AGIS Programme

Project "Situation analysis of the good practices in the field of the hearing of child victims of mistreatment in order to establish a European cooperation between the police and the legal system"-

Preliminary draft of the Italian Report

1. The backround

1.a.Data on violence against children

The official data on violence against children came from the Ministry of the Interior and statistics are referred to cases that are reported to police. They are clearly only a marginal part of the reality. Estimates of prevalence of sexual abuse in Italy remain approximate. Only data from regional areas are available. In a survey (1998) of 1,088 cases referred to specialized centres for child abuse, 33.5% had been sexually abused. In two community surveys, rates of sexual abuse ranged from 5 to 12%.

Sexual abuse has been demonstrated to be highly dependent on family context.
Italy has not a national agency collecting data on children who are referred to social services for assistance and protection for situation of risk or ranger, children who need help for situation not immediately recognized as penal crimes, we can think to neglect or psychological maltreatment.

The Italian National Childhood and Adolescence Documentation and Analysis Centre has promoted a Working Group on child abuse finalizing is to make a proposal for the unification of general criteria on the concept of child abuse and intervention in the same. It also proposes a model of notification for the detected cases which could facilitate the procedure and the maintenance of epidemiological vigilance systems. By using the same criteria and categories, these would increase our knowledge of the phenomenon of child abuse.

Child sexual abuse

At the beginning of the 2000's , the data indicate a declining trend for child sexual abuse, but since the year 2003 it seems to have inversed the direction with a new increase in the

number of crimes and victims. The denounces Anyway we cannot consider the trend in this data as an effective proxy for the phenomenon because their is a too big discontinuity in the form of the curve of data, which should be judged as the result of changes in structural factors such as the collecting of data and their organization. The increasing registered in the Nineties was much more the effect of a reform in the organization of the Police Department with the creation of special units having the duty to repress this kind of phenomenon, instead of an increment in the phenomenon itself.

Sexual exploitation in prostitution

In Italy the prostitution of minors is present following four main modalities:

- prostitution of not Italian minors victim of trafficking , the majority of them are girls exploited by single adults or criminal organizations which promised them a job in Italy or buying them from the families, generally the minors are adolescents ;
- prostitution of Italian male and female children, a problem related to the marginalization and poor economic condition of families, often they have been abused firstly inside the family then they are prostituted to other persons. Some girls and boys may accept this condition as the only way to help the family;
- prostitution of not accompanied immigrant minors , who enter in the circuit of prostitution as one of the several forms of survival they have to accept in order to avoid the failure of their desire of more earnings and, sometimes, of their project of migration;
- occasional prostitution of adolescents (mainly Italians) who find a possible response to the satisfaction of not primary needs (as travels, clothes, ecc.) in the exchange of sex for money or material advantages.

The number of minors involved in the circuit of prostitution is estimated between 1.800 and 2.500, roughly the 10% of the total of persons prostituted in Italy.

The minors migrants come mainly from East Europe, Niger and South America. The mean age of the not Italians is 16, instead for the Italian the mean age is lower, 13.

Internet and child pornography

In recent years, the Police unit specialized in the investigations for counteracting the sexual exploitation of children in the production of pornographic materials, has developed high level of tools and skills which make possible the monitoring of thousands of web sites each year and a significant increase in the number of persons reported to police. The most

recent successes were achieved also by a good cooperation with other police forces at an European and international level, a scale of the inquiry which has became clearly a necessary condition due to the globalisation of this kind of crime, at least for the exchanging of materials.

The need of analysing and monitoring the changes in the different aspects of the phenomenon of child sexual abuse and paedophilia, induced the Office of the Department of the Police under the Ministry of Interior, to build a special database in which all the data relating to the crimes denounced to police offices are registered. That is, the database contains information on all the reports to Police and it allows to know :

- the territorial distribution of the crimes;
- the nationality of the author and victim;
- the age and the sex of the victim;
- the existing relationship between the victim and the author of the crime (e.g., father, teachers, brother, ecc.).

Also the other Police forces under the Ministry of Defence, Carabinieri, collects data on the reports submitted to its territorial Offices. The main problem is that this data are not homogeneous with those collected by Police but they pick up a further fragment of the phenomenon.

Cases reported

2003: 259

2004: 259

Individuals denounced

2003: 243

2004: 217

The Department of the Juvenile Justice collects quantitative and qualitative data on the cases that are in charge to the decentralized Offices. The data concern minors victims of crimes and minors authors of crimes.

In 2004 the Department launched a pilot project to harmonise tha modalities of registration by the professionals working in the territorial Offices in order to investigate the features of the vitctims of sexual abuse and exploitation reported to the Offices (law n. 66/96). On juvenile uneasiness, that sometime it is expressed with very serious forms of deviance, is

called to develop research and collect data also the European observatory on juvenile deviancy, instuted with decree of the Minister of Justice on 31 March 2003.

1.b The institutional and legislative framework

The Italian legislation is largely influenced by the international developments happened during the last 15 years, starting the UN Convention on child's rights. Italy signed and ratified the UN Convention on the Rights of Child (CRC) in 1991, by Act no. 176/91, and its relevant Protocols, by Act no. 46/02. In doing so, Italy's commitment to the protection of child victims of violence has been renewed.

The 1997-2003 period witnessed important legislative interventions and actions in favour of children,

1. in social sector, with the Act no. 285/97 entitled "Provisions for the promotion of children's rights and opportunities", which created a special fund for financing local projects aimed to promote children's rights and participation, support parenthood, enlarge educational and recreational services for children and adolescents, reinforce the system of services for assistance, protection and recovery of children victims of child abuse and domestic violence.. In Italy, the Act No. 285 represented a sort of Copernican revolution in the social policies for children. Considerable financial resources were made available to local communities with the aim of promoting innovative services for improving the living conditions of children and adolescents.

