be interchangeable, it has seemed appropriate to avoid using the terms ‘minor’, mostly because of the different connotations that the term has in different national contexts.

The definition of juvenile is purposely disconnected to the issue of criminal responsibility. As was observed in the legal study, the threshold of criminal liability is different from country to country and is often connected to the formal classification of proceedings as criminal. Furthermore, the need to ensure the presence of safeguards might arise even for juveniles below the age of criminal responsibility.

The choice to take 18 as a threshold was made by looking at the already (almost) uniform approach taken by supranational legislation. It has also seemed appropriate to complement the notion of juvenile with that of young adult. It seems appropriate to create an intermediate category between juveniles and adults. When children become 18 they are sufficiently old enough to understand what happens but they remain in a vulnerable phase of their life. It seems appropriate to encourage authorities to avoid treating those who have just reached the age of 18 in the same way as adults are treated. Hence, the choice to establish an intermediate category, those of young adults.

1.2. An interrogation is intended as any form, implicit or explicit, of questioning by a public authority of a juvenile accused of an alleged/presumed offence – or other equivalent behaviour that is subjected to a restriction of personal liberty or other form of punishment – aimed at gathering information.

It is irrelevant whether the interrogation takes place in proceedings formally labelled as criminal and whether the interrogation itself is formally labelled as such.

The purpose of an interrogation is to offer a fair, valid and reliable account of the allegations and matters under investigation and of the relevant surrounding conditions.
Additional explanatory remarks

The definition of interrogation takes account several variables.

First, it intends to identify all situations that fall into the concept. In this respect the choice was made for a very broad definition, based on two elements: the element of confrontation, on the one hand, and the element of the aim of gathering information, on the other hand. The element of confrontation is to be found in the term questioning. The definition refers to explicit and implicit questioning because there can be situations where a juvenile suspect feels confronted by an authority and thus forced to give an explanation despite the fact that he has not been explicitly questioned. The confrontation element is coupled with the 'aim of gathering information', in order to clarify that the definition also includes these situations of informal (or implicit) questioning. Furthermore, the legal study has highlighted the existence of many different forms of interrogations, some of which might have the predominant or exclusive function of offering the suspect a chance to defend themselves. It is for this reason that the definition has been drafted in terms sufficiently general to include all the different types of interviews that can be carried out.

Second, the concept of interrogation is detached from criminal proceedings in the sense that it intends to capture all types of confrontation which could have some connection with the punishment of the juvenile: hence not only interviews within criminal proceedings, but also interviews in connection to criminal proceedings or with a view to starting criminal proceedings. As was highlighted in the legal and empirical study, juvenile justice is a field where the boundaries between criminal law and other areas of law are often not clear. It can happen that an interview starts within administrative or care proceedings, albeit being focussed on the juveniles' unlawful behaviour. It can happen that early mechanisms of diversion from criminal justice are put in place, where the juvenile is interviewed (e.g. probation). In all these cases it is important that the juvenile is offered a certain amount of safeguards. The only limiting factor is that the interview must be carried out by a public authority. Furthermore, the legal study shows that there are countries where the label criminal law is not used in relation to juvenile offences or disorder behaviour, despite the fact that the juveniles can be restricted in their liberties.

Third, the definition is complemented with an indication of what the purpose of an interrogation should be. This complement seems important in order to ensure that questioning officers have clear what the goal of the interrogation is. In this respect a crucial role is played by the emphasis given to the obtaining of a 'fair, valid and reliable account'. The interrogation should not aim at obtaining a confession. On the contrary, interviewing officers shall ensure that the juvenile is given the possibility to give an account of the facts and matters under enquiry. 'Fair' refers to the need to ensure that the suspect can freely express his view, without being forced or tricked into giving a certain answer. 'Valid' is connected to the need to respect all procedural safeguards that are in place before, during and after the confrontational moment. 'Reliable' refers to the need to ensure that the interview can offer true information, regardless of whether they are discharging or incriminating. In other words, an interview should not be aimed at obtaining predefined information.

2. GENERAL PRINCIPLES

2.1. All juveniles are vulnerable subject qualitate qua.

Additional explanatory remarks

The vulnerability of juveniles is largely known and it is highlighted by every supranational legal source. Underscoring the intrinsic vulnerability of juveniles is important to counter the tendency of considering some juveniles (for instance, those who appear to behave in a more adult manner) as non-vulnerable subjects. For example, the empirical study has shown that juveniles, particularly repeat offenders, are often treated as adults by interviewing authorities because of the confidence and bravado that they apparently display.
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The intrinsic vulnerability of juveniles should in no way be intended in the sense that all juveniles are to be treated in a standardised manner. It is crucial that the vulnerability of juveniles be assessed on an individual basis (see infra, point 4).

Last, the emphasis on the intrinsic vulnerability of every juvenile is also a way to emphasise that juveniles who are affected by some forms of inability (e.g. physical, mental, cultural) are additionally vulnerable and hence deserve even greater protection.

2.2. Before, during and after an interrogation, and in general whenever approached by a public authority, all juveniles should be treated with full respect for their dignity and attention to their personal conditions.

Additional explanatory remarks

All suspects and defendants deserve to be treated fairly and with respect. This is all the more so for juveniles. The empirical study has shown that the more juveniles are treated respectfully, the more they react in the same way. The behaviour of the young person tends to mirror that of the interrogating authorities. Furthermore, authorities should always bear in mind the condition of vulnerability of a juvenile. In other words, public authority should first consider that they are dealing with young vulnerable suspects rather than with offenders.

It is important that interviewing officers are constantly aware that their action should limit the emotional and psychological stress to the greatest extent and that they should avoid harming any further the fragile personality of the juvenile. To ensure this, officers shall be adequately trained (see infra, 9).

2.3. Special attention should be given to children younger than 16 and particularly under the age of 14.

Additional explanatory remarks

The legal and empirical studies have both shown a form of indifference toward the age of the juvenile. This approach was termed ‘one size fits all’ to underscore that no clear differentiation is made between juveniles of different ages. Included in the category of ‘juveniles’ are children from the age of 10 (in England and Wales) or 12 (the Netherlands) up to the age of 18. It is certainly true that the stages of development of a young person are different for each individual, nonetheless, the age factor remains a good indicator in assessing the ability to understand and endure the criminal justice experience. In this respect a suggestion is made to differentiate between age categories. In principle, the differentiation could already be made at the legislative level.

The extra protection needed is defined with the terms of ‘special attention’ because the relevant difference does not necessarily consist in the type or quality of the safeguards but rather in their intensity.

2.4. No difference in the application of the safeguards shall depend on the gravity of the crime.

Additional explanatory remarks

The attention toward the vulnerability of the juvenile shall not diminish when the alleged offence is very serious. The empirical findings of the study have instead shown that this is sometimes the case, with officers tending to perceive suspects of very serious crimes as non- (or less) vulnerable. On the contrary, the more serious the crime is, the more serious the consequences can be for the suspect if he or she is found guilty. Hence, it is important that the level of attention does not diminish and that the reasonable concern to uncover serious crime does in no case override the attention for the juvenile’s
vulnerability. Last, it should be emphasised that any suspect is presumed innocent and the seriousness of the crime does not affect the presumption of innocence.

2.5. No difference in treatment shall derive from the sole fact that the juvenile has already been convicted or is under investigation. Officers should make no difference between first/second time offenders, recidivists, or prolific offenders.

Additional explanatory remarks
The empirical study findings demonstrated a stark contrast in the way juveniles are treated depending on whether they were having their first contact with criminal justice, or had been arrested and detained previously. Recidivists are often seen as less vulnerable, particularly by police and lawyers. The empirical study found that despite recidivists appearing to be more confident and knowledgeable, they often had a poor understanding of the process. Shows of bravado also masked their underlying fear. The tendency to treat repeat players more like adults must be avoided. Juveniles remain vulnerable even when they have had prior contacts with the justice system.

2.6. Public authorities that come into contact with the juvenile shall listen to the needs expressed by the juvenile. They shall be able to communicate with the juvenile in a language that is comprehensible and where required, comforting.

Additional explanatory remarks
The empirical findings of this research have confirmed the difficulty of establishing good communications with juveniles. At the same time, it is evident how good communications between the authority and the juvenile can help reduce the negative impact and the stress on the juvenile caused by contact with the justice system. They also allow the juvenile to be more and better informed about the situation and thus increase the degree of informed participation.

In order to increase the ability of authorities to interact with juveniles, training is a crucial variable (see infra 9).

3. RIGHT TO INFORMATION OF JUVENILES

3.1. The right to information of juveniles includes the right to be informed of rights, of the procedure and the procedural context of the ongoing proceedings, and of the accusation and relevant evidence.

Additional explanatory remarks
The empirical study has shown that it is crucial that exhaustive and appropriate information is given to the juveniles on their rights. The right to information shall thus not be limited to information on the rights to which the juvenile is entitled, but it should include the right to an explanation of the procedural situation (e.g. custody procedures, purpose of the investigation and stage of investigations, potential outcomes) and of the ongoing proceedings, including the allegations against the juvenile and the existing evidence (see more specifically infra 3.2 and 3.6).

3.2. Juvenile suspects shall always be informed of their rights before an interrogation even if they have received such information on a prior occasion. These rights shall, at least, include:

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- the right to be treated respectfully at all times;
- the right to remain silent;
- the right to legal assistance by a lawyer free of charge;
- the right to be assisted by an appropriate adult;
- the right to interpretation and translation;
- the right to an individual assessment and, if necessary, to a medical examination;
- the right to be informed in as much detail as possible of the accusation in accordance with art. 6 ECHR;
- the right to have access to, or be informed of, the incriminating evidence before an interrogation;
- the right to privacy.

Juveniles under arrest or in custody shall also be informed of the right to have someone informed of their detention, the right to be treated with maximum respect and dignity during the detention and of the right to judicial review of the detention.

Additional explanatory remarks

The guidelines list the rights of which the juvenile ought to be informed before the interrogation. Hence it does not intend to represent an official communication of rights concerning the proceedings as a whole, but it specifically looks at the moment of interrogation.

The communication of several of the listed rights is already mandatory in light of the recent directives of the European Union (directive 2012/13/EU and directive 2013/48/EU). The list is supplemented with some specific rights concerning the position of the juvenile suspect and other rights which, though not child-specific, assume greater importance in interrogations of juveniles.

The right to be treated respectfully is a general right, communication of which seems important to emphasize the particular vulnerability of the young suspect.

The choice was made not to mention the right to have an adult informed of the situation, because that right is considered to be included in the right to be assisted by an appropriate adult. If the juvenile requests the assistance of the adult, the interviewing officers are under a duty to inform the adult.

Specific mention is made of the right to be informed of the evidence, in light of the limited disclosure that is normally offered to suspects and their lawyers (see also infra 3.6).

The guidelines explicitly mention that information must be repeated even if it had been given on a prior occasion (e.g. at the moment of arrest). As was shown in the empirical study, repeated information can help the juveniles retain more of their rights. Nevertheless, it is important that repeated information is given in a manner which is not inconsistent with previous communications and which is sufficiently clear, avoiding any tokenistic or perfunctory approach (see also infra 3.5).

3.3. Interviewing officers shall explain what an interrogation is and what is its purpose, including a brief communication on the procedural steps that could follow the interrogation.

Additional explanatory remarks

The empirical study has shown that it is crucial that extensive and appropriate information is given to juveniles on their rights.
When giving information on interrogation, the officers shall remain faithful to the highlighted purpose of the interrogation (see supra, 1) and avoid explanations that in their tone or essence could be detrimental to the juvenile’s well-being and best interest. Useful information on subsequent steps of the procedure include information on subsequent investigative steps, possibility of mediation or diversion, decisions to be taken by the prosecutor, et cetera.

3.4. Juvenile suspects shall be informed of their rights in a language and manner that is fully comprehensible to them, in light of their level of maturity.

Information shall be provided verbally and in writing as soon as the person is arrested or before the beginning of the interrogation.

When given orally, information should be divided into the different conceptual units and it shall be given at a pace that allows the juvenile to understand and retain the information.

Interrogating officer(s) shall ensure that juveniles have substantially understood the information and that the juvenile feels free to tell the interrogating officer(s) if something is not understood.

Additional explanatory remarks

The empirical findings of the research have shown that juveniles did not always have adequate knowledge of their rights. The same was true for those arrested and detained (particularly for the first time) who needed more explanation of the process in order to understand what would happen and what their rights were during custody.

It is thus crucial with regard to juvenile suspects that information be given in a language accessible to a child. However, the effort to explain the juvenile’s rights should not be detrimental to the precision of the communication, neither should it be a way to induce the juvenile to waive any of their rights. It is preferable that an official written communication be given accompanied by an explanation of the rights.

The information should be provided insofar as possible in a child-friendly manner. For instance, the right to remain silent can better be explained as the right not to answer any questions. Interrogating officers shall ensure that juveniles have substantially understood the information. In this respect it is advisable that, whenever in doubt on the full comprehension by the juveniles, officers ask questions (not merely confirmative) to the juvenile or run a quick test to ensure that juveniles have properly understood their rights.

