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# Restorative Justice in Cases involving Child Victims

## in Romania



**i-RESTORE**  
Better Protecting Child Victims  
Rights through Restorative Justice

December 2020

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**i-RESTORE is co-funded by the European Union's Justice Programme (2014-2020).**

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# Acknowledgements

*I would like to take this moment to express my deepest appreciation to the entire Terre des hommes team who has been extremely helpful in the past few months in providing all the support needed for conducting this study. A special recognition is addressed to the one and only Rodica Novac who has been an admirable co-researcher. I would equally like to thank Emanuela Biffi from the European Forum for Restorative Justice and Annemieke Wolthuis and Malini Laxminarayan from the Restorative Justice Netherlands for their helpful reviews and comments to the present report. Special thanks to the army of volunteers, Ruxandra Dorobantu, Alexandra-Maria Dan, Andrada Elena Danaila and Alina Diaconu who have been tirelessly and impeccably transcribing the many hours of interviews. Many thanks also to Anamaria Oprea (nee Szabo), Ionut Stoica and Ovidiu Majina for facilitating some of the interviews included in this study. Many thanks as well to Amanda Taylor for her outstanding edition and proofreading of this report. And last but certainly not least, to every single one of the respondents of this study who brought their knowledge and energy into building this report that we hope will open doors to best practices with child victims.*

**Cecilia Popa**

# Acronyms

## **ANA**

Agentia Nationala Antidrog  
(Anti-drug National Agency)

## **ANP**

Administratia Nationala a Penitenciarelor  
(National Administration of Penitentiaries)

## **ANPDCA**

Autoritatea Nationala pentru Protectia Drepturilor Copilului si Adoptie  
(National Authority for Protecting Child's Rights and for Adoption)

## **CAB**

Child Advisory Board

## **CCR**

Curtea Constitutionala a Romaniei  
(Romanian Constitutional Court)

## **CJRAE**

Centrul Judetean de Resurse si Asistenta Educationala  
(County Centre of Educational Resources and Assistance)

## **CMBRAE**

Centrul Municipiului Bucuresti de Resurse si Asistenta Educationala  
(Bucharest Centre of Educational Resources and Assistance)

## **COR**

Classification of Occupations in Romania

## **CP**

Criminal Code

## **CPC**

Criminal Procedural Code

## **CRJ**

Centrul de Resurse Juridice  
(Centre of Legal Resources)

## **CSM**

Consiliul Superior al Magistraturii  
(Superior Council of Magistracy)

## **DAS**

Directia de Asistenta Sociala  
(Directorate of Social Work)

## **DGASPC**

Directia Generala de Asistenta Sociala si Protectia Copilului  
(General Directorate of Social Work and Child Protection)

## **DIICOT**

Directia de Investigare a Infractiunilor de Criminalitate Organizata si Terorism  
(Directorate for Investigating Organised Crime and Terrorism)

## **FONPC**

Federatia Organizatiilor Neguvernamentale pentru Copil  
(The Federation of the Non-governmental Organisations for the Child)

## **ICCJ**

Inalta Curte de Casatie si Justitie  
(Supreme Court of Cassation and Justice)

## **INM**

Institutul National al Magistraturii  
(National Institute of Magistracy)

## **INPPA**

Institutul National Pentru Pregatirea Avocatilor  
(National Institute for the Training of Lawyers)

## **INS**

Institutul National de Statistica  
(National Institute of Statistics)

## **NICHD**

National Institute of Child Health and Human Development

## **NGO**

Non-Governmental Organisation

## **RJ**

Restorative Justice

## **SPAS**

Serviciul Public de Asistenta Sociala  
(Social Work Public Service)

## **Tdh**

Terre des hommes

# Executive summary

This study is part of the project “i-RESTORE - Protecting Child Victims through Restorative Justice” and is aimed at identifying gaps and synergies concerning the application of restorative justice (RJ) in cases involving child victims. Amongst other goals, the project identified RJ practices in Romania, with a focus on the particularity of this process and the existence of best practices when working with children.

The first part of this report addresses the history of RJ in Romania, from the introduction in the Classification of Occupations in Romania (COR) of different terminologies of the mediator to the RJ Experimental Centres at the beginning of 2000 and to the current state of mediation as portrayed in the law and in practice.