2. In administrative sectors , because National government and Regional governments started to approve specific plan of actions aimed to improve the opportunities for children and adolescents, and to intervene specifically in order to remove obstacles and limits to the development of operative strategies in the promotion of child's welfare, and, in particular, for the reinforcement of primary and secondary prevention. Moreover, for the monitoring of administrative procedures regarding the protection of children and child's well being, some Regions established regional ombudsmen for children's rights, having special responsibilities for ensuring the right of hearing to all children living on regional territory.

3. in legislative sector, with new specific laws on crimes affecting children.

2. The child abuse in the law

2.1. Ill –treatment

The situations of ill –treatment, which give impulse to legal proceedings are:

Material and moral abandonment Act n. 184, 4 May 1983**,** art. 8 and Penal code, art. 591, *Abandonment of minor or of a person incapacitated* : it is important to specify that for «abandonment» we have to intend where not only there is a deliberate intention of the parent to abandon the child, but also the situations in which the persistence of insufficient behaviours of a parent creates a serious risk for the psychological and physical growth of the child.

Penal code, art. 570, *Violation of the obligations of familial assistance and care*, everyone**,** leaving home, or having a behaviour which is contrary to rule or moral, deserts the obligations of care and assistance related to the parental authority or tutorship,

Penal Code, art 571, *Abuse of correction punishments*, states the punishment of everyone who abuses of correction punishments or methods of discipline in damage of a person subjected to her/his authority, or to him/her granted for reasons of care, education, custody or supervision

Penal Code, art. 572, *Maltreatments in family or against children*, states the punishment of anyone who mistreat in a systematic and repetitive way a relative or a minor of 14 years or a person granted to his/her authority

2.2 Sexual crimes against children

The Act n. 66 of the 15th February 1996, ruling against *sexual violence*, represents the first legislative act in this new trend, as it overrules the old moralistic approach and considers sexual offences as “crimes against the person” and no more as “crimes against public morality”.

With Law no. 66/1996, the offences of rape and indecent assault were incorporated in the single crime of sexual assault. The law defines the perpetrators of offences under reference as all “those who use violence or threats to force a minor of any age to perform or submit to sexual acts, or those performing sexual acts on children younger than 14 (or 18 if the perpetrator is their parent, guardian or the person entrusted with their care) even

in the absence of violence, or those who perform sexual acts in the presence of children under 14 with the aim of having them witness these acts"

Ex Art. 609 *sexies* p.c. is prescribed that *ignorantia* of the age of the victim *non excusat*. Moreover, at the procedural level, Arts. 609 *septies, nonies* and *decies* p.c. set forth that "the criminal proceeding is started *ex officio*" and "the juvenile courts and the ad hoc bodies must be promptly informed"; and finally "in case of positive verdict, additional penalties includes the lost of the parental authority and the permanent interdiction by the office of tutor".

The Act n. 269 of 3rd August 1998, *Rules against the exploitation of prostitution, pornography, sex tourism to the detriment of minors, as new forms of enslavement* has a broader scope and aims at combating and punishing more effectively crimes affecting minors, such as forced prostitution, child pornography and trafficking in minors defined as a new form of slavery. Moreover the production, trade, publication (also by computer) and even the possession of paedophile-pornographic material is considered a criminal offence. In other words, the law prosecutes any action disrespectful of the dignity of the child as a person and which considers her or him as a mere object of pleasure or commerce. The law also punishes the offences of sex tourism and prosecutes, as recommended in Stockholm, any Italian national who commits such offences abroad. The punishment also includes every person involved in the promotion of activities as "sex-tours", which could lead to exploitation of children.

All the crimes described above must be referred *de ufficio* to the judicial authorities. It means that they are crimes ***for which the Judicial authority proceeds independently from the will of the victim to punish the offender.***

There is a legal obligation to report the fact for specific professionals who are identified as …public official (police, judges, doctors, etc.) , or persons ***entrusted*** of a public service (e.g. teachers, social workers, professionals working in public services, etc.). (***art. 331 of*** Code of Penal /criminal Procedure***, and art. 365 of penal code)***

This legal obligation prevails on the rules regarding the professional secret.

The Act 38 Dispositions in matter of fight against the sexual exploitation of the children and the pedopornografia also to average INTERNET

New elements modifying the laws 66/96 and 269/98

a. the extension of the protection comes to the eighteen year of age using the same definition of child introduced by CRC;

b) the widening of the notion of "paedopornography" including material representing realistic virtual images of minors.

c) the forecast of new punitive thresholds in relation to the crimes in issue;

and) the forecast of the responsibility for legal entities in the hypotheses in which crimes in consideration are committed for the advantage of the same ones, by subjects that act in base to a power of representation of the legal entities

The bill, leaving from the consideration that Italy has already equipped , with laws n. 66 of 1996 and n. 269 of 1998, of a modern system of contrast of the phenomenon, means, however, to supply the instruments for a necessary completion of the national legislation and integrate it where the same one has been revealed insufficient. In such a context a particular consideration has been reserved to the commission of the illicit ones through the use of INTERNET .

Further *ad hoc* civil and criminal measures against domestic violence and abuse were taken by Italian legislation, specifically by Act n. 154 of 4 April 2001 ("*Rules against domestic violence*"). One of the most significant measures is the possibility of removing the offender from the family instead of the abused child. It's important to underline that the Act offers the framework allowing the protection of children witnessing of violence, a category of children victims often neglected in the attention of professionals and of the law.