Where feasible, and without detriment to a timely communications of the rights, it is advisable that the communications is tailored to the individual assessment previously conducted (see infra 4.4.).

3.5. Investigating officers shall never act to discourage the juvenile from exercising rights.

Additional explanatory remarks

Officers shall not act in a way that may undermine the rights of children and the possibility to exercise them fully. They shall wherever possible refrain from commenting on the exercise of such rights. This should be particularly the case when the juveniles are informed of their rights. When communicating the rights to the juveniles, the officers shall explain the rights in a neutral manner and shall avoid making comments which may induce juveniles to waive or not exercise their rights.

The conduct of interrogating officers throughout the entire time shall be such as to avoid conveying a message on the opportunity not to exercise rights. For instance, when the juvenile has already stated that he or she will remain silent, the officers should avoid repeating the same questions.
Similarly, they should refrain from making reference to the delay that legal assistance may cause or to the cost of legal assistance.

On the contrary, officers are not prevented from suggesting that juveniles make use of their rights (e.g. right to silence or legal assistance) whenever it is in the best interest of the juvenile to do so.

3.6. Prior to an interrogation interrogating officers should disclose to the juvenile and their lawyer the relevant evidence.

Additional explanatory remarks

The right to be informed shall also cover the right to be informed of the evidence already available, either by way of communication given by the proceeding authority or of direct access of the defence to the case file. There is a recurrent tendency – which was also highlighted in the empirical study – to withhold evidence from the defence before the interrogation. Interviewing authorities wrongly fear that giving the defence discovery of the file might lead to fabricated accounts of the events. On the contrary, discovery can be a way to obtain more reliable accounts, since it would increase the willingness to cooperate of both suspects and lawyers. With regard to juveniles, discovery of the file is crucial in the preparation of the interview in many respects. First, it contributes to the building of trust with the lawyer. Second, it allows the lawyer to explain to the juvenile what is at stake and give a more informed advice. Third, it allows the juvenile to be more aware of what happens during the investigations.

3.7. States shall develop projects in schools so as to raise awareness of rights related to criminal proceedings.

Additional explanatory remarks

Since the majority of juveniles have little knowledge of criminal proceedings and of their rights, it is important to promote a culture of rights outside of the realm of criminal justice. Information given during the proceedings is important but it reaches the juvenile in a stressful moment when the risk of misunderstanding or not comprehending is higher. For this reason it is sensible that the knowledge of rights is part of the educational curriculum of juveniles.

4. ASSESSMENT

4.1. Prior to an interrogation, an assessment of the mental and physical ability of the juvenile to participate fully in the proceedings shall be made whenever necessary, possibly with the help of relevant youth justice services (such as social services) doctors or other specialists/experts.

Additional explanatory remarks

When the juvenile is held in custody the assessment should be made as early as possible, without having to wait for the moment of interrogation.

It is important that an early intervention of youth justice/social services is ensured, particularly when there may be doubts about the juvenile's fitness and mental health.

Where requested by lawyers, appropriate adults, youth justice/social services, or by the juvenile themselves, the police shall provide for a medical assessment of the physical and mental condition of the juvenile.
4.2. States shall develop a tool/protocol in order to assess juvenile fitness to participate in criminal proceedings from a physical and psychological point of view.

Additional explanatory remarks
The empirical findings show that an assessment of the fitness to be interrogated is not always conducted and when it is, interviewing officers often proceed according to bureaucratic standards and without clear guidance. Furthermore, the respondents often expressed dissatisfaction with regard to the absence of clear guidance. It is for this reason that each country shall develop a common protocol in order to ensure that officers have sufficient uniform indications on how to proceed.

The protocol shall be developed having in mind all forms of deficit (physical, psychological, cognitive, emotional, et cetera) which could affect the proper participation of the juvenile in the criminal process, or signal a risk that criminal proceedings could further harm the emotional well-being and/or the development of the juvenile.

4.3. Officers who come into contact with juveniles and interrogating officers shall be trained on the indices of illness and vulnerabilities.

Additional explanatory remarks
The development of a tool/protocol is certainly insufficient if not coupled with adequate training of the officers (see infra 9). Officers dealing with juveniles shall be adequately trained on all matters related to the intrinsic vulnerability of juveniles. They shall also be prepared to identify the potential forms of illness or deficits or special vulnerabilities, which could affect the juvenile suspect.

4.4. The individual assessment shall be made as early as possible in the course of the proceedings.

Additional explanatory remarks
The individual assessment is important not only to establish the fitness of the juveniles to be interrogated, but also to individualise the approach more generally. The assessment is also important in order to tailor the language and the tone of the communication when administering rights, explaining the procedure and giving details on the allegations.

Furthermore, the individual assessment is important not just to establish the fitness of a juvenile to be interrogated but also to determine whether to divert them from the course of criminal proceedings (and what type of diversion to choose). This shows the potential advantages of an early assessment also in terms of the potential for achieving 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).

5. LEGAL ASSISTANCE

5.1. All juveniles have a right to legal assistance at least from the moment they are arrested or from the moment they are invited to an interrogation.

No exceptions to the right can be allowed.

Additional explanatory remarks
The importance of legal assistance is well documented in the empirical study. Lawyers are the most important figure to support the juvenile, particularly in ensuring that juveniles have adequate
knowledge of their rights and of the situation, but also so that they behave properly and take appropriate decisions in the interrogation room.

The right to a lawyer is already foreseen for all suspects in the case-law of the European Court of Human Rights and in the directive of the European Union 2013/48/EU. With regard to juvenile suspects those directives should be complemented with a further indication that no exception to the right is allowed for juveniles.

With regard to the right to be assisted by a lawyer from the moment they are arrested, it is important that assistance is offered as early as possible. It might not always be practicable to wait for a lawyer where the arrest has taken place. In any case legal assistance shall be offered as early as possible and it rests upon the authority to offer the reason for any delay. In this respect, legislatures are invited to consider the adoption of such mechanisms that could ensure continuous and timely representations of suspects at the police stations and prison institutions.

The term lawyer used here shall include any qualified and trained legal representative permitted to provide legal assistance in criminal matters under national rules.

5.2. The police should be trained to dissuade juveniles from giving statements before the arrival of the lawyer.

Additional explanatory remarks

Particularly at the moment of arrest it may be impossible to avoid that the juvenile remains alone with the police. Officers shall adequately be trained in order to refrain from exerting any pressure or inducing the giving of any statements on the part of the suspect, following good practice that has been detected in the empirical study. Even in those cases where juveniles might be willing to immediately give an account of the facts, officers should suggest that the juveniles do not to give any statements until they are properly assisted. Preference in these early moments of contact shall be given to ensuring the tranquillity of the child by reassuring them and explaining to them their rights.

5.3. All juveniles have the right to be assisted by a lawyer in the interrogation. No derogations to the right can be allowed.

Additional explanatory remarks

According to the case-law of the European Court of Human rights (Salduz v. Turkey) and the directive on legal assistance of the European Union, there can be derogations to the right to legal assistance of adult suspects, albeit in very extreme circumstances. No similar derogations should instead be allowed for juveniles. Even in cases of extreme urgency, no exception to the rule of legal assistance should be allowed. Other artificial forms of limitations (e.g. only legal assistance for the first interrogation) shall be impermissible. Together with the rule above (supra 5.1) and the one below, this rule emphasises the inflexible nature of the right, which was defended by a large majority of practitioners throughout the empirical study and which in principle should tolerate no derogations nor exceptions.

5.4. Assistance of a lawyer in interrogation shall be mandatory for all juveniles.

Additional explanatory remarks

The empirical study confirmed the already existing bulk of research according to which it is debatable that juveniles are sufficiently competent to waive their rights. The empirical study also underscores how the right to a lawyer is of paramount importance in ensuring that juveniles are aware of the situation, duly protected and defended. All these reasons suggest that waiving of legal assistance shall not be permissible.
The present proposal considers that the right to counsel shall be mandatory for all juveniles. However, if States continue to allow it, waiver shall never be permitted for juveniles below the age of 16, since their skills do not allow them to adequately ponder the decision alone. In any case, where States were still to allow waivers, waiving shall be treated as an exception and States should allow juveniles to waive only after they have had a consultation (at least a telephonic consultation) with a lawyer.

It is important to clarify that the concept of mandatory is here intended in the sense that it cannot be waived. That the right is not susceptible of legal derogations is stated supra 5.3.

5.5. The right to legal assistance at the interrogation includes the right to consultation and the right to the presence of the lawyer during the interrogation.

Additional explanatory remarks
The right to legal assistance in interrogations consists of two main components: the right to consult the lawyer and the right to have the lawyer present. The two components cannot be separated: granting only the right to consultation or the right of the lawyer to be present during interrogation is a denial of the very essence of the right. The two components are further detailed in the rules below.

5.6. The right to consultation includes the right to consultation prior to and after the interrogation.

The right to consultation includes also the right to consult with the lawyer during the interrogation by having the interrogation suspended for a short period of time.

Additional explanatory remarks
The empirical study has underscored the importance of the consultation with the lawyer. During the moment of consultation the lawyer explains the situation, the procedure and his rights to the juvenile. Furthermore they determine the strategy to follow during the interrogation or in the following steps of the proceedings.

The most important type of consultation is the one before the interrogation. However, even consultation after the proceedings is very important, particularly for juvenile suspects. The lawyer can discuss the outcome of the interrogation with the suspect and reduce forms of discomfort/distress.

There can be also a consultation during the interrogation, as was highlighted by some good practices in the empirical study.

5.7. The time allowed to consult before the interrogation shall be adequate. The juvenile and the lawyer shall be given adequate time to go through the case and to build a rapport which assists in taking instructions and giving advice.

Additional explanatory remarks
In order for consultation to be effective it is important that the lawyer is given sufficient time to establish a relationship of trust with their client. The empirical research has shown that the building of a relationship of trust is very important in order to maximise the protective effect of legal assistance.

Furthermore the empirical research has shown that consultations with juvenile suspects normally last longer than with adults. It is for these reasons that the time allotted to the consultation before the interrogation shall not be too limited. In some countries it has emerged that 30 minutes might not always be a sufficient time and so it would seem sensible not to place a time limit on the consultation.
5.8. States shall ensure that consultation takes place in an environment where full confidentiality of lawyer-client communications is ensured.

Additional explanatory remarks
The empirical study detected cases where the confidentiality of the consultation was not entirely assured due to inadequate facilities. For this reason it is important that all efforts are made to ensure a proper environment for the consultation between the juvenile and their lawyer.

5.9. The lawyer can allow the appropriate adult to participate in the consultation, particularly when the juvenile so requests.

Additional explanatory remarks
In the early moments of the contact with the lawyer the role of the adult can be useful as a sort of facilitator. The appropriate adult can help to establish a closer relationship between the juvenile and the lawyer. However, adults at times can hamper the proper discharge of the lawyer's function by altering the juvenile's behaviour and trying to influence the strategy to be adopted. In this respect it is important that lawyers decide whether or not the presence of the adult in the consultation is appropriate, particularly by listening to the request and needs of the juvenile.

In case the adult is permitted to join the consultation, the adult shall be bound to a duty of confidentiality on all issues discussed during the consultation.

5.10. During the interrogation the lawyer shall play an active role whenever necessary. As a minimum, the lawyer shall always be given the possibility to explain the questions to the juvenile and challenge any improper questions or behaviour, including by asking the police to rephrase the question or by advising his/her client to remain silent.

Additional explanatory remarks
For the assistance of the lawyer to be effective, his role cannot be restricted to one of a silent spectator. The lawyer must be aware that his role requires him to be active (and training is crucial in order to ensure that lawyers can properly discharge their function, see infra 9). Furthermore the law must give the lawyer sufficient prerogatives in order for him to be active. Among such prerogatives is the possibility to intervene to explain the questions, to challenge leading, persuasive or accusatory questions, to ask the police to rephrase the questions. These rights are only a minimum amount of rights. It shall also be possible for States to expand the prerogatives of rights to further rights (e.g. the possibility to ask/introduce new questions).

If the law provides for the making of a written record (next to audio-visual recording, infra 8.1 and 8.2) the lawyers shall have a right to have their comments, interventions and observations recorded.

5.11. Lawyers should be mindful that the interrogation is a very sensitive moment for the juvenile. During the interrogation they should at all times consider and give priority to the need to protect the well-being of the juvenile.

Additional explanatory remarks
The confrontation with authority is a very stressful moment for a vulnerable person such as the juvenile. It is important that the lawyer is fully focussed and always alert to protect their client from
any form of potential or effective pressure. The lawyer should intervene actively if necessary/important to protect the juvenile (see supra 5.10).

The lawyer shall also consider the impact of his defensive strategy on the juvenile’s well-being. This does not exclude the lawyer deciding to challenge the police.