The second part of this report comprises of an empirical study, which includes 40 professionals and 20 children in 25 consultation meetings. The findings of these consultations and interviews conclude around five main topics: restorative work with child victims, the challenges showcased when working with children, best practices when working with children, the existence and the frequency of training in RJ and juvenile justice and children’s opinions about RJ.

When referring to child victims, it is essential to remember that child offenders have often been victimised themselves and so they have been included in the terminology of child victims for this study. In reference to the statistics obtained and displayed below, there is a rough estimation that less than 15% of the minors who committed crimes and are criminally responsible end up in either the prison system or probation. The other part, thus, falls within the situation where a criminal investigation is not undertaken. Unfortunately, for most of these children, there is no further assistance. However, as detailed in the research findings, all professionals agree that there is still a long journey to embark upon in order to establish an ideal justice system for children.

According to the COR, five working occupations use the title of mediator, some of these have existed since the 1990s. The first is the school mediator, created for the Roma community, and who works to facilitate

the relationship between the school and the family of the child. The second is the social mediator, who was created to help people in need in different small communities to deal with public authorities or businesses. The third is the sanitary mediator who was created to help people in small communities with a lack of hygiene resources. The fourth is the mediator counsellor who works in schools as a school counsellor. The fifth is the mediator created following the **Mediation Law** in 2006.

In 2006, Romania adopted the **Mediation Law (192/2006)**, the first of its kind, that regarded the profession of mediation in both civil and criminal cases. On April 5, 2020, according to the Mediation Council, there were 10,646 authorised mediators across Romania and 23 authorised training providers in nine cities of Romania.

Some believe that these mediation professions should be merged into one, as too many definitions create confusion. However, others consider that the separation between different types of mediators is useful because different formats address various community needs.

Romania experienced the first initiatives of RJ, similar to the practice today in other countries, in 2002 with the first Restorative Justice Experimental Centres, one in Bucharest and the other one in Craiova. Through these centres, youth perpetrators were able to access mediation in cases of crime for which withdrawal of prior complaint or reconciliation between parties was possible. Despite many difficulties that any new initiative has, these centres had positive results, with 83% of the victim-offender mediation meetings reaching an agreement in Craiova and 60% of the meetings having a similar outcome in Bucharest. As estimated at the time, the costs involved showed that mediation in the RJ Experimental Centres amounted to 77% less than the expenses that the judicial system would entail, including the costs of all professionals involved to work with a case. The RJ Experimental Centres ceased operations in 2004 on account of the difficulties experienced by initiators (independent organisations) to secure further funding.

In Romanian culture, the concept of mediation is used more often than restorative justice. Elements of RJ in Romania are seen in the practice of mediation implemented in civil and criminal cases, either during a judicial process or before a judicial process could take place.

Mediation is seen as a facilitated dialogue or assisted negotiation to an issue that happened or is under development. Mediation cannot happen in the absence of a conflict or crime. It can sometimes be seen as being very transactional, meaning parties tend to primarily discuss financial aspects or any other similar gains or it can also address feelings and emotions.

The restorative practice, however, may be used not only to address past and current conflicts, but also to prevent issues and conflicts in the future. It can also be applied at any time. It addresses feelings and emotions, which is central to RJ. Restorative practices include mediation, circles, family decision-making groups or any other initiatives that fall under the principles of restorative approaches. Such principles address *restoration*, a primary aim of restorative justice to address and repair harm. The principles also address *voluntarism*, as participation in restorative practices is voluntary and based on an informed choice and *neutrality*, as such processes are fair and unbiased towards participants. Finally, they also address *safety* by creating a safe space for the expression of feelings and views about the harm that has been caused, *accessibility* to all those affected by conflict without any form of discrimination and respect for the dignity of all participants to this process.

The mediator is the standard job title used and it refers to two kinds of mediators: those practitioners who work mainly at the judicial level, dealing with civil and/or criminal cases, and those practitioners who work in the community, mostly in schools. Similarly, as mentioned before, different restorative practices apply to different contexts by different professionals. There are restorative circles implemented in communities and schools or victim-offender mediation developed in either schools or in the criminal justice system, in pre-conviction or pre-sentence. There are also family decision-making group approaches in case management. These practices have their particularity based on who is using them and in which context.