2.3 Coordination and protocols

The regional governments in recent years have promoted inter-institutional committee in order to facilitate the cooperation among all the institutions involved in the protection of a child victim of violence. Some regions have adopted multidisciplinary protocols for the detection and notification of cases by the social and Health services.

Protocols of procedures have been adopted by various Justice offices in order to clarify the roles and duties of each office and find agreement of procedures which may protect more efficiently the child. This kind of protocols focus mainly on the following points:

• Acknowledgement of the need for mutual submission of the "*notitia criminis*" in order to ensure the co-ordination of investigation activities with possible institution of civil proceedings for the protection of the child abused by the the Court for Minors;

• The criteria for the removal of the child from the family (in the case of abuse within the family) and the adoption of custodial measures against the offender, in order to avoid both possible pressures on the children

• The places and criteria for the hearing of the child victim of sexual abuse, especially when he/she is a very young child, establishing that it shall take place through qualified staff for psychological support and in the form of "protected examination of the victims", i.e. in a different place from the Court and with the use of a one-way mirror. This procedure, specifically established by Act n. 66/96, is incorporated today also by Act n. 269/98.

• The psychological investigations, legal medical tests as well as assessment of the abused child's competency to testify shall be agreed upon by judicial authorities with a view to limiting overlapping investigations as far as possible, which would at any rate be shocking for the children involved in order to avoid secondary victimization.

• The conditions for avoiding that the Judicial procedures may allow the victim's identification through their publication.

A further aspect which has recently been at the centre of public attention concerns the institution of a tutor or Guarantor of minors. This is evidence of the country's intention to institute a figure that is already present in many European states (e.g. the "ombudsman" for minors, with wide-ranging powers) with the main aim of protecting the rights of minors in their relations with the State and against risks of judicial and administrative abuse.

Parliament is currently studying several legislative proposal regarding the setting-up of such a specific body.

2.4 To whom does a professional or social worker report?

In case of abandonment

- in general: to the Public Prosecutor in Juvenile Court
- For emergency provision (as removal from home) : to the local child protection service or to police

For all the other crimes indicated earlier: the reports have to be presented to the Public Prosecutor Office or to the Police It will be the Public Prosecutor who will inform the Juvenile Court, which has the responsibility to adopt protection measures**.**

In some towns, the Judicial Offices have signed protocols of actions in order to avoid procedural dysfunctions, as :

- The violation of the secret de officio during the first phase of preliminary investigations, enquiries.
- The duplication of child hearing
- The duplication of assessment on the psychological condition of child

Since 1996, a Juvenile Office has been set up at each “Questura” (provincial police headquarters) with the task of monitoring and fighting different types of crimes involving minors, as well as of co-ordinating the work of other bodies and local agencies which deal with the problems of childhood. In addition, a special organisational unit called the Juvenile Section has been set up at the Central Directorate of Criminal Police. This Section has created a dynamic system for surveying this category of offences, thus enhancing the availability of data on children and adolescents victims of crimes.

Specialised sections for investigation into cases of sexual exploitation of children have been created at the “Squadra mobile” (C.I.D. unit) of each “Questura”, as well as Judicial Police Units – Juvenile Offices - at the Anticrime Divisions, charged with information gathering and analysis.

Regarding the just mentioned actor, it is important to underline that each of them has own aim that have to be met: the Juvenile court acts primarily for the protection of child, instead the Penal court , that is the Public Prosecutor Office, acts in order to identify the author of a crime. Their scopes sometimes are competitive, with the risk to leave the child without any support and real protection.

3. Child’s hearing in judicial proceedings

With specific regard to child’s hearing, in the domestic legislation currently in force, the right of the child to be heard in proceedings that affect the child is basically founded on the

incorporation of the Convention on the Rights of the Child, adopted by the United Nations in New York on November 20, 1989 and ratified by Italy with Law no. 176 of May 27, 1991, and the European Convention on the Exercise of Children's rights adopted in Strasbourg on January 25, 1996, and ratified with Law no. 77 of March 20, 2003.

Both Conventions represent a decisive passage in the evolution of the legal instruments safeguarding children, since they lay direct emphasis not only on the need to protect the best interest of the child, bur also on the affirmation of definite subjective rights of the child that may be implemented directly. According to the fourth paragraph of Article 1 of the European Convention, every State is required, when depositing its instrument of ratification, by a declaration addressed to the Secretary General of the Council of Europe, to specify at least three categories of family cases before a judicial authority to which the standards of the Convention apply. Italy, as published in the Official Gazette no. 210 of September 10, 2003, has pointed to a number of articles that refer to cases of separation, recognition and protection of property: 145 c.c. (intervention of the judge in case of disagreement of the married couple as regards the course of their family life); 244, last paragraph (action of non-recognition brought by the special guardian of a child who is over 16 years of age); 247, last paragraph (passive legitimation in the action of non-recognition in the case of death of the alleged father, mother or child), 264, second paragraph (authorization of a child who is over 16 years of age to appeal against a recognition); 274, last paragraph (admissibility of a judicial paternity action), 322 (possibility to invalidate acts performed by parents in the name and on behalf of a minor child without the required authorizations), and 323 civil code (acts forbidden to parents).

Nowadays an emergent problem, rarely discussed, is how to guarantee a correct hearing to those victims that are not Italians, some of them are the sons and daughters of migrant families, some of them are the victims of trafficking for exploitation. They have the right to fully understand what is happening around them, so it is important to ask for the presence of a linguistic and cultural mediator on the behalf of the child victim.