5.12. In no circumstances can the lawyer be excluded from the interrogation room.

Additional explanatory remarks
The lawyer is a crucial safeguard for the juvenile suspect. They shall not be threatened with having to leave the room, nor should they be ordered to do so. If the lawyer engages in abusive or improper conduct, the abusive conduct shall be duly reported and later punished according to the rules in force in the country. But in no case should the consequence of leaving the juvenile without a lawyer. If absolutely necessary, the interrogation should be halted until a suitable replacement lawyer has been found. The interrogation should only recommence once the suspect has had an opportunity to consult with their new lawyer.

It is worth nothing that this rule is also connected to the crucial role of protection that the lawyer plays in the interrogation (compare and confront with rule 6.8 on appropriate adults).

5.13. Only lawyers who have received adequate and continuous training in relation to juvenile justice can qualify to offer legal assistance to juveniles in interrogation.

Additional explanatory remarks
For a proper exercise of his role, the lawyer shall be proficient in a number of different skills which require that he has received appropriate training (see infra 9.1–9-4). An exception could be allowed only when the juvenile decides to appoint his own lawyer and to choose a lawyer who is not accredited for (i.e. has not received specific training on juvenile justice).

5.14. The lawyer shall be given the opportunity to read and amend the written report of the interrogation, where a written record is made next to the recording.

Additional explanatory remarks
The reading of the report is an important follow up to the interrogation and lawyers shall be given the opportunity to check and ensure that the written report is consistent with what was said during the interrogation.

5.15. Legal assistance shall be free of charge for all juvenile suspects facing an interrogation. Both arrested and invited juveniles shall be informed of such right.

Additional explanatory remarks
The empirical study has shown that juveniles can be pressured to waive legal assistance for fear of costs. Normally juveniles do not have enough resources to pay for a lawyer unless the assistance is paid for by parents. Furthermore, if assistance is made mandatory (see supra 5.) the free character of the right is an almost (inevitable) corollary. A juvenile cannot be forced to have a lawyer and at the same type forced to pay for it. In this respect the right to a lawyer would transcend into an unacceptable
obligation to hire a lawyer at the juvenile's own expenses (which as mentioned are normally very limited or absent).

Legal assistance can come at a cost only if the juvenile expressly wishes to be assisted by a chosen lawyer (who does not partake in the Member State's duty lawyer scheme). In this case, a means test should be applied by the States.

6. APPROPRIATE ADULTS AND YOUTH JUSTICE SERVICES

6.1. Juveniles should be assisted by an appropriate adult.

Additional explanatory remarks
For a juvenile the contact with the justice system is a harsh moment and the emotional assistance of somebody can be of great help. The appropriate adult can be a person indicated by the juvenile or, if he does not indicate one, a worker of youth justice/social services or an adult from an accredited scheme (see infra 6.3). The person accompanying the juvenile should be an adult, and not just an appropriate person. It has appeared preferable that the person is an adult, because the emotional assistance should be given by an older person with some experience.

With the expression 'should' the guideline enshrines a mitigated right for the juvenile to have an appropriate adult. The right is mitigated in two ways: first, the States can adopt rules to the extent that the juvenile is allowed to waive the assistance of the adult if he or she so wishes (although there must be specific safeguards, see infra 6.3). In exceptional cases the law can also allow the authority to remove the appropriate adult; but in no case should the juvenile be prejudiced by the need to find a replacement (see infra, 6.8).

6.2. The role of the appropriate adult is to offer emotional and psychological support to the juvenile.

Additional explanatory remarks
The guideline is intended to emphasise the role of emotional and psychological assistance provided by appropriate adults. Their presence is to reduce the stress of the first moments in which the juvenile comes into contact with the authority. They can also function as a facilitator in the relationship between the juvenile and the lawyer. The guideline is also significant for what it does not say. By clarifying that assistance is only emotional and psychological, it excludes that appropriate adults can offer a more generic form of assistance which could even stretch to offering some legal advice. In the context of these rules the safeguard of legal assistance is intended as mandatory, hence there is no need to allow the appropriate adult to perform functions other than the natural one of emotional and psychological assistance.

6.3. The juvenile has a right to be assisted by an appropriate adult.

The interviewing officer shall contact the appropriate adult indicated by the juvenile, unless the indicated person is inappropriate.

The legislation can allow the juvenile to waive the right to an appropriate adult but only under a minimum of safeguards. In any case a waiver shall not be permitted if the juvenile does not give adequate reasons, which must be recorded in writing by the proceeding officer.
The family of the juvenile shall always be informed that the juvenile has been arrested or is due to be interrogated.

Additional explanatory remarks

The guideline clarifies three main points.

First, the juvenile has a right to indicate the adult that will stand by them, unless they are inappropriate (e.g. the indicated person is a co-accused, has mental health problems, is intoxicated, et cetera). The reasons of inappropriateness must be attested and adequately explained in a written document by the proceeding authority.

Second, the States can permit that the right to an appropriate adult is renounced by the juvenile but only under a minimum of safeguards, including the need to adduce good reasons. The requirement of good reasons shall allow the police to understand if the waiver is sufficiently competent. At the same time it is a safeguard against any inducement by the interviewing authority to waive the assistance of an appropriate adult.

Third, juveniles have the right to indicate the adult person that will assist them.

In any case, the family of the juvenile must be informed.

6.4. The appropriate adult shall always remain next to the juvenile.

During interrogations appropriate adults shall be allowed to sit in a position where they can offer emotional and/or psychological support. They shall not be ordered to leave the room unless their behaviour constitutes a clear and blatant obstruction of justice or if the juvenile explicitly asks that they leave the room.

Additional explanatory remarks

The guideline is intended to clarify the prerogatives of the appropriate adult and the few circumstances in which the juvenile can be separated from the adult. Before the interrogations, this can happen during the consultation between the suspect and the lawyer (see supra 5.9 for the conditions). During the interrogation the adult can (unlike the lawyer, see supra 5.12) be asked to leave the interrogation room but only in extremely exceptional situations which have been summarised in the formula ‘clear and blatant obstruction of justice’. The expression is intended to identify situations where the conduct of the adult would disrupt the procedural activity to the extent that it would be no longer possible to proceed without removing the adult from the room. See also infra 6.10.

6.5. Interrogating officers shall never threaten to change or expel the appropriate adult.

Additional explanatory remarks

The guideline is connected to the rule set out above and it is intended to avoid any abusive practice (sometimes detected in the empirical study). Juveniles and adults should never be put under any forms of undue pressure. The only occasion in which the interviewing officers can make such a remark is if the adult is acting so inappropriately (see supra 6.3) that a warning is required.

6.6. States shall ensure that a leaflet with general instructions on the role of appropriate adults is given to all appropriate adults as soon as they arrive.

When giving information to appropriate adults on their role, the police should do so in a neutral way.
Additional explanatory remarks

The empirical study has shown that adequate knowledge of the function is a crucial pre-requisite for an adult. The study showed that there is a direct correlation between awareness of the role of appropriate adults and effective discharge of a protective role. For instance the empirical findings showed that those who act professionally as appropriate adults (e.g. youth justice and social services; trained volunteers) possess knowledge and skills that allow a better protection of the juvenile. In many cases, however, the role of appropriate adults is undertaken by parents (or other relatives or adult friends) who have no knowledge of the situation and do not exactly know what they are supposed to do. It is thus important that these untrained adults receive proper preliminary information through a leaflet.

Empirical studies also showed that at times the police give information to the adults in a manner that is not completely neutral, with the underlying intention of bringing the appropriate adult 'on their side' or sidelining them. For this reason the guidelines clarify that when the police wish to give additional oral information, that they do so in a neutral manner.

6.7. States shall ensure that adequate and appropriate training is provided to selected adults who can act as appropriate adults in the proceedings.

Additional explanatory remarks

When familiar adults are not available it is important that the juvenile is still accompanied by an adult. Individuals acting as appropriate adults should be adequately trained (see infra 9).

6.8. Social services or youth justice services should be informed that a juvenile has been arrested or is due to be interrogated.

6.9. States shall ensure that trained employees from social services or youth justice services are available at the venues of judicial bodies and police stations/headquarters in order to ensure that juveniles are properly protected and taken care of, particularly when they have to be interrogated or kept in custody.

6.10. Social or youth justice services shall be given the opportunity to advise appropriate adults on their role or even to replace appropriate adults in the procedure where the juvenile so consents.

Additional explanatory remarks 6–8–6.10

In principle, it would be important to ensure that social services/youth justice workers are present in police stations in order to ensure support to juveniles without a familial adult. They would also be very useful in helping the untrained appropriate adult to better understand his role. Further, the empirical research shows that trained appropriate adults can significantly increase the protection of the juvenile and reduce the risks of coercion or oppression by interviewing officers. However, it is not sufficient to impose a duty for a practice to be established, particularly when the practice is expensive, as would be the case here.

7. MODE OF INTERROGATION

7.1. All States shall develop a model for the interrogation/questioning of juvenile suspects.
The model adopted – and in any case the conducting of the interrogation – should be child-friendly and should be consistent with the general purpose of the interrogation.

The mode of conduct should be tailored in light of the psychological assessment carried out.

Additional explanatory remarks.

The empirical study has shown that a) in all countries there is no uniform model or system of guidelines for questioning juvenile suspects; b) the lack of uniform model creates confusion for the interviewing officers and opens the way to some negative questioning practices.

Bearing in mind that:
- a juvenile is naturally under pressure during an interrogation regardless of the conduct of authorities and other contextual circumstances;
- the vulnerabilities of the juvenile are emphasised in the context of an interrogation;
- models and guidelines on the appropriate way for questioning suspects (e.g. the PEACE model) and child witnesses protocols (e.g. ABE) already exist and these models represent tools that can offer some guidance to the interrogating authorities,
- the existing guidelines for child witnesses cannot however be directly applicable, since they are either designed for adults, who are not intrinsically vulnerable, or for witnesses for the purpose of truth seeking, hence without taking into proper consideration the right to remain silent and privilege against self-incrimination,

the research group emphasises that the model of interrogation shall be in line with the points set out in the rules below.

Furthermore the model shall insofar as possible be consistent with the general principles enshrined in the existing guidelines mentioned above (e.g. PEACE model).

The model of interrogation envisaged shall also ensure that the goal of interrogation is consistent with the one set out above of giving a valid and reliable account (see supra, 1). Under no circumstances should the model consider obtaining the confession of a suspect as the primary purpose of the interrogation. The interrogation model should be compliant with the fundamental liberties of suspects as enshrined in these guidelines and in the international and national legal sources.

Insofar as possible, the interrogation model should follow the standards already applied in the interviewing of young/child witnesses. With comprehensive guidelines having been adopted for vulnerable victims and witnesses, these should be adapted to meet the needs of juvenile suspects. The vulnerability, as in the case for vulnerable witnesses, should not only relate to their age but also take into account the needs of those suffering from a mental disorder, those significantly impaired in relation to intelligence and social functioning, physically disabled, and those suffering from fear or distress in relation to giving evidence.

7.2 Interrogations should be conducted during the day.
Interrogation should take place in appropriate, child-friendly places wherever possible.

Breaks at regular intervals shall be required in order to ensure the constant attention of the juvenile.

Additional explanatory remarks

Timing and place of interrogations shall be child-friendly.

Interrogation should, insofar as possible, take place in an environment that is sufficiently friendly in light of the age of the child. States shall ensure that they establish child-friendly places, particularly...
for the interrogation of children below the age of 14. They shall be able to sit next to their lawyer/appropriate adults.

A child-friendly interview also requires that breaks at regular intervals be made. In the empirical study it was mentioned by police officers and other practitioners that 15 minutes would be appropriate when taking into account the short attention span of the juvenile.

7.3. Interrogations should take place without delay, particularly when juveniles are booked into detention.

Unless absolutely necessary authorities shall avoid resorting to making an arrest and bringing a juvenile into custody with a view to conducting the interrogation.

Additional explanatory remarks

The empirical findings have shown that arrest and detention can influence (often negatively) the juvenile’s behaviour during the interrogation by impacting negatively on the juvenile’s tranquillity. The deprivation of liberty of a juvenile as vulnerable suspects puts them under greater distress and pressure. Furthermore the empirical findings have highlighted that delays of the interrogations are very harmful for juveniles, particularly those booked in detention. The police at times and in some countries uses delay in the context of tactics aimed at getting ‘the truth’ from juveniles suspects. Hence it is important that the interrogation is, insofar as possible, not connected to a state of deprivation of liberty.

When juveniles have been arrested (for reasons other than the mere conducting of the interrogation) it should then be required that authorities question them within a very short timeframe (which could for instance be no longer than 24 hours or even less).

7.4. Interrogating officers shall allow the juvenile to tell his version of events.

Officers shall give juveniles enough time to understand the question and formulate a reply. They shall avoid repeating questions or repeated questioning unless where strictly necessary to clarify certain issues.

Officers shall refrain from using any form of persuasion, oppression or accusation when questioning juveniles.