3.1 Civil proceedings

With reference to adoption, Law no. 149 of March 28, 2001, *Amendments to Law no. 184 of May 4, 1983, on Rules governing the adoption and the placement in foster care of children*, introduced specific provisions on the child's opportunity to be heard. The rules on adoption represent somehow the regulations that are more in keeping with the Strasbourg Convention. The assent of a fourteen year old child is an *ad substantiam* requirement for a

pre-adoption placement in foster care and for adoption; while it is a requirement to hear a child who is twelve years old, a child below that age may be heard only if the child is deemed to have sufficient understanding.

During the separation of a married couple, whether judicial or by mutual consent, there is absolutely no provision allowing children to be heard, while the latest provisions in the matter of divorce (Law no. 74/1987) set forth that minor children may be heard only in cases when such a hearing is deemed a definite requirement (eight paragraph of Article 4, and ninth paragraph of Article 6).

As regards the personal separation of a married couple, Article 155 c.c. provides for the same opportunity when deciding on the custody of minor children and on the contribution for their maintenance, as it merely lays down that "the judge must take parties' agreement into account" stating that "...the provisions may differ from the requests of the parties or their agreement, and are issued after the examination of evidence as set forth by the parties or required by the judge acting *ex officio"*. It should be noted that Article 316 of the Civil Code lays down that children over fourteen years of age must be heard in the event of a serious conflict between their parents on matters affecting them.

In practice, in the proceeding in front of the Juvenile Court or Civil Court, minors are usually heard in an indirect manner through the parents' representation or through a technical consultant appointed by the judge, especially in the case of judicial separations, to report on the conditions of conflict affecting the parental couple and to provide evidence as to the personality of the parents and the state of the child.

In the proceedings depriving parents of their parental power or limiting such power – these being measures that are known to apply in order to protect a child victim of abuses – for purposes of the implementation of the principles laid down in the European Convention it will be necessary for the Judicial Authority to conform to the principle of the compulsoriness of hearing a child, at least when the child is considered as having sufficient understanding, in order to allow the person who will be affected by the aforementioned proceedings to have a say in the matter.

With respect to judicial proceedings, the Italian Civil Code sets forth that the child must be allowed the opportunity to be heard in a few specific instances. If the child is ten years old, it must be heard by the tutelary judge before the latter decides the place where the child must be brought up and the child's educational or vocational training (Art. 371.1.1 of the Civil Code); at the age of sixteen, a child must be heard by the tutelary judge before the

latter appoints a guardian (third paragraph of Article 348 of the Civil Code) and, should it be possible, must take part in the formation of the inventory (first paragraph of Article 363 of the Civil Code). On the other hand, it is only when a child comes of age or is emancipated that, upon the finalization of the period of guardianship, he/she will be requested to review the final accounts and to communicate his/her observations (first paragraph of Article 386 of the Civil Code).

It is important to cite what happens in the civil proceedings because all the cases of ill – treatment and neglect are notify to the Juvenile Courts which, generally, demand the hearing of the child to the social workers and psychologist working in the local services.

However, there are not provisions laying down how a child should be heard.

3.2. Child hearing in the penal proceedings?

In the Italian legal system the chid victim is considered primarily as a witness.

1 In the first phase of the proceeding, when the inquiries are developed under condition of secrecy concerning the documentation of pre – trial investigation, the child may be listened in three different moments.

1.A. *By police, with or without the assistance of a psychologist, which acts independently or under the mandate of Public Prosecutor.*

In the Code of Penal procedure, under the section in which the legislator has established the norms that regulate the preliminary investigations, the art. 348 (paragraph 4) states that "the judicial police, when, of own initiative or under mandate of the Public Prosecutor performs actions or operations that ask for specific technical competences, the Police can use experts, who cannot refuse". This article introduces , since the first phases of the preliminary investigations, professional figures that operate as auxiliary of judicial police contributing to the carrying out of the investigations. In this case, the judicial police acts to complete a charge (complaint) or to collect additional information (Summary Witness Information) so the child hearing remains exclusively an action of judicial police, whose record, inclusive of the possible annotations of the psychologist, it is under the exclusive responsibility of the agent who is present at the hearing and records the facts described by the child. When the nomination of the psychologist as assistant of the police is

recorded, the police has to specify if it is proceeding on its own initiative (for receipting reports, investigation to assure new sources of criminal evidence) or on mandate of the Public Prosecutor. The presence of an assistant of police to support the activities of investigation or for the reception of a complaint, is not an obligatory routine neither it is uniformly adopted on the whole national territory.

Unfortunately, the collaboration among the two professionals, both interested in the wellbeing and protection of child, is not a simple matter since they use different languages, professional methodologies and they have different objectives: the police to pick up a good testimony to the purpose of well instructing a proceeding aimed to discover the author of a crime, instead the psychologist is moved by the scope of assuring effective support and care to the child. Fortunately, in the last years the collaboration between the two professionals has increased and their collaboration has brought to the growth of a more common sensibility. Some agreements between local Offices of the Police and specialized services have been signed up in order to define agreed procedures, but only few define what is needed in this very first phase of the judicial proceeding.

The intervention by police can take place at the police station or in other places where the child lives (for example at school, at child's home) or in other place as a child protection centre. There are not official guidelines on how the child should be heard.

A serious problem is that it is not compulsory an audiovideo recording of child's declaration in this phase. But a complaint taken properly and in a way more detailed as possible can avoid that the child is asked to repeat several times the same declaration and it allows the judicial police to have a good documentation on the facts reported. And it will be useful both for the activities of the Public Prosecutor,and for the adoption of possible, urgent measures of protection for the child if he/she . An example of good practice is the collaboration between the Police Office of Bari and the specialized centre against violence "Albachiara" of Bari. The last offers psychologists that intervene close to the police when the child is brought to the Police Office; and when the child is brought to the Centre Albachiara the psychologists ask the intervention of the police officers. Then the child meets persons that are ready to listen to him/her in a calm situation in which, without expressing judgments and without neither to emphasize neither to minimize what the child is saying , he/she can be supported emotionally.

The receipt of a testimony which is well detailed is the first necessary step for a correct investigation and, at the same time, the beginning of the pathway that the child will have to follow for overcoming the trauma.

1. B. By Public Prosecutor , with or without the assistance of a psychologist.
The Public Prosecutor has the possibility to listen to the child in order to complete the information reported in the charge. The assumption of child's declaration is functional to the whole penal proceeding. It can be the most important part of the information which bring to the indictment of the suspected author f the crime, and sometimes it can force the abuser to confess the crime.

1.C. By the technical consultant appointed by the Public Prosecutor in order to assess the capability of child to testify and on the compatibility between the facts reported and the psychological conditions of the child. In this case the psychologist will be questioned during the trial as witness.

3.3. The child's hearing as part of the trial in the "interlocutory witness exam" (probative institute)

The usefulness of the statements taken by the investigative police and state prosecutor as evidence for proceedings is limited because generally speaking and with a few exceptions their only worth is in assessing the credibility of the witness and not as proof of what is stated in them. This means that the timing of assembling the child's accusation into proof by means of the interlocutory witness examination is crucial.

Act no. 66 of 15 February 1996 ("Provisions against sexual abuse") introduces a new policy as a basis for criminal proceeding. Crimes against children shall be prosecuted ex officio and the child victim shall be heard in a protected environment with a psychological support. In doing so, criminal proceedings become more child sensitive, but a child may be subjected to several interrogations during all the penal proceedings, starting with the first moment in which child tells for the first time to a teacher, a social operator or to police, ending to the last technical consultant who may be named by the judge for the preliminary investigations.

Paragraph 1 bis of Article 392 of the Code of Criminal Procedure grants either the State's Attorney, Public Prosecutor, or the person indicted of sexual abuse the possibility of asking the anticipation of the child's hearing during preliminary investigations for the so-called "interlocutory witness exam", if the minor is under sixteen of age.

The typical hypothesis for asking a probative accident concerns the acquisition of a criminal evidence that cannot be deferred because: to) there is a proved motive to believe that the hearing of a witness cannot be postponed due his/her infirmity or other impediment; b) it is supposed that the witness can be exposed to violence, threat or promise of money or other utility, so that he/she doesn't give testimony or give false declarations; c) in the hypothesis in which the evidence to be acquired concerns a person, a place or a thing whose situation is modifiable ; d) when there are particular reasons for urgency which don't allow to postpone the process.

The purpose of the provision stated in art. 392 is to prevent the child victim from giving evidence before that the time could modify his/her memory, since the trial can occur a long time past the abuse, thus allowing him/her to receive a psychological support.

This important provision, however it is not exempted by criticisms since it doesn't insert among the subjects that can ask for the probative accident the child him/herself , the part that, instead, is the subject needing mostly all the required protection.

The interlocutory witness exam is conducted by the Judge for the Preliminary investigations.

Art 398 (5) (a) of the code of criminal procedure states that, "*when the witnesses involved in giving evidence include children below 16 years of age the judge shall set the place, time and method for proceeding with the interlocutory witness examination when the needs of the child make this necessary and appropriate. In such a case, the hearing may be conducted in a place other than the courtroom and, in particular, the judge may avail himself of specialist assistance bodies or, in their absence, at the dwelling place of the child"*. This norm also provides that whenever possible the evidence of the child must be recorded with means of sound or audiovisual reproduction and in the absence of such means in order to be used as evidence during the trial and to avoid further hearings. **Law 269/98 extends the provision, which states that examination in hearings of a witness who has already made statements during the interlocutory witness examination is admitted only if the judge deems it absolutely necessary, to the testimony given by a child in procedures for crimes of sexual violence and paedophilia**, the aim being to

prevent the child being re-examined **in hearings** so as not to subject it to further traumas. The amendments made by the new law extend the **same special methods of protection provided for the interlocutory witness examination** to the hearings with an express normative reference (Art 498 (4) (a) relates to Art 398 (5) (a) of the code of criminal procedure), should one party request it or the judge deem it necessary.

The Law states the right of child to receive psychological and affective assistance child during the whole judicial proceedings, so the judge can decide to meet the child with the assistance of an expert, a psychologist. But with teenagers, even below sixteen of age, the judge may decide to take the child's testimony without the assistance of an expert. There are not official guidelines on how the child should be heard.

Legislation provides a particular system of protection where the child is heard as a witness in criminal proceedings. The norm of reference is Art. 498 (4) of the code of criminal procedure which as a general rule provides that the examination of a child in the hearings must be conducted by the presiding judge on questions and objections raised by the parties with the possible assistance of one of the child's family, or an expert in child psychology.

It is essential to underline that these more favorable previsions to the interest of the child can be chosen by the judge but they are not compulsory. There is a wide discretion because the law foresees that the judge can evaluate autnomously on the necessity and the opportunity in relation to the state of the child

During the interlocutory witness exam , the Child is in one room with the Judge for the preliminary investigations and a psychologist acting as assistant of the judge, while in another room there are, or may be,

- the lawyer of suspected offender,
- the offender,
- the technical consultant of offender, a psychologist
- the lawyer representing the interest of child , if the legal representative of the minor (parents or a guardian) has decide to move action for damage, acting as "civil part" in the trial,
- the technical consultant for the child's lawyer, a psychologist
- the Public prosecutor

Frequently, the psychologist, acting as judge assistant, meets the child only a few minutes before the protected audition.