Interviewing officers shall refrain as much as possible from expressing their personal opinion or commenting on the facts, allegations or evidence that could be used in the proceedings.

Additional explanatory remarks

The model of questioning juveniles should be inspired by an ‘active listening’ or ‘information gathering’ approach. The interviewing authority shall refrain as much as possible from posing leading questions and they should give preference to questions with an open structure.

Interrogating officers should refrain from constant repetition of the same question either in order to put the suspect under pressure to comment or to change what they have to say. All forms of persuasion techniques should be avoided throughout the entire interrogation (and not only at the beginning).

The tone of officers should be calm and empathetic. At the same time, it should be neutral in the sense that officers should avoid making unnecessary comments which could entail the exercise of some forms of persuasion or pressure on the suspect.

7.5. In no case should the officers exaggerate or emphasise the gravity of a presumed offence or its consequences.
Additional explanatory remarks

The empirical study has shown that there still are some practices of maximisation or minimisation of the offence. The intention of such practice is to put the suspect under pressure and to force them to comment/make admissions. Furthermore, maximisation and minimisation techniques can alter the natural recount of events by the suspects and introduce external factors which could affect the overall reliability of the account.

7.6. The interrogating authority shall refrain from making reference to evidence that they have not disclosed to the juvenile or his lawyer prior to the interrogation.

In any case, they shall not confront the suspect with false or hypothetical evidence.

Additional explanatory remarks

The empirical study has shown that there is a large tendency during the interrogation to confront the suspect with evidence that was not disclosed in advance. In order to prevent this, the guidelines require that officers only use evidence that has previously been disclosed.

It is important to note however that this rule should not be intended as an alibi to avoid preventive disclosure of relevant evidence (see supra 3.6). Lack of disclosure harms juvenile suspects even when during the interrogation they are not confronted with the undisclosed evidence.

A specific provision has been inserted against the practice of confrontations with hypothetical evidence (which the empirical study showed to be still quite popular in some jurisdictions), although the provision is already logically included in the first statement.

7.7 No adverse inference from the exercise of the right to silence shall be drawn.

Additional explanatory remarks.

The drawing of adverse inferences from silence inevitably leads to pressure and shall thus be avoided with regard to juvenile suspects.

8. RECORDING OF INTERROGATION

8.1. Interrogations with juvenile suspects shall always be audio-visually recorded.

Additional explanatory remarks

Audio-visual recording is a fundamental safeguard in order to ensure compliance with the rules and with best practices. Furthermore it represents a crucial tool for developing proper training. It is for this reasons that audio-visual recording shall be a mandatory requirement in every juvenile interrogation.

It is also important to ensure the good quality of the recording (both video and audio), so that the interrogation can later be subject to adequate scrutiny.

The camera must not be placed to capture the demeanour of the suspect alone, since this could represent an element of pressure against the defendant. The camera shall at least be placed so as to capture all the participants in the interrogation and enable a view of the entire room. If possible, a second camera should be in function so as to provide for a different camera angle on all the participants.

Preferably two different cameras shall be used, one closer to the interviewer and interviewee, the other capturing the entire room and all participants in general.
Chapter 9. The Guidelines

Rules shall also be foreseen connected to preserving the integrity of the interrogation and to ensure the privacy of the juvenile. The law shall also provide for rules on the destruction of the recording which are compatible with the further use in criminal proceedings and the further use for training purposes (see infra 9.4).

8.2. Additional written records must in any case provide an accurate summary of the content of the interrogation, particularly when they constitute an official piece of evidence.

Additional explanatory remarks
Audio-visual recording shall always be done irrespective of whether the national law also requires the drafting of written transcripts. In case both forms of recording (written and audio-visual) are made it is left to national law to establish whether the written transcripts or the tape is the official piece of evidence at trial. If a written record of the interrogation is made it must provide an accurate summary and sufficiently reflect the content of the interrogation (juvenile’s statement, questions and answers) and proceedings. The written record shall always contain the entire question posed to the juvenile. It shall be as faithful as possible to the words used by the juvenile.

9. TRAINING

9.1. States shall provide adequate and continuous training to all practitioners involved in juvenile proceedings and interrogation, including:

- judges;
- prosecutors;
- police officers;
- lawyers;
- social services/youth justice employees;
- appropriate adults.

9.2. Training shall cover at least the following topics:

- legal issues related to juvenile law and proceedings (including recent case-law development and practical experience);
- interrogation techniques;
- cognitive/behavioural/psychological issues;
- communication skills.

Additional explanatory remarks 9.1–9.2
The aim of training should be to develop child-friendly communication skills, understanding of children reactions and at developing the ability to grow/show emotional closeness - empathy on the part of all practitioners.
Police officers must be specially trained when interrogating juvenile suspects, whether in custody or on a ‘voluntary’ basis. This is already the case in some countries when conducting interviews with
juvenile victims and witnesses (e.g. in England and Wales, where they are trained according to the guidelines which aim to support vulnerable and intimidated witnesses to give their best evidence in criminal proceedings, known as ‘achieving best evidence’). It is also important for the guidelines to consider training when dealing with juvenile suspects who do not speak the national language.

The training of lawyers and appropriate adults shall be aimed at developing the skills to communicate with the child and build a relationship of trust.

Lawyers must be specially trained when dealing with juvenile suspects. With the routine way in which lawyers attend upon interrogations they were observed in this study to respond to their young clients first and foremost as a ‘suspect’ during the interrogation rather than as a child. Also a Parliamentary review of the youth court system in England and Wales recommended that all youth justice lawyers should be trained. In relation to police interrogations it was noted that brain development is ongoing during adolescence which means that it is difficult for those under 18 years to take part in criminal proceedings, including understanding interview questions and the significance of their answers. The review calls on the three main regulators to introduce ‘without delay’ a requirement for all legal practitioners representing children at the police station and practising in youth proceedings to be accredited to do so. The training should cover the need to communicate the legal rights of juvenile suspects, their needs (including mental health issues, speech, language and communication needs, welfare issues and child development), effective participation, which includes supporting suspects when exercising their right of silence.

Professional and voluntary schemes provide training for appropriate adults who deal with juvenile suspects. However, the majority of appropriate adults are parents, or other family members. It is important to provide training, or at least information, to familial appropriate adults concerning their role in police interrogations (see supra 6.7).

Research shows that training is ineffective if it consists of an isolated course. Training must be continuous, in that it all practitioners must be put under the obligation to undergo a training course at regular intervals.

9.3. States shall ensure that the training offered includes joint training between the abovementioned categories.

Additional explanatory remarks

Joint training events between the police, lawyers and appropriate adults could help to raise awareness of the issues from their different perspectives. It is also important for the practitioners to better understand their different roles during the interrogation. Such an appreciation could help to progress cases more quickly and reduce the time suspects have to wait in custody.

9.4. Training modules shall be regularly updated. They shall also be based on the observation of video-recorded interviews.

Additional explanatory remarks

Training shall not only be theoretical but it shall cover practical issues. Research has highlighted that training is ineffective without constant feedback and evaluation.

In this regard it is important that training is based on observations of video-recordings of interrogations (of the trained officers and of other officers). Lawyers and appropriate adults too shall be trained on the basis of videotaped materials.

It is furthermore important that a random sample of video-recorded interviews is regularly reviewed by a Committee (tasked with checking interrogation practice, giving advice on practice and training modules and improving training tools).
To this end, States shall set up a committee tasked with the evaluation of interrogations at regular intervals on the basis of video-recordings. The committee shall be given the possibility to have access to video-recordings and to extract a random sample of video-recordings. The committee shall review the video-recordings and give feedback and advice with a view to improving interrogation and training methods.

9.5. Police officers, including arresting officers, custody officers and police interrogators, require training in order to better understand the needs of children when arrested and brought into custody. In particular, it is important that legal rights, such as the right to silence and access to legal advice, are explained in ways that are understandable to the juvenile suspects.

10. REMEDIES AND SCOPE

10.1. Breaches of rights and rules from points 2 to 8 shall require the judge to consider the exclusion of any incriminating evidence or the adoption of other appropriate remedial actions.

Additional explanatory remarks

The enforcement of rules can be strengthened by providing for the exclusion of evidence, the declaration of abuse of process or other forms of remedies declaring the unfairness of trial.

The use of incriminating evidence in such cases shall result in the unfairness of the trial, save for exceptional circumstances.
FOCUS GROUP INTERVIEW
POLICE – TOPIC LIST¹

INTRODUCTION
Hello, my name is ..................., I am a ................ at ................ My colleague ..................., researcher at the ..................., will assist me today.

I would hereby like to welcome everyone to this focus group interview with lawyers in the course of the European research project 'Protecting young suspects in interrogations'. Additionally, thank you in advance for your cooperation, it is very much appreciated.

I will first say something on the project in general and afterwards go into more detail about the focus group interview. The project is on procedural safeguards for juvenile suspects during the interrogation and is conducted in five countries: Belgium, England & Wales, Italy, Poland and The Netherlands. In the first part, we studied the rules and guidelines regarding the interrogation of juvenile suspects. In this part, we want to have a look at the practice: what happens in interrogations with juvenile suspects? More in particular, we are looking for good practices in order to make some recommendations in the end. Therefore, it is also interesting to know which barriers should be dealt with as well.

¹ In Italy, a similar topic list was drafted for the focus group with prosecutors.
This immediately brings us to the goal for today. This focus group serves as a round table in which we will discuss how it works in practice based upon your experiences. For the composition of this focus group we aimed at police officers with experience in interrogating juvenile suspects. Therefore, we contacted police officials we know from earlier research and practice and asked them also for suggestions.

This focus group will take three hours, which at first seems like a lot, but this is limited time given the topics we want to address. Therefore, in order to make this focus group interview ‘run’ smoothly, we will go through some practicalities:

- First some announcements of a practical nature: in case you have made expenses for which you require reimbursement, you can fill in the provided form and send it back to us so that we can provide the reimbursement. You will also find a list where you can fill in your e-mail address in case you want to be informed about the status of the project since at the end of the project (January 2015) we will organise a conference and masterclass.

- We would like to stress that what is discussed during the focus group is treated confidential. We would therefore kindly like to ask you to treat the shared information confidential as well. Your anonymity will also be safeguarded in all publications.

- In order for us to process the findings of this focus group we will audio-record it. After the information is processed, the recording will first be stored safely in order to comply with empirical research ethics. When allowed, the recording will be deleted.

- You have also been asked to fill in a short questionnaire with some basic information about your experience and role as a police officer. This will, of course, also be treated confidentially. It will only serve for us as a way to describe the respondent-group.

- As for the goal of this focus group: we strive to acquire as much variation in answers as possible. Therefore we value each and everyone’s opinion. Of course you do not have to agree with one another!

- In order to structure the focus group, I as a moderator will introduce topics, ask questions and round up the topics with a summary. In order to make sure the discussion is constructive and on point I might be required to ‘park’ some topics in order keep an overview of the complexity. This does in no way mean that the topic is uninteresting, but it might mean that we get back to it later. In order to make sure everyone can equally contribute to the focus group interview, all (or as many as possible) topics are discussed and we acquire insight into a variety of practices, my role as a moderator might sometimes require me to interrupt, ask for more detail or asks someone else’s opinion.

- We prepared two parts: a first part about what practices in general and a second part in which we chronologically go through the different steps in the procedure. Herein we selected some topics we want to discuss with you. We will ask for your experiences and for some specific topics your opinion as well.

Before we get started, it might be a wise idea to have a short introduction round so that we all know who is who, by giving your name and telling something about your role within the police more in particular with regard to interrogating juvenile suspects.
PART 1: EXPERIENCES WITH INTERROGATION OF JUVENILES SUSPECTS IN PRACTICE IN GENERAL

The following questions aim at gaining insight in what happens in practice during the interrogation of juvenile suspects.

1. What do you think of when I ask about your experience with interrogating juvenile suspects?

2. Literature refers to the continuum with on the one hand the adult suspect and on the other hand the juvenile witness/victim. What should be given priority when choosing an interrogation strategy: the age (being a juvenile) or the status (being a suspect)?
   - Why?
   - In your experience, are adult suspects interrogated different or similar to juvenile suspects?
     • Some of you are trained in interviewing juvenile victims/witnesses (TAM). When you interrogate a juvenile suspect, to what extent do you use this model?*2
     • Is anyone trained in interrogating juvenile suspects? If so, to what extent do you use this training when you interrogate a juvenile suspect?*
     • Some of you have not had juvenile-specific training. What model do you use when you interrogate a juvenile suspect?*
     • Are interrogations of juveniles surrounded with any – juvenile-specific – difficulties? If so, explain?

PART 2: CHRONOLOGICAL TOPICS

In the following questions, we will chronologically go through the procedure from the first contact of the juvenile with the police. Thus, these questions aim at getting a full picture about what happens before, during and after the interrogation of juveniles.

3. Sometimes, juveniles are communicating spontaneously with the police at the first contact. What are your experiences with these conversations?
   - What is according to you the relevance of this information?

Similar to adults, juvenile suspects need to be informed about their rights.

4. What are your experiences with informing juvenile suspects about their rights?
   - When does this happen in the procedure?
   - How?
   - Is this repeated later in the procedure?
   - What are the challenges in informing juveniles about their rights?
   - To what extent do juvenile suspects understand these rights?
     • How do you check their understanding?

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Country-specific topics/questions are marked with *.

Intersentia 409
In many countries juvenile suspects have the right to legal assistance. However, practices are different in many countries. The next questions will go into more detail about the right to legal assistance.

5. In ......................, arrested juvenile suspects can't waive their right to legal assistance. How do these juveniles respond to this right?*
   • However, it might be the case that the juvenile suspect does not wish to be assisted by a lawyer. What happens if this is the case? How do you deal with this?*

We would also like to know more about the consultation between a juvenile suspect and his lawyer from the perspective of the police.

6. To what extent do you provide information to the lawyer about the case/juvenile before the consultation?
   – Do lawyers ever ask for (additional) information? If so, what kind of information?
   – When they do, do you provide them with any information?
     • Why or why not?
     • What kind of information?
   – To what extent do you provide information about the case to the juvenile suspect before the interrogation?

At the moment a European guideline for vulnerable suspects, including juvenile suspects, is drafted. This guideline encompasses the assessment of a juvenile suspect before the interrogation.

7. What do you think of when talking about assessment of the juvenile suspect?

8. What do you know about the assessment of a juveniles suspect?
   • By the police/lawyer?
   • How is it dealt with? What is assessed and how?
   • What do you do when you consider a juvenile suspect not fit for interrogation?

We will now discuss the core of this project, the interrogation of juvenile suspects. A lot can be thought of when discussing the proceedings of an interrogation. Therefore, we will address some relevant topics in order to gain insight in how interrogations are conducted in practice.

9. To what extent are juveniles vulnerable during the interrogation and the procedure in general?
   • Why?
   • Do juvenile suspects differ from adult suspects?
   • Do juvenile suspects differ among each other?
10. In your experience, do juvenile suspects require a different interrogation strategy given their vulnerabilities?
   • To what extent do they understand the procedure?
   • To what extent do they understand the questions?

11. Which interrogation model do you use when interrogating a juvenile suspect?
   • Why this model?
   • How would you describe your interrogation style with juvenile suspects?

12. What information is provided at the beginning of the interrogation?
   • How?
   • Is the understanding by the juvenile suspect checked? If so, how?

13. How do juveniles generally behave during the interrogation?
   • Which strategy do they choose? Remaining silent/denial/confession?
   • Does this differ from adult suspect’s behaviour?
   • Do juvenile suspects understand the consequences of the chosen strategy?
   • Is there a difference between juvenile suspects who have legal assistance versus juvenile suspects who are not assisted by a lawyer with regard to their strategy during the interrogation?

14. To what extent do lawyers intervene during the interrogation?
   • How?
   • Why?
   • How do you deal with this?
   • How do juvenile suspects react?

15. To what extent are interrogations of juvenile suspects recorded?
   • How?
   • Are all interrogations within the same case recorded?
   • What is your opinion on audio/video recording?

16. In ………………, juvenile suspects can be a category 3 (invited) or a category 4 (arrested). What are the differences in practices between these categories with regard to the topics we discussed?*

The following questions refer to the availability of safeguards for juvenile suspects in interrogations. This might be similar to adult suspects but can also be different. In this project we aim at identifying necessary safeguards for juvenile suspects. Besides safeguards, there are some good practice which should be conserved but maybe the position of the juvenile suspect can be improved as well. The following questions concern the vulnerability, safeguards, good practices as well as points of improvement.

17. What, in your expert opinion, do you currently consider to be adequate safeguards for juvenile suspect when they are interrogated by the police?
18. Which, if any, safeguards are lacking according to you?
   • Why?
   • In some countries juvenile suspects can waive their right to legal assistance. Do you think this a good or bad practice?

19. What is your experience with an appropriate adult?
   • What is/should be the role of the appropriate adult according to you?

20. What is the role of a lawyer:
   • Before the interrogation of a juvenile suspect?
   • During the interrogation of a juvenile suspect?

21. For the interrogation of juvenile suspects, do you think interrogators and/or lawyers should be specialised? If so, what do you think of?
   • Is every police officer able to interrogate juvenile suspects?

22. What do you consider to be good interrogation practices when interrogating juvenile suspects?

23. What do you think can be improved?

24. Could you describe the optimal interrogation model for juvenile suspects?

25. Do you have a preference for the way an interrogation is recorded?
   • Which?
   • Why?

26. In …………………, juvenile suspects are invited or arrested as we discussed earlier. What do you think of this distinction?

Final questions and closure
We talked about several topics however I have some specific questions about the interrogation in general which were not addressed throughout the discussion yet.

27. When a juvenile suspect is being interrogated, how many police officers conduct this interrogation?
   • Why?
   • How is the choice of which interrogators made?

28. On average, how many times are juvenile suspects interrogated within one case?
   • How is this decided? W?hier hun mening erover: zijn ze nodig (waarom wel/niet), wat moet hun rol zijn en waarom enz.aringen met aanwezigheid van AA

29. During what time of day are juvenile suspects most often interrogated?
   • Why?
The next question is the final question of this focus group interview.

30. Since the goal of this project is to draft a proposal on minimum rules and best practices, is there anything you feel we have not discussed but is worth mentioning?

The results of this interview will be processed in the coming months and the end conference of this project is scheduled for January 2015. Should you however desire some feedback beforehand or have any other questions in relation to the project and/or this interview, feel free to contact …………… at any time via e-mail:………………………… (or see the PowerPoint) or telephone ………………………

I would also like to point out again that, if you wish to be reimbursed for your travel expenses, feel free to fill in one of the reimbursement forms which have been provided to you in the folder. In case of public transport, you need to provide the original receipts and/or tickets. Please fill in the form with any color ink other than black (otherwise it can’t be proven that it is not a copy). You can send the form to the address provided on the form.

Once more we would very much like to THANK YOU for your willingness to cooperate with our project and your participation in the focus group. This has given us valuable insights into the practice.

Finally we would like you to provide us with additional reflections on this focus group interview’s content. From experience we know that after leaving the room, many respondents think about additional issues. Therefore, we will send you an e-mail in which you can fill in additional reflections/experiences/opinions. If there is anything else you think of later that you wish to discuss with us, you can also add that as well of course.
FOCUS GROUP INTERVIEW

LAWYERS – TOPIC LIST

INTRODUCTION

Hello, my name is …………………, I am a …………… at ……………. My colleague ………………………………, researcher at the ………………………, will assist me today.

I would hereby like to welcome everyone to this focus group interview with lawyers in the course of the European research project 'Protecting young suspects in interrogations'. Additionally, thank you in advance for your cooperation, it is very much appreciated.

I will first say something on the project in general and afterwards go into more detail about the focus group interview. The project is on procedural safeguards for juvenile suspects during the interrogation and is conducted in five countries: Belgium, England & Wales, Italy, Poland and The Netherlands. In the first part, we studied the rules and guidelines regarding the interrogation of juvenile suspects. In this part, we want to have a look at the practice: what happens in interrogations with juvenile suspects? More in particular, we are looking for good practices in order to make some recommendations in the end. Therefore, it is also interesting to know which barriers should be dealt with as well.

This immediately brings us to the goal for today. This focus group serves as a round table in which we will discuss how it works in practice based upon your experiences. For the composition of this focus group we aimed at lawyers with experience in assisting juvenile suspects. Therefore, we contacted lawyers we know from earlier research and practice and acquired respondents through ………………….

This focus group will take three hours, which at first seems like a lot, but this is limited time given the topics we want to address. Therefore, in order to make this focus group interview ‘run’ smoothly, we will go through some practicalities:

- First some announcements of a practical nature: in case you have made expenses for which you require reimbursement, you can fill in the provided form and send it back to us so that we can provide the reimbursement. You will also find a list where you can fill in your e-mail address in case you want to be informed about the status of the project since at the end of the project (January 2015) we will organise a conference and masterclass.
- We would like to stress that what is discussed during the focus group is treated confidential. We would therefore kindly like to ask you to treat the shared information confidential as well. Your anonymity will also be safeguarded in all publications.
- In order for us to process the findings of this focus group we will audio-record it. After the information is processed, the recording will first be stored safely in order to comply with empirical research ethics. When allowed, the recording will be deleted.
You have also been asked to fill in a short questionnaire with some basic information about your experience and role as a lawyer. This will, of course, also be treated confidentially. It will only serve for us as a way to describe the respondent-group.

As for the goal of this focus group: we strive to acquire as much variation in answers as possible. Therefore we value each and everyone’s opinion. Of course you do not have to agree with one another!

In order to structure the focus group, I as a moderator will introduce topics, ask questions and round up the topics with a summary. In order to make sure the discussion is constructive and on point I might be required to ‘park’ some topics in order keep an overview of the complexity. This does in no way mean that the topic is uninteresting, but it might mean that we get back to it later. In order to make sure everyone can equally contribute to the focus group interview, all (or as many as possible) topics are discussed and we acquire insight into a variety of practices, my role as a moderator might sometimes require me to interrupt, ask for more detail or asks someone else’s opinion.

We prepared two parts: a first part about the practice in general. In the second part we will go through the procedure chronologically and discuss some topics separately. We will ask you about your experience as well as your opinion about certain issues. These don’t necessarily have to be your own, but can also be a colleague’s experiences or opinions, because we want as much variation as possible.

Before we get started, it might be a wise idea to have a short introduction round so that we all know who is who, by giving your name and telling something about yourself.

**PART 1: EXPERIENCES WITH INTERROGATION OF JUVENILES SUSPECTS IN PRACTICE**

*The following questions aim at gaining insight in what the interrogation of juvenile suspects: what happens during such an interrogation, what are your experiences.*

1. What do you think of when I ask about your experience with the interrogation of juvenile suspects?

2. Literature refers to the continuum with on the one hand the adult suspect and on the other hand the juvenile witness/victim. What should be given priority when choosing an interrogation strategy: the age (being a juvenile) or the status (being a suspect)?
   - Why?
   - In your experience, are adult suspects interrogated different or similar to juvenile suspects?
     - In ............., police officers receive general interrogation training for interrogation of suspects. Besides, some police officers receive additional training in interviewing juvenile victims/witnesses. Do you notice any differences between interrogators?*
   - Is the assistance of juvenile suspects during the interrogation surrounded with any – juvenile-specific – difficulties?
PART 2: CHRONOLOGICAL TOPICS

In the following questions, we will chronologically go through the procedure from the first contact of the juvenile suspect with the police. The questions aim at getting a full picture about what happens before, during and after the interrogation.

3. Sometimes, juvenile suspects are communicating spontaneously with the police at the first contact. Have you heard about this from juvenile suspects?
   - What do you know about these conversations?
   - To what extent is this information used, that you know of?

Similar to adults, juvenile suspects need to be informed about their rights.

4. What do you know about the information about rights provided to juvenile suspects?
   - Do you know how often this happens during a case? And when?
   - In your experience, do police officers check the juvenile suspects’ understanding of his rights?
     • If so, how is this done?

In many countries juvenile suspects have the right to legal assistance. However, practices are different in many countries. The next questions will go into more detail about the right to legal assistance.

5. In ……………, arrested juvenile suspects can’t waive their right to legal assistance. How do juveniles react to this?*
   • Have you ever assisted a juvenile suspect who first refused legal assistance?*

We would like to know more about what happens during the consultation between a juvenile suspect and the lawyer.

6. To what extent do you receive information from the police on the case/juvenile suspect before the consultation?
   - Do you ask information?
     • If so, what kind of information?
     • If not, why not?

7. How often do you consult:
   - by telephone?
   - face to face?

8. What happens during the consultation?
   - What information is provided? Which questions are asked?
   - strategy / what happened (guilty or not) / procedure
   - How is decided upon the strategy during the interrogation?
   - To what extent are juvenile suspects capable to choose a strategy?
   - Which strategy do juvenile suspects usually prefer?
To what extent do consultations with juvenile suspects differ from consultations with adults?
Are there specific difficulties/challenges in consulting with a juvenile suspect?

At the moment a European guideline for vulnerable suspects, including juvenile suspects, is drafted. This guideline encompasses the assessment of a juvenile suspect before the interrogation.

9. What do you think of when talking about assessment of the juvenile suspect?

10. In your experience, how is currently the assessment of a juvenile suspect being handled by:
- The police?
- By lawyers?
  - What do you assess?
  - How?
  - What do you do if you consider your juvenile client unfit for interrogation?

We will now discuss the core of the project: the interrogation of juvenile suspects. A lot can be thought of when discussing the proceedings of an interrogation. Therefore, we will address some relevant topics in order to gain insight in how interrogations are conducted in practice.

11. In your experience, are juvenile suspects vulnerable during the interrogation and during criminal proceedings on a whole?
- Why?
- Do juvenile suspects, according to you, differ from adult suspects?
- Do juvenile suspects differ from one another?