His/her role is to mediate between the judge and child in order to facilitate the understanding of the questions, assuring a psychological support to child. Some jurists underline as of fact the role of the psychologist in some cases goes well over the simple role of "translator", because he/she ends to directly conduct the examination. In the past, the psychologist who had in care the child was named for this role, but this practice was heavily criticised because it was considered to alter the neutrality needed for this function.

It must be remembered from the outset that the Italian accusatory system requires evidence to be built up in the hearings. This means that evidence gathered by the investigative police or the state prosecutor through examination must be represented in the hearings.

Since the right of the defence to cross examination may not be limited, the defence of accused can intervene with questions to the child, but they are posed with the mediation of both the judge and the psychologist.

The factors that engrave the quality of the interlocutory witness exam in protected audition are:

- the age and the stage of cognitive development of the child
- the emotional and psychological conditions of the child
- the adequacy of the protection assured to the child before the audition
- the adequacy of the environments and means of audiovideo recording used
- the professionalism and the training of the judge and the assistant of the judge
- the methodology used for the interview
- the emotional climate which characterizes the context in which the audition takes place
- the time spent by the presumed facts of abuse.

If a minor refuse to give witness or modifies previous statements or declares facts that are not true, there not any legal consequences against him/her. For the minors under the age of fourteen, the law declares that they are not punishable for any type of crimes (obviously in the most serious cases there is the possibility that the minor is requested to takes part in specific educative programmes decided by social services) . Art. 497 (2) of the code of

criminal procedure exonerates the child under 14 from declaring it will tell the truth which, today replaces the swearing in procedure for giving evidence. The reason is that the very young child is deemed incapable of discerning the negative value of insincere testimony and derives from principles of imputability which absolve the child from responsibility.

All the above measures are applied in the case of sexual abuse and exploitation, only by few years those provisions have been using also in the cases of physical ill –treatment or other forms of child abuse, when a penal proceeding is opened and there is the need to interview directly the child.

4. The evaluation of the reliability of child's statements after the interlocutory witness exam

Fourth, after the child's hearing, the judge for the preliminary investigations has the possibility to name another psychologist, as "expert of the judge" to verify the reliability of child's statements. In this case, since the assessment is part of the trial, the person accused has the chance to name a consultant who will participate to the assessment. Moreover, since the legal representative of the minor (parents or a guardian) can decide to move action for damage, acting as "civil part" in the trial, the legal representative of minor can name the own consultant who will be present to the new assessment, too. This fourth assessment may be carried out with a direct assessment on child (and eventually his/her parents or other informed persons) or through the examination of documents produced during the proceeding, that is: the tape of child's hearing, the report written by the consultant of Public prosecutor and other related documents.

5. Special protection measures

Protection is made more complete by the provisions in the code which protect the **right of privacy**. Thus Art. 472 (4) of the code of criminal procedure provides that the judge can examine the child "behind closed doors" with the ensuing prohibition to film or broadcast the proceedings audio-visually as well as to publish the personal information of the witness until he or she comes of age.

The law further supplemented this protection by adding clause (3) (a) to Art. 472 which states that where the alleged crimes are sexual violence and underage prostitution, proceedings are always held behind closed doors when the injured party is underage.

Furthermore, law 66/96 introduced a specific norm for punishing those who divulge the personal information or images of the injured party in acts of sexual violence without his or her consent, and laws 269/98 and 38/06 contemplate new types of crime against safeguarding the personal data and image of the child (art. 734 (a) penal code)[1] in cases of underage prostitution, pornography and sex tourism detrimental to children, viewing the divulgation of the personal data and the image of the injured party in such crimes without his or her consent, not only through the press but also through other means of mass communication as a misdemeanour.
Art. 114 of the new code of criminal procedure protects the personal information and image of underage children who are witnesses, or parties injured or damaged by the crime until they are over age, prohibiting publication[2].

In the Italian legislation, Article 114 of the Code of Criminal Procedure prohibits the publication of images or personal data of a minor witness, safeguarding in so doing his or her right to privacy; Article 120 of the Code of Criminal Procedure lays down that minors under fourteen years of age may not bear witness during criminal proceedings.

Regarding sexual crimes against children, The Law expressly provides that when an action is taken for offences committed against children, the public prosecutor at the ordinary Criminal Court must notify the Juvenile Court, which is the body charged to take proceedings aimed at supporting the child victim. Moreover the law (the Art. n° 609-decies of p.c.) provides for mandatory assistance of children under age by the Youth Welfare Services of the Juvenile Justice Department, while para. 4 empowers Judicial Authorities to avail themselves of the Youth Welfare Services' support in any stage of proceedings. Youth Welfare Services act in concert with ordinary and juvenile Offices of the State's Attorney when abuse is reported.
This norm has not an operational nature and has not found real application. To give operational force to such provision of the law, it could be necessary to integrate it with sanctions in case of violation and to discipline the role and tasks of the local services in the

[1] Art. 734 (a) states: "Whoever divulges the personal information or image of injured parties in crimes provided for by Arts 600 (a), (b), (c), (d) and 609 (a), (b), (c), (d) and (g) whether or not by mass media without his or her consent will be punished by a jail sentence of between three and six months. **Law 38/06 supplemented this type with the crime of virtual pornography, with Art 600 (c) (1) amending the above-mentioned article.**

[2] Art. 114 (6) of the code of criminal procedure: It is forbidden to publish the personal information and images of underage children who are witnesses, injured or damaged parties of a crime until they are over age. The juvenile court may consent to said publication only when it is in the interest of the underage child, or the child who is over sixteen.

relationship with the Penal Court. The services demand, in fact, to be involved as active actors during the phase of the investigations with the purpose of representing the needs of child and for conforming their interventions in favour of the minor according to the judicial necessities with the aim of assure both the support and protection of child and not to interfere with the investigations. Besides, the territorial services consider as surely essential a continuous exchange of information with the judicial authority and the possibilities to interact directly with the Public Prosecutor and the Judge for the Preliminary investigations when it is necessary to inform them on the state of the child and on the possible presence serious risks (e.g. threats against him/her; the inadequacy of a mother who is collusive with the abuser, and so on).