12. What kind of information is provided at the beginning of the interrogation?
- How?
- Is the juvenile suspects' understanding of the information checked?

13. How do juvenile suspects generally behave during the interrogation?
- Which strategy do they choose (remain silent / denial / confession)?
- Does this differ from adult's behaviour?
- What about the consequences of this strategy?

14. Does interrogating juvenile suspects require a different interrogation strategy in your opinion?
- To what extent do juvenile suspects understand:
  - The procedure of the interrogation?
  - The questions asked?

15. How do you know if the juvenile suspect gives a voluntary statement?
16. To what extent do you intervene during the interrogation?
   – Why?
   – How?
   – What about the break which is allowed for once?*
   – Written record of the interrogation?
     • Do you make comments?
     • What is the quality?

17. In ……………., juvenile suspects can be a category 3 (invited) or a category 4 (arrested). What are the differences in practices between these categories with regard to the topics we discussed?*

The following questions refer to the availability of safeguards for juvenile suspects in interrogations. This might be similar to adult suspects but can also be different. Aside from safeguards a lot of good practices can be kept but the position of juvenile suspects can also be improved. The next questions will be about the vulnerability, safeguards, good practices and possible improvements.

18. Do juvenile suspects differ from adult suspects when it comes to vulnerabilities?

19. What, in your expert opinion, do you currently consider to be adequate safeguards for juvenile suspects when they are interrogated by the police?

20. Which, if any, safeguards are lacking according to you?
   – Why?
   – Should juvenile suspects be able to waive their right to legal assistance?

21. Do you think professionals involved in the interrogation should be specialised when it comes to juvenile suspects? If so, what do you think of?

22. What do you consider good practices in interrogation of juvenile suspects for police?

23. What do you consider good practices for lawyer when they assist juvenile suspects:
   – During the consultation?
   – During the interrogation?
   – How can the lawyer be a safeguard?

24. What do you prefer: written record / audio recording / audio-visual recording?
   – Why?

25. In ……………., juveniles are invited or arrested. What do you think of this division?*

26. What would you improve in light of the interrogation of juvenile suspects?
Final questions and closure

We talked about several topics however I have some specific questions about the interrogation in general which were not addressed throughout the discussion yet.

27. Is a juvenile suspect normally interrogated by 1 or 2 officers?

28. In your experience, how often are juvenile suspects interrogated within one case?

29. During what time of day are juvenile suspects most often interrogated?

The next question is the final question of this focus group interview.

30. When you know that the goal of this project is to draft a proposal on minimum rules and best practices, is there anything you feel we have not discussed but is worth mentioning?

The results of this interview will be processed in the coming months and the end conference of this project is scheduled for January 2015. Should you however desire some feedback beforehand or have any other questions in relation to the project and/or this interview, feel free to contact …………… at any time via e-mail: ………………… (or see the PowerPoint) or telephone …………………

I would also like to point out again that, if you wish to be reimbursed for your travel expenses, feel free to fill in one of the reimbursement forms which have been provided to you in the folder. In case of public transport, you need to provide the original receipts and/or tickets. Please fill in the form with any color ink other than black (otherwise it can’t be proven that it is not a copy). You can send the form to the address provided on the form.

Once more we would very much like to THANK YOU for your willingness to cooperate with our project and your participation in the focus group. This has given us valuable insights into the practice.

Finally we would like you to provide us with additional reflections on this focus group interview’s content. From experience we know that after leaving the room, many respondents think about additional issues. Therefore, we will send you an e-mail in which you can fill in additional reflections/experiences/opinions. If there is anything else you think of later that you wish to discuss with us, you can also add that as well of course.
FOCUS GROUP INTERVIEW
JUVENILES – TOPIC LIST

INTRODUCTION
Hello, my name is …………………, I am a …………… at ……………. My colleague ……………………, researcher at the ………………………, will assist me today.

I would hereby like to welcome everyone to this focus group interview with lawyers in the course of the European research project ‘Protecting young suspects in interrogations’. Additionally, thank you in advance for your cooperation, it is very much appreciated.

The project is about what happens when you are at the police station and being interrogated. The research is conducted in five countries: Belgium, England & Wales, Italy, Poland and The Netherlands. In this interview, we want to look at what you experienced. So, we will ask about your experiences with the police especially during the interrogation: how did the police officers behave, how it was for you to be interrogated by the police, how did you feel, did you understand everything and so on...

This focus group will take at most two hours. In order to make this group interview ‘run’ smoothly, we will go through some practicalities:
- We would like to stress that what is discussed in the group stays in the room. That goes for you and for us. Of course, we have to write the results down in a book, but we will never mention any names.
- We will audiotape the interview because everything needs to be written down and our memory is limited. After the information is processed, the recording will be deleted.
- You have a short questionnaire in the folder with some basic questions about you and your experience with the police. Again, you don’t have to fill in your name. It is only to know a bit more about who took part in the interview.
- When we ask questions it is about your experience and your opinion. Thus, there are no good or bad answers. We are interested in everything that happened at the police station. However we don’t need to know what exactly happened, what you did or did not do and what the interrogation was about. We are interested in how you felt, what you thought and did when you were at the police station and when you were interrogated by the police. This also means that this can differ between all of you so you don’t need to agree with each other.
- It is my task to ask questions, ask to explain something, give an example and so on. Sometimes I need to ‘park’ some topics which will be discussed later on.
- We will go through the different steps from your first contact with the police until you left the police station.

Before we get started, we will tell you something about who we are.
We also want to learn about you, so can you tell us your name and a bit about who you are and why you are here?

So, let’s start. We will ask you questions about your experiences with the police. However, some of you were confronted with the police several times for different reasons or situations. Therefore, we will sometimes ask you to talk about the first time you came into contact with the police or the first time you were interrogated by the police.

*We mentioned a few times that we will talk about your experiences with the police. With this, we mean how the police investigation went and the interrogation. It is important that we all talk about the same here. Therefore I will sometimes ask you to explain or describe some of the things we will talk about. For example, can someone tell me what the police investigation is? And what do we mean with interrogation?*

*OK, thank you. We are all talking about the same.*

**Part 1: First contact**

*First, we will ask you some questions about the last time you came in contact with the police. So, when you met the police then, …*

1. Can you describe what happened?
2. What did you think of the police when you first came into contact with them?
3. What did the police say or do at this first contact?
   - What did they tell you?
   - What did they ask you?
   - Did you know whether you were a suspect?
4. How did the police behave?
   - Friendly, polite, nice, formal/informal…
   - Unfriendly, impolite, not nice, formal/informal…
5. If you came into contact with the police for different reasons, are there differences between…?
   - These situations
   - Police officers

**Part 2: Information about rights**

*Thank you for telling us what happened when you met the police. We will now look at what the police told you about the situation and about your rights. Can anyone tell me what is meant with ‘rights’?*

6. When you came into contact with the police, did they tell you what it was about?
   - Can you describe how they did this? When? Where? What?
7. What did the police tell you about your rights?
   - Can you tell me your rights given by the police?
Did you understand your rights?
Did the police explain your rights?
Did someone else explain your rights?
Was there someone present?

8. Before you were at the police station, did the police ask questions?
   - What?
   - How?
   - Have you talked about this? With whom?
   - Did they tell you why you were at the police station?
   - Did the police tell you what they already knew about what happened? If so, what did they tell you?

9. Did the police ask you whether you would like to inform someone?
   - How?
   - Did you make use of this?

10. Did the police ask you whether you would like to have a lawyer?
    - How?

Part 3: Legal assistance

Sometimes when the police interrogates you, there can be a lawyer present. What is according to you a lawyer? What is a lawyer doing?

11. Did you have a lawyer?
    - How did you make a choice about having a lawyer?
    - Did you feel that you could make this decision? If so, why? If not, why not?
    - When you asked for a lawyer, what happened next?
    - When you refused a lawyer, what happened next?
    - Did the police advise you to take a lawyer or not?
    - Did you choose a lawyer? If not, who did?

When you have a lawyer, they often talk with you before the police starts asking questions.

12. Can you describe your talk with your lawyer?
    - What did you talk about?
    - Did you understand what happened?
    - Did you understand your lawyer?
    - Did he tell you what to do during the interrogation?
    - Did you already know your lawyer beforehand?
    - Did you like your lawyer? Why? Why not?
    - Do you trust your lawyer? Why? Why not?
    - How did you feel when talking with your lawyer? And afterwards?
    - Was it confidential?
    - Formal/informal?
**Part 4: Situation at the police station**

Who was at the police station when they asked questions? Ok, we also have some questions about you being at the police station.

13. Was there someone else at the police station to assist you?
   - Who?
   - Why? Did you ask? Why/Why not? What happened then?
   - Did you choose that person to be there?
   - How did you feel about this person being there?

14. Was the police concerned about you?
   - How did you notice?
   - Lawyer? Others?

15. Before the interrogation, how did you feel?
   - Did the police check if you were ‘up for an interrogation’?
     - If they checked, do you know the person who did check? Who was it? And what did he/she ask you?
     - If they did not check, do you feel they should have (because you were feeling not ready)?

16. Did you see or talk with other people?

The following questions concern how long you were at the police station. Let’s start with when you arrived.

17. At what time were you at the police station?
   - How long did you have to wait to be interrogated? Why?
   - How long did you stay at the police station in total?
   - Where did you have to wait at the police station?

**Part 5: Interrogation**

We talked about interrogation earlier. Can someone repeat what it is about? Thank you. When you were at the police station, the police also interrogated you, I think. Is that correct?

18. Can you describe how the interrogation went?

19. What did you think of the interrogators?
   - Friendly, polite, nice (or opposite), formal/informal…

20. What information did they give you at the beginning of the interrogation?
   - Did you understand this information?
   - Did you understand what was going to happen?
   - Did you know whether you were a suspect or not?
21. What happened during the interrogation?
   - Did you understand the procedure?
   - Did you understand the questions?
   - Were you able to tell your story about what happened?
   - Were you allowed to ask questions?

22. Can you describe what you did during the interrogation?
   - Silence/provide a statement… How did the police respond?
   - Why?
   - Did you know what would happen if you behaved like this? How?
   - What did you think?
   - How did you feel (at ease/anxious – respected/not respected…)

23. Was your lawyer present?
   - What did you think of him being present / not present?
   - Do you think it is important to have a lawyer present? Why/ Why not?
   - If a lawyer was present, what did he do during the interrogation?
     • How did the police react to this?
     • How did you react to this? Why?

24. Was there someone else present during the interrogation?
   - Who? Why? What did he/she do?

25. How long did the interrogation last?

26. Do you know whether the interrogation was recorded?
   - How?

27. Did you read what the police wrote down?
   - What did you think of it?
   - Someone else read it? Who?

**PART 6: NEEDS?**
*I can imagine that when you were confronted with the police, you needed things. This is what we are going to talk about next. What did you feel, thought, wanted but also what didn’t you like and so on. Is that clear to you?*

28. What was the most difficult for you?
   - What did you worry about?

29. What was the easiest for you?
   - What made you feel comfortable?

30. Are there things you would have liked…?
   - The police to have done
31. What do you think is good for (the protection of) juveniles when they are confronted with the police?

32. Is there anything else you want to say?

33. If you would be interrogated by the police again, what would you want them to do in order to feel respected and at ease?

_Thank you for talking about everything you experienced! Maybe it wasn’t always easy to talk about it._

34. How do you feel after talking about your experiences at the police station?

**Part 7: Closing remarks**

This brings us to the end of this focus group interview. I would once again like to thank you for talking to us. If you need to talk to someone about this, you can always ask... (institution).

The results of this interview will be there in January of 2015. You will be kept informed through the institution. If you have any question though, you can contact me through your counselor here at the institution.
FOCUS GROUP INTERVIEW
POLICE – QUESTIONNAIRE

We would like to ask you to fill in this questionnaire containing some information about yourself and your position/job. This data will be used anonymously and serves only to describe the group of participants.

1. Gender:
   □ Male       □ Female

2. Police station: ...............................................................................................................

3. You are part of the:*\(^1\)
   □ Federal police: ...............................................................................................................
   □ Local police: ..................................................................................................................

4. How many years of experience do you have?
   - As a police officer: ..........................................................................................................
   - In interrogation in general: ............................................................................................

   Please turn over

5. Function and unit: ..........................................................................................................

\(^1\) Country-specific questions are marked with *.

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Intersentia
6. Which general interrogation trainings (basic and advanced courses) have you followed? …………………………………………………………………………………………….

……………………………………………………………………………………………………

7. Did you follow specialist training for interrogating:
   ☐ Juvenile victims/witnesses
   ☐ Juvenile suspects

8. Are you currently involved in interrogation of juvenile suspects?
   ☐ If yes, how often do you interrogate juvenile suspects on a yearly basis by average:
     Juveniles without any assistance:
     Monthly: ............ times / Annually: ............ times
     Juveniles assisted by a legal advisor:
     Monthly: ............ times / Annually: ............ times
     – Juveniles assisted by another person (namely: .............);
     Monthly: ............ times / Annually: ............ times
     – Juveniles assisted by a legal advisor and another person (namely: ............);
     Monthly: ............ times / Annually: ............ times
   ☐ If no, please provide your job description with regard to interrogation of juvenile suspects:
     .................................................................................................................................
FOCUS GROUP INTERVIEW
LAWYERS – QUESTIONNAIRE

We would like to ask you to fill in this questionnaire containing some information about yourself and your job. This data will be used anonymously and serves only to describe the group of participants.

1. Gender:
   - Male
   - Female

2. In which region do you work?

3. How many years of experience as a lawyer do you have?

4. How many years are you practicing as a juvenile lawyer?*

5. Are you experienced in assisting juvenile suspects? If so, which types or crimes do you mostly encounter in relation to juveniles?

6. Are you enrolled in the duty lawyer scheme?*
   - Yes
   - No

7. Approximately, how often do you give legal advice to juveniles?
   A. Prior to the (first) police interrogation:
      - By telephone: monthly: ………… times / Annually: …………. times
      - At police station: monthly: ………… times / Annually: …………. times
   B. During the interrogation:
      - At police station: monthly: ………… times / Annually: …………. times

Please turn over
8. Did you follow any training for assisting juvenile suspects in criminal proceedings?
   □ Yes, please explain:
   .......................................................................................................................................................
   .......................................................................................................................................................
   □ No

9. Did you follow any training for assisting juveniles during interrogations?
   □ Yes, please explain:
   .......................................................................................................................................................
   .......................................................................................................................................................
   □ No
FOCUS GROUP INTERVIEW
JUVENILES – QUESTIONNAIRE

We would like to ask you to fill in this questionnaire asking some information about yourself. You can tick off the right answer or fill in your answer.

1. Gender:
   □ Male  □ Female

2. For how many different events were you in contact with the police? ……………… events.

3. What is the reason you are in this institution?
   .......................................................................................................................................................
   .......................................................................................................................................................

4. Were you in an institution before for another reason?
   □ Yes  □ No

5. With regard to the this event, how many times were you interrogated by the police?
   ……………… times
Observations

Coding scheme 1
Basic information & transcripts
1. Actors

A. Juvenile suspect

1) Sex:
   - Male
   - Female

2) Age: …… years

3) Nationality: …………………………………………………………….

4) Recidivist:
   - Yes
   - No
   - Unknown

5) Arrested:
   - Yes
   - No
   - Unknown
   - Not applicable

B. Interrogator(s)

6) Number of interrogators:
   - 1
   - 2
   - > 2

7) Sex:
   - Male
   - Female
   - Male – male
   - Male – female
   - Female – female
   - Other: …………………………………………………………………
   - Unknown

8) Police station: …………………………………………………

C. Lawyer

9) Consultation:
   - Yes, face to face
10) Duration consultation:
   - ………………………… minutes
   - Unknown
   - Not applicable

11) Lawyer present?
   - Yes, during the whole interrogation
   - Yes, during part of the interrogation
   - No
   - Unknown
   - Not applicable

12) Lawyer in consultation and/or interrogation:
   - Yes, chosen by juvenile suspect and/or parent/legal guardian
   - Yes, appointed
   - Unknown
   - Not applicable

D. Other persons present

13) Appropriate adult:
   - Yes, family
   - Yes, other
   - Yes, unknown person
   - No
   - Unknown
   - Not applicable

14) Interpreter:
   - Yes
   - No
   - Unknown
   - Not applicable

2. Crime

15) Type of crime:
   - Crime against persons
Annexes

- Crime against property
- Other: .................................................................
  .................................................................
  Unknown
  Not applicable

16) Specification of type of crime: ........................................
  .................................................................
  Unknown

17) Time of arrest: .................
  Unknown
  Not applicable

18) Time arrival at police station: .................
  Unknown
  Not applicable

3. Interrogation

19) Time start of interrogation: .................
  Unknown
  Not applicable

20) Description of what happens between arrival at police station and interrogation:
   A) Body search:
      - Yes
      - No
      - Unknown
      - Not applicable
   B) Mobile phone analysis:
      - Yes
      - No
      - Unknown
      - Not applicable
   C) Priors / criminal record:
      - Yes
      - No
      - Unknown
      - Not applicable
   D) Judicial identification:
      - Yes
E) Other:
   ○ Yes. Example: .................................................................
                  .................................................................
   ○ No
   ○ Unknown
   ○ Not applicable

21) Duration interrogation:
   ○ ............... Minutes
   ○ Unknown

22) Interruption interrogation:
   ○ Yes, reason: .................................................................
                  .................................................................
   ○ No
   ○ Unknown

4. Characteristics written record

23) What is the written record format?
   ○ Question and answer literally
   ○ Monologue mentioning question and answer
   ○ Monologue
   ○ Other: .................................................................
                  .................................................................

24) Where are the lawyer's remarks written down?
   ○ No remarks given
   ○ Integrated in the statement
   ○ Remarks at the bottom of statement
   ○ Other: .................................................................
                  .................................................................
   ○ Unknown
   ○ Not applicable

25) Where are the juvenile suspect's remarks written down?
   ○ No remarks given
   ○ Integrated in the statement
   ○ Remarks at the bottom of statement
   ○ Other: .................................................................
26) Is the written record signed by the juvenile suspect?
   - Yes
   - No
   - Unknown
   - Not Applicable

27) Is the written record signed by the lawyer?
   - Yes
   - No
   - Unknown
   - Not applicable

28) Is the written record signed by other people?
   - Yes, by: ..............................................................
   - No
   - Unknown
   - Not applicable

29) Do the police mention special circumstances in the written record?
   - Yes, subjectively. Example: ..............................................................
     .............................................................................................................................
   - Yes, objectively. Example: ..............................................................
     .............................................................................................................................
   - No
   - Unknown

30) To what extent does the statement reflect the content of the interrogation?
   - Content is reflected well. Explain: ..............................................................
     .............................................................................................................................
   - Content is sufficiently reflected. Explain: ..............................................................
     .............................................................................................................................
   - Content is insufficiently reflected. Explain: ..............................................................
     .............................................................................................................................
   - Unknown
   - Not applicable
31) To what extent does the written record reflect the proceedings of the interrogation?

- Proceedings are reflected well. Explain: .................................................................

- Proceedings are sufficiently reflected. Explain: ..............................................

- Proceedings are insufficiently reflected. Explain: .............................................

- Unknown

- Not applicable

32) There is standardised information in the written record concerning:

A) Rights given to suspects orally;
   - Yes
   - No
   - Unknown
   - Not applicable

B) Letter of rights;
   - Yes
   - No
   - Unknown
   - Not applicable

C) Other procedures;
   - Yes. Explain: ....................................................................................................

   - No
   - Unknown
   - Not applicable

D) Others;
   - Yes. Explain: ....................................................................................................

   - No
   - Unknown
   - Not applicable

33) Specific remarks researcher:

Remark 1: .................................................................................................................
Observations

Coding scheme 2
Topics (audio/video)
Topic 1: Information gathered before the interrogation

1) Does the interrogator refer to information gathered from the juvenile suspect before the interrogation started?
   - Yes, information from an earlier interrogation:
     .............................................................................................................................
   - Yes, other than from an earlier interrogation:
     .............................................................................................................................
   - Yes, unknown when/how information was gathered earlier:
     .............................................................................................................................
   - No

2) Does the juvenile suspect refer to information gathered before the interrogation started?
   - Yes, information from an earlier interrogation:
     .............................................................................................................................
   - Yes, other than from an earlier interrogation:
     .............................................................................................................................
   - Yes, unknown when/how information was gathered earlier:
     .............................................................................................................................
   - No

Topic 2: Starting the interrogation

3) Tick off what information the interrogator(s) provide(s) at the beginning of the interrogation:
   A) Reason for interrogation (facts/crime);
      - Yes
      - No
      - Unknown
      - Not applicable
   B) Goal of the interrogation;
      - Yes
      - No
      - Unknown
      - Not applicable
   C) Juvenile being a suspect;
      - Yes
      - No
      - Unknown
      - Not applicable
D) Information on proceedings during interrogation;
   - Yes
   - No
   - Unknown
   - Not applicable

E) Information on recording;
   - Yes
   - No
   - Unknown
   - Not applicable

F) Information on the role of the lawyer;
   - Yes
   - No
   - Unknown
   - Not applicable

G) Information on the role of the appropriate adult;
   - Yes
   - No
   - Unknown
   - Not applicable

H) Information on the role of the interpreter
   - Yes
   - No
   - Unknown
   - Not applicable

I) Information about interrogator(s) (name, function);
   - Yes
   - No
   - Unknown
   - Not applicable

J) Right to legal assistance;
   - Yes
   - No
   - Unknown
   - Not applicable

K) Right to silence;
   - Yes
   - No
1) Right not to incriminate oneself;
   - Yes
   - No
   - Unknown
   - Not applicable

M) Other rights;
   - Right 1: ...................................................................................................................
   - Right 2: ...................................................................................................................
   - Right 3: ...................................................................................................................
   - Right 4: ...................................................................................................................
   - Right 5: ...................................................................................................................

4) Does the standard information in the written record reflect what happened in practice?
   - Yes
   - No. Explain: ..............................................................................................................
   - Unknown
   - Not applicable

5) In what way is the juvenile suspect informed about his/her rights?
   - Literally (verbatim text of the law)
   - In own words of interrogator
   - Literally and in own words of interrogator
   - Other: ......................................................................................................................
   - Unknown

6) Did the juvenile suspect receive a letter of rights?
   - Yes
   - No
   - Unknown
   - Not applicable

7) Does the interrogator(s) check whether the juvenile suspect understands his/her rights?
   - Yes, asks the juvenile suspect whether he/she understood
   - Yes, asks the juvenile suspect to explain in own words
Topic 3: Interrogation – procedure

8) Does the interrogator(s) refer to the juvenile suspect’s rights during the interrogation?
   - Yes, explain: ...................................................................................................................................
   - No
   - Unknown

9) How does the interrogator(s) treat the juvenile suspect mostly?
   - As a juvenile. Explain: ........................................................................................................
   - As a suspect. Explain: ........................................................................................................
   - Unknown

Topic 4: Interrogation model

10) To what extent does the interrogator(s) make an effort to establish rapport with the juvenile suspect?
   - To a very large extent
   - To a large extent
   - To a small extent
   - To a very small extent
   - Unknown

11) Does the interrogator(s) adjust the language to the level of the juvenile suspect?
    - Yes, very good adjustment
    - Yes, rather good adjustment
    - No, rather bad adjustment
    - No, very bad adjustment
    - Adjustment not necessary
    - Unknown

12) Does the interrogator(s) use an information gathering interrogation-style or an accusatory interrogation-style?
    - Mostly information gathering style
    - Rather information gathering style
    - Rather accusatory style
13) What is the interrogation approach?
- Mostly accusatory style
- Mostly question & answer approach
- Mostly conversational approach

14) Do both interrogators show similar interrogation-behaviour throughout the interrogation?
- Yes. Explain: .................................................................
- No. Explain: .................................................................
- Unknown
- Not applicable

15) Does the interrogator(s) give the juvenile suspect the opportunity to give his/her story (free recall) before asking any questions?
- Yes, extensively
- Yes, limited
- No
- Unknown

16) Does the juvenile suspect give his/her story (free recall)?
- Yes, extensively
- Yes, limited
- No
- Unknown
- Not applicable

17) The juvenile suspect is mostly:
- Using the right to silence
- Answering questions. Explain: ...........................................
- Other: .............................................................................
- Unknown

18) When the juvenile suspect uses the right to silence, how does the interrogator(s) respond in general?
- .................................................................
- .................................................................
- .................................................................
- Example: .................................................................
19) To what extent is the juvenile suspect cooperative?
   - Very cooperative
   - Rather cooperative
   - Rather uncooperative
   - Very uncooperative
   - Unknown

20) Does the interrogator(s) use one of the following techniques:
   A. Minimisation;
      - Yes. Example: .................................................................
      - .................................................................
      - No
      - Unknown
   B. Maximization;
      - Yes. Example: .................................................................
      - .................................................................
      - No
      - Unknown
   C. Accusing the juvenile suspect;
      - Yes. Example: .................................................................
      - .................................................................
      - No
      - Unknown
   D. Good and bad cop;
      - Yes. Example: .................................................................
      - .................................................................
      - No
      - Unknown
   E. Suggestive questions;
      - Yes. Example: .................................................................
      - .................................................................
      - No
      - Unknown
   F. Persuasive techniques;
      - Yes. Example: .................................................................
      - .................................................................
      - No
      - Unknown
Annexes

G. Showing empathy;
   ○ Yes. Example: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown

H. Active listening;
   ○ Yes. Example: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown

I. Other;
   ○ Yes. Example: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown

21) Is the juvenile suspect confronted with discrepancies in his/her own statement?
   ○ Yes. Explain: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown
   ○ Not applicable