5.4. Some other detail on the role of the psychologist

As we illustrated above, in this context the psychologist acts as

- technical consultant for the Public prosecutor or police
- assistant of the judge for preliminary investigations during the interlocutory witness exam
- as expert of the judge (perito) for further examination of child's declaration

according to the provisions of the Code of Criminal procedure (artt. 221 and followings).

The Code states that in the phase of preliminary investigations the Public Prosecutor may name and use technical consultants (art. 359 ccp). This professionals support the investigations activities on the part of Public Prosecutor.

The activity of the expert of judge , or perito, is admitted according to the articles 220/1 of ccp. This persons must give to the Judge information and technical advices and explanations, which are needed for the final decisions.

The "perito" must acts in a position of impartiality regards to all the parties of the trial, and it become a public official whose report assumes the nature of a document with, form a legal point of view, a public relevance , which integrate the criminal evidence. When the judge named the perito, formulates the questions that he considered most important for the trial. The perito has 90 days of time for answering, and the results of his/her work can be explained orally or in a written form. The perito may be supported by one or more assistants , e.g. for the administration of psychological tests , but they cannot have tasks that imply evaluation o the case.

Moreover, the psychologist may participate to the proceeding as technical consultant for the accused or for the victim . In this case, the consultant has duties of collaboration in the regards of the part which names him/her because he/she has the role of technical defence.

6. Child hearing as child's right to intervene in the penal proceeding

In penal proceeding, the declination of the twelfth right of UN convention, means the right of a child to cover the role of part with the public prosecutor.

In Italy, as I have just explained, this is possible if the legal representative of child, decides to move action for damage, acting as "civil part" in the trial. It gives the right of participating actively in the trial: naming witnesses, formulating questions to the defence's witnesses , and of having access to all the documents produced during the penal proceeding.

As we said, in the Italian legal system the chid is considered primarily as a witness, so it is not unusual that parents, or the one having the legal representation of the minor, decide not to move the constitution as civil part, since the presence of the public prosecutor is considered enough to defend and represent child's interests (obviously there are also economic reason due to the cost the lawyer, that is the reason why some legislative proposals want to establish a public fund to finance the legal representation of the child).

In this respect, another critical point is the identification of a conflict of interests between the child and his/her parents, in this case the Public prosecutor, as autonomous decision or under the suggestion of child protection service, can nominate the public child protection service itself or a lawyer as special custodian for the legal presentation of child's interests. In this case, this figure appoint a lawyer for acting the child's interests during the trial constitution as civil part with the mechanism of moving action for damage, sometimes is the special custodian himself, or herself that can cover this role , as well.

7. The interview with the minor

For the interview of the child during the investigations and in the penal proceedings, there are not official guidelines which could drive the baìehaviour of all the professionls involved. Only some associations of professionals have compiled documents which give useful criteria and methods:

- Declaration of consent in theme of sexual abuse to the infancy (2001) of the Italian Network of Centres and Services Against the Abuse and the Maltreatment against children (CISMAI)
- The Declaration of Noto (rev. 2002)
- The guidelines and operational procedures of the Italian Society of Paedopsychiatrics
- Code of conduct of the Forensic Psychologist Association

All the documents assert very clearly the need that the professionals involved in this sector must be trained and equipped with a suitable specialization because the basic professional knowledge is not enough to face the interview and the evaluation of a child victim of child abuse, especially in the case of sexual abuse. The necessity of a special training is recommended in the "Document on the training in the area of abuse and maltreatment against children" emanated by the Department for the social policies in 2001. Such document demands for a specific training of the psychologist and the operators of the judicial area (police, lawyers and judges) .... in particularly on the audition of the child, the factors that obstacle the declarations of the child , the criteria to assess the credibility , the techniques of interview, the choice of the expert."
Generally the interview is articulated on four steps
1 – the creation of a relationship with the child,
2 – free tell of the facts;
3 – questions on the facts;
4 – closing of the interview with the debrifieng of child.

In the last two decades the increase in reports of child abuse has led professionals and researchers working in the area of children's testimony to focus on the vulnerability of child witnesses in interview situations. For example, a large body of research has set out to identify how easily children may succumb to misleading suggestions provided by an authority figure . This type of research has provided some clues as to why and how misleading information effects may occur. With an increased concern about procedures for collecting evidence from child witnesses, there is a need for positive research directed at identifying situations under which testimony may be improved.

From all that we know about jurors', judges' and attorneys' perceptions of children's veracity and testimonial competence, however, there is cause for concern. Young child witnesses appear to be disproportionately less likely to be believed than older witnesses.
One implication of this conclusion is that the trial testimonies of alleged preschool witnesses resulted in fewer criminal convictions than for cases involving older child witnesses.
So, as it happens in many countries, also in Italy there is a special emphasis on the questions posed to the child, and the person taking the interview must pay a very strong attention in avoiding any suggestible and leading questions. The questions must be very clear, brief and simple.
As it regards the intervention of other experts of the Health sector as experts of the Public Prosecutor or of the Judge for the preliminary investigations, only in the sector of the gynaecology for infancy and adolescence we find guidelines addressing the professionals toward a correct fulfilment of their role. We refer to the document Medical Semiotic Of the Sexual abuse in pre -pubertal Children . Criteria and Recommendations for the diagnosis, it is the result of a work done by a group of Italian professionals belonging to the gynaecological and paediatric areas. The document, in absence of a specific university education, it is addressed to all the physicians that work with children as attempt to offer a tool for a correct approach to the child when there is a suspect of sexual abuse.