22) Is the juvenile suspect confronted with evidence?
   A) Witness statement;
      ○ Yes. Example: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown

   B) Victim statement;
      ○ Yes. Example: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown

   C) Statement(s) of co-suspect(s);
      ○ Yes. Example: ....................................................................................................................
      .................................................................................................................................
   ○ No
   ○ Unknown
D) Forensic evidence;
   - Yes
   - No
   - Unknown

E) CCTV (video images);
   - Yes
   - No
   - Unknown

F) Other documents;
   - Yes. Explain: .................................................................
     ...................................................................................
   - No
   - Unknown

G) Hypothetical evidence;
   - Yes. Example: .................................................................
     ...................................................................................
   - No
   - Unknown

H) Other;
   - Yes. Example: .................................................................
     ...................................................................................
   - No
   - Unknown

23) Were there other confrontations?
   - Yes. Explain: .................................................................
     ...................................................................................
   - No
   - Unknown
   - Not applicable

24) Does the lawyer intervene during these confrontations?
   - Yes, gives a comment to the police: ................................
     ...................................................................................
   - Yes, advises the juvenile suspect: ................................
     ...................................................................................
   - Yes, other: ........................................................................
     ...................................................................................
   - No
   - Unknown
   - Not applicable
25) How does the juvenile suspect in general respond to the intervention by his/her lawyer?
   ○ Does not respond and continues
   ○ Changes his/her behaviour: .................................................................
   ○ Unknown
   ○ Not applicable

26) Does the lawyer intervene during the interrogation?
   ○ Yes, 1–2 times
   ○ Yes, 3–5 times
   ○ Yes, > 5 times
   ○ No
   ○ Unknown
   ○ Not applicable

27) Does the intervention by the lawyer entail:
   A) Comment to the police;
      ○ Yes. Example: .................................................................
      ○ No
      ○ Unknown
      ○ Not applicable

   B) Providing the police with additional information;
      ○ Yes. Example: .................................................................
      ○ No
      ○ Unknown
      ○ Not applicable

   C) Advising the juvenile suspect to remain silent;
      ○ Yes. Example: .................................................................
      ○ No
      ○ Unknown
      ○ Not applicable

   D) Advising the juvenile suspect (on something else then remaining silent);
      ○ Yes. Example: .................................................................
      ○ No
      ○ Unknown
      ○ Not applicable
E) Explaining procedure or used wording to juvenile suspect;
   - Yes. Example: ............................................................................................................... 
     ............................................................................................................................. ............
   - No
   - Unknown
   - Not applicable

F) Comments on written statement;
   - Yes. Example: ............................................................................................................... 
     ............................................................................................................................. ............
   - No
   - Unknown
   - Not applicable

G) Asking for consultation;
   - Yes. Example: ............................................................................................................... 
     ............................................................................................................................. ............
   - No
   - Unknown
   - Not applicable

H) Other;
   - Yes. Example: ............................................................................................................... 
     ............................................................................................................................. ............
   - No
   - Unknown
   - Not applicable

28) How does the juvenile suspect in general respond to the lawyer’s intervention(s)?
   - Compliant. Explain: ................................................................................................. 
     ............................................................................................................................. ...................
   - Opposite. Explain: ................................................................................................. 
     ............................................................................................................................. ...................
   - Ignores. Explain: ................................................................................................. 
     ............................................................................................................................. ...................
   - Other: ................................................................................................................ 
     ............................................................................................................................. ...................
   - Unknown
   - Not applicable

29) Does the juvenile suspect look for support from the lawyer?
   - Yes, 1–2 times
   - Yes, 3–5 times
   - Yes, > 5 times
   - No
   - Unknown
   - Not applicable
30) How does the juvenile suspect look for support from the lawyer?

*Give the three most important examples*

.......................................................................................................................................................
.......................................................................................................................................................
.......................................................................................................................................................
.......................................................................................................................................................
.......................................................................................................................................................
.......................................................................................................................................................

31) How does the interrogator in general respond to the lawyer’s intervention?

- Willing
- Unwilling
- Ignores
- Other: ...........................................................................................................................................
- Unknown
- Not applicable

**Topic 6: Appropriate adult**

32) Does the appropriate adult intervene during the interrogation?

- Yes, 1–2 times
- Yes, 3–5 times
- Yes, > 5 times
- No
- Unknown
- Not applicable

33) The intervention by the appropriate adult entails:

A) Comment to the police;

- Yes, Example: ..........................................................................................................................

- No
- Unknown
- Not applicable

B) Providing the police with additional information;

- Yes, Example: ..........................................................................................................................

- No
- Unknown
- Not applicable

C) Comment to the lawyer;

- Yes, Example: ..........................................................................................................................
D) Advising the juvenile suspect;
   - Yes. Example: .................................................................
   - No
   - Unknown
   - Not applicable

E) Supporting the juvenile suspect in another way;
   - Yes. Example: .................................................................
   - No
   - Unknown
   - Not applicable

F) Comments on written statement;
   - Yes. Example: .................................................................
   - No
   - Unknown
   - Not applicable

G) Other;
   - Yes. Example: .................................................................
   - No
   - Unknown
   - Not applicable

34) How does the juvenile suspect in general respond to the appropriate adult’s intervention(s)?
   - Compliant. Explain: .................................................................
   - Opposite. Explain: .................................................................
   - Ignores. Explain: .................................................................
   - Other: .................................................................
   - Unknown
   - Not applicable
35) Does the juvenile suspect look for support from the appropriate adult?
   - Yes, 1–2 times
   - Yes, 3–5 times
   - Yes, > 5 times
   - No
   - Unknown
   - Not applicable

36) How does the juvenile suspect look for support from the appropriate adult?
   *Give the three most important examples*
   - ........................................................................................................................................
   - ........................................................................................................................................
   - ........................................................................................................................................
   - ........................................................................................................................................
   - ........................................................................................................................................
   - ........................................................................................................................................

37) How does the interrogator in general respond to the appropriate adult’s intervention(s)?
   - Willing
   - Unwilling
   - Ignoring
   - Other: ................................................................................................................................
   - Unknown
   - Not applicable

*Topic 6: Interpreter*

38) Does the interrogator explain the role of the interpreter?
   - Yes
   - No
   - Unknown
   - Not applicable

39) If so, what is the role of the interpreter?
   - Translation
   - Translation and intercultural exchange
   - Other: ................................................................................................................................
   - Unknown
   - Not applicable

*Topic 7: Ending the interrogation*

40) Does the juvenile suspect get the opportunity to read or listen to his/her statement?
   - Yes, listen
41) Does the lawyer get the opportunity to read or listen to the statement?
   - Yes, read
   - No
   - Unknown
   - Not applicable

42) Does the appropriate adult get the opportunity to read or listen to the statement?
   - Yes, listen
   - Yes, read
   - No
   - Unknown
   - Not applicable

43) Does the juvenile suspect get the opportunity to change his/her statement?
   - Yes
   - No
   - Unknown
   - Not applicable

44) Does the lawyer get the opportunity to change the statement?
   - Yes
   - No
   - Unknown
   - Not applicable

45) Does the appropriate adult get the opportunity to change the statement?
   - Yes
   - No
   - Unknown
   - Not applicable

46) Does the interrogator(s) explain further procedures?
   - Yes
   - No
   - Unknown
   - Not applicable

47) Does the interrogator(s) allow the juvenile suspect to ask questions, tell about his/her needs…?
   - Yes
48) Does the interrogation end in a positive atmosphere?
   ○ Yes. Explain: ........................................................................................................................
   .................................................................
   ○ No. Explain: ........................................................................................................................
   .................................................................

49) Specific remarks researcher:
   Remark 1: ....................................................................................................................................
   ..............................................................
   Remark 2: ...................................................................................................................................
   ..............................................................
   Remark 3: ...................................................................................................................................
   ..............................................................
   Remark 4: ...................................................................................................................................
   ..............................................................
   Remark 5: ...................................................................................................................................
   ..............................................................
   Remark 6: ...................................................................................................................................
   ..............................................................
   Remark 7: ...................................................................................................................................
   ..............................................................
   Remark 8: ...................................................................................................................................
   ..............................................................
Observations

Coding scheme 3
Additional information (video)
1) Does the audio/video start at the beginning of the interrogation?
   - Yes
   - No, explain: ...........................................................
   - Unknown

2) Are there interruptions in the audio/video-recording?
   - Yes
   - No
   - Unknown

3) Is it clear why the recording is interrupted?
   - Yes: ...........................................................
   - No
   - Not applicable

4) In case of interruptions of the interrogation, is the audio/video then stopped?
   - Yes
   - No
   - Unknown
   - Not applicable

5) In case of interruption of the interrogation, is an explanation given?
   - Yes: ...........................................................
   - No
   - Unknown
   - Not applicable

6) What is the camera perspective (aimed on)?
   - Suspect
   - Interrogator(s)
   - Suspect and interrogator(s)
   - Combination/other: ...........................................................

7) Does the camera perspective change?
   - Yes: ...........................................................
   - No

8) Does the camera zoom in/out during the interrogation?
   - Yes: ...........................................................
   - No
9) In case of zooming, is it clear why?
   ○ Yes: ........................................................................................................................................
   ...................................................................................................................................................
   ○ No
   ○ Not applicable

10) Sketch setup interrogation room and actors:

11) Changes in setup during the interrogation?
   ○ Yes: ........................................................................................................................................
   ...................................................................................................................................................
   ○ If so, Why? .................................................................................................................................
   ...................................................................................................................................................
   ○ No
   ○ Unknown

12) Specific remarks researcher:
   Remark 1: ....................................................................................................................................
   .......................................................................................................................................................
   Remark 2: ....................................................................................................................................
   .......................................................................................................................................................
   Remark 3: ....................................................................................................................................
   .......................................................................................................................................................
   Remark 4: ....................................................................................................................................
   .......................................................................................................................................................
   Remark 5: ....................................................................................................................................
   .......................................................................................................................................................
   Remark 6: ....................................................................................................................................
   .......................................................................................................................................................
   Remark 7: ....................................................................................................................................
   .......................................................................................................................................................
Observations

Analysis scheme
1. Vulnerabilities

1. Type vulnerability: ....................................................................................................................
   Explanation: .............................................................................................................................
   Example 1: .............................................................................................................................
   Example 2: .............................................................................................................................
   Example 3: .............................................................................................................................

2. Type vulnerability: ....................................................................................................................
   Explanation: .............................................................................................................................
   Example 1: .............................................................................................................................

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2 You explain the name of the vulnerability. What does it mean. What is the name referring to. For example 'Mental retardation = name. Explanation can be: the juvenile is mentally less evolved which can lead to a lessened understanding of some words/questions.

3 Please give an example of this vulnerability as you saw/heard it in the transcript, audio, video. Describe the situation so that the vulnerability (in the case of our example, the mental retardation, more in particular, the fact that the juvenile might not understand the question) becomes clear. Please do elaborate enough and give reflections when necessary. For example, sometimes more than one explanation can be given for the behavior of the juvenile. In this case, please refer to both explanations. Make clear what example as such is and what is your own reflection. Always put the number of the transcript/audio/video where the example comes from, in footnote. If possible, you can give more than one example.
3. Type vulnerability: .................................................................
   Explanation: ..............................................................................
   Example 1: ..............................................................................
   Example 2: ..............................................................................
   Example 3: ..............................................................................

2. Procedural safeguards and best practices

1. Type safeguard/practice: ...........................................................
   Explanation 4: ...........................................................................
   Example 15: ..............................................................................

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4 You explain the name of the procedural safeguard or best practice. If you can identify whether it is a safeguard or a best practice, you can circle the correct term. If not, you just leave it open. Here you explain what it means. What is the name referring to? For example ‘right to silence’ = name. Explanation can be: the juvenile has the right not to answer all questions.

5 Please give an example of this safeguard/practice as you saw/heard it in the transcript, audio, video. Describe the situation so that the safeguard/practice (in the case of our example, the right to silence, more in particular, the fact that the juvenile did not want to answer a question: how he mentioned this, what the response was etc.) becomes clear. Please do elaborate enough and give reflections when necessary. Make clear what the example as such is and what is your own reflection. Always put the number of the transcript/audio/video where
Example 2:

Example 3:

2. Type safeguard/practice:

Explanation:

Example 1:

Example 2:

Example 3:

---

the example comes from, in footnote. If possible and relevant, you can give more than one example.
3. General remarks

Remark 1: ................................................................................................................... 
............................................................................................................................. 
............................................................................................................................. 
............................................................................................................................. 
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Remark 2: ................................................................................................................... 
............................................................................................................................. 
............................................................................................................................. 
............................................................................................................................. 
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Remark 3: ................................................................................................................... 
............................................................................................................................. 
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6 This refers to remarks which are relevant/important/crucial for the protection of juvenile suspects during the interrogation. Things about which we should mention recommendations in order to avoid less good or bad practices.
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