In the Italian practice, the police and the judicial authorities in the examination and evaluation of the minor rely on the following parameter:
The approach adopted in the practice is founded on the concept of the Reliability of the child - witness. The reliability is based on two fundamental criteria : on the concepts of "competence", or rather on the cognitive, emotional and social abilities of the minor and the concept of "credibility", that is the truthfulness or falsehood of the declarations.
COMPETENCE: To appraise the competence means to analyze if the child is able to differentiate his/her thoughts and feelings from the real data and if it is able to gather the understand his/her position of witness. The article 196 c.p.ps. states that "if, with the purpose to assess the declarations of the witness, it is necessary to verify its physical or mental adequacy to make testimony, the judge, also de officio, can order the opportune checks with the means allowed by the law".

Credibility: regarding the examination of the truthfulness or falsehood of the declarations of the child, it is known that the typical requisite of the reliability of a witness are the clarity, quickness, safety and coherence of the statements, but sometimes all these parameters are not fulfilled. The actual orientation , from the judicial point of view, is a story told by a child is believable if it is characterized by a spontaneous and coherent exposition of the facts, meaning with coherence the correspondence among the declarations the child made at different times.

A sentence of the Supreme Court (Cass. Pen. Sez. III October 3 rd 1997, n. 8962 Ruggeris), has clarified the criteria according to which the reliability of a child must be defined in juridical terms, underlining the difficulty to converge on the formal requisites from which it is possible to infer the child's ability to testify and his/her real competences: "The evaluation of the content of the declaration of a child, offended part of a sexual crime, in consideration of the complex implications of the theme, it has to contain an examination of the psychological attitude of the child - witness to expose the stories in useful and exact way; and of his/her psychological position in comparison to the inside and external situations. It is important the use of the psychological investigation pertaining to two fundamental aspects: the child's attitude to testify, under an intellectual and affective profile and his/her credibility. The first one consists in the check of his/her ability to understand the information, to connect it, to remember r and to express it in a complex vision, the intellectual profile must be considered in relationship to the child's age, to the emotional conditions that regulate his/her relationships with the external world, to the quality and nature of the family relationships. The second, to hold distinguished by the reliability of the test that relies under the exclusive assignments of the judge, is directed to examine the way in which the young victim has lived and elaborated again the story in way to select sincerity, misrepresentation of the facts and lie".
Interview techniques such as Cognitive Interview, Step Wise Interview and Statement Validity Analysis are normally used during the hearings.

8.La validation

The validation is a psychological diagnosis aimed to assess the credibility of the report of sexual abuse. The collection of information concerns the child's personality and the emotional and intellectual development with the scope of evaluating if he/she is able or

less to report the facts and experiences lived. The validation considers and analyzes the characteristics of the revelation, comparing it with the indicators of abuse that it is possible to observe in the behaviour and in the emotional and psychological state of child. Particularly, through the analysis of the used language, of its completeness, of the spontaneity and the presence of incongruous details with the compatible sexual knowledge with the age, this procedure allows to notice if the behaviour, the emotions and the feelings are congruent with the reported traumatic event reported . The objective of the validation is not the evaluation of the truthfulness of the revelations made by the child, but the evaluation of the compatibility among the psychological and intellectual development and the degree of reliability of the child.

Conclusions

Some other points of weakness and points of strength in the Italian system:

1. the trials related to child abuse have increased in the past years and this has favourited a wider debated and evaluation on the practice of child hearing;
2. there is collaboration between centres specialised in the maltreatment and abuse of children and the Police Offices and Courts, but is must be consolidated and supported with a clearer and more explicit previsions in the law;
3. there is still a need for a continuous training of all the professionals involved in this sector;
4. it is not yet garanteed egal and moral assistance to victims during the entire proceeding;
5. Support actions are needed for a correct heairng of foreign child with the support of linguistic and cultural mediator, and for their rehabilitation

The demands not to sacrifice the protection of the psychological and physical health of children in favour of the undeniable guarantee for the accused, have brought some judges to reflect on practicable actions towards solutions that don't violate the law. On the legal level, a greater guarantee of the victim finds answer in the: 1) to exclude the child minor from the cross-examination but not from the contradictory: the judge becomes the guarantor of the regularity in the acquisition of the witness declaration 2) to anticipate the witness examination during the investigations also in the cases in which the probative accident is not admitted: the reduction of the rights of the defence (because the judge

listen a witness without the presence of reasons for particular urgency or necessity) is compensated by the deposit of all the documents on the actions concluded (art. 393 paragraphs 2 second c.p.p.) .

According to a recent sentence of the Supreme court (Cass. Sez. III, 25.9.2000, Galliera in Cass.Pen. 2002, 614) it is possible to proceed in the reading of the declarations it made by child during the investigations instead of meeting the child, since if he/she is affected by a serious psychological stress in consequence of the suffered violence, the audition can worsen the damages provoked .

In the child hearing t is possible to commit errors that frustrate him/her or make him/her more vulnerable:

- the judicial operator or the police can practise the hearing as a mere formality, underevaluating this moment, that instead it has also a big recovering potential from the point of view of the trauma, disappointing the need of the child to succeed in communicating the experience and to express his/her own opinion;

- the meeting with his/her child or the teen-ager can be transformed in an occasion of confrontation of the first revelation or in a monologue of the judicial operator that can damage, also seriously, the victim that can go out of the audition with an increased sense of impotence;

- the hurry doesn't help the child hearing, he/she needs time to enter in relationship with the interlocutor and to make to share with him/her his/her world of experiences on whch he/she can talk about.