While there have been quite some developments for adults, practices targeting children are lacking. Many experts raise the issue that the **Mediation Law** refers to minors in only one Article, inferring that this practice was not envisioned to include child victims. There are, indeed, other laws in place to address child's rights, such as **the Child Protection Law (272/2004)**, **Anti-Bullying Law (221/2019)**, **the Law on Fighting Human Trafficking (678/2001)**, or **the Law on Fighting Drug-Trafficking and Drug-Consumption (143/2000)**, among others, that make reference to children.

In general, the interventions used for children are mainly focused on children's access to justice and not necessarily on creating new alternatives that could better address their needs. As found in this study, although significant efforts have been undertaken at the individual level to serve children best, these admirable endeavours are not sustainable in the absence of structural institutional interventions. Equally, there is no specialisation on children of different professions in the criminal justice system, as seen in other countries (e.g. Minors Prosecutor, Minors Police Officer, Minors Probation Officer etc.).

There were other issues raised by the experts, such as the need to re-align the Romanian mediation principles with the international standards of restorative practices, the importance of developing an operative team when working with child victims or developing training on restorative juvenile justice that can be integrated into different institutions or institutes' curricula.

Due to some cases which have failed to be addressed in a correct manner in mediation, professionals and the general public tend, on occasion, to be reluctant towards the practice of mediation. To address this, it is crucial to explain the limitations of such practices and highlight the situations in which this service may not be offered and delivered.

Children, in general, are open to new ideas and within this study it was no exception. When speaking with the children, they were very much intrigued by the mediation practice. They had not experienced it before but would be willing to try it. What is clear is that each child that faces difficulties needs to receive a tailored approach by the professionals and restorative practices should not be omitted as a possible best fit.





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## 1. History

Before talking about the restorative justice practice in Romania, it is important to have an overview of what restorative justice (RJ) actually is. According to the United Nations Economic and Social Council (2012), a "restorative process means any process in which the victim and the offender, and [...] any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime."

RJ has evolved over time, but most importantly it has progressed differently accordingly to local contexts and needs and for these reasons, practices may vary across different jurisdictions.<sup>[1]</sup>

Currently, there are different practices of RJ. The most common practice is victim-offender mediation, where the victim and the offender meet to discuss in the presence of a trained mediator. Another form is restorative conferencing, mainly used in the United

Kingdom, New Zealand and Australia, where the victim and the offender, with the support of family members, friends or other parties, meet to discuss the crime and its effects. Restorative circles are another practice, in which, besides the parties mentioned at restorative conferencing, other members of the community, indirectly affected by the committed crime, can participate. This method is predominantly used in the United States and Canada, having derived from Canadian aboriginal cultures, and is not only about engaging in a dialogue concerning the crime and conflict but also to strengthen communities around a matter important to them. In these three practices, in addition to the opportunity to discuss the conflict and crime and its effects, participants are encouraged to find a solution to repair the harm and think about the future. A unique form of implementing RJ in England and Wales for juveniles is the referral order. When juveniles receive a referral order, they are referred to Youth Offender Panels by the Youth Court or the

<sup>[1]</sup> O'Mahony, D. & Doak, J. (2017). Reimagining restorative justice. Agency and accountability in the criminal process. Oxford and Portland, Oregon. Hart Publishing.

Magistrates' Court. The purpose of these panels is to ensure that young offenders are accountable for their crimes. The victim or their representative can attend so that their view may be put forward.

Restorative practices are embedded within indigenous communities across the world. In Romania, it used to be the so-called "sfatul batranilor" (elders' advice) and in the Roma community we can still find "staborul", a form of mediation to resolve conflicts. But Romania experienced the first initiatives of RJ, similar to the practice today in other countries, in 2002 with the first Restorative Justice Experimental Centres. Through an order of the Minister of Justice No. 1075C/10.05.2002, two of these centres were established in Bucharest and Craiova, of which activities were extended through another order No. 2415/2003 until the end of 2003.<sup>[2]</sup>

## A. Experimental Centres of Restorative Justice

These RJ Experimental Centres, funded by the International Development Department of the United Kingdom and the European Union, allowed youth perpetrators (aged 14-21 years), which eventually included youth up to 25 years old, to access mediation. Mediation was only possible to those perpetrators who admitted guilt and only for crimes for which the withdrawal of a prior complaint or reconciliation between parties was possible. Each centre had two mediators, a social worker and a psychologist. A legal adviser was added to the staff one year later. Prior to contacting people, the specialists in the centres would read the case and conduct a social and psychological evaluation of both the victim and the defendant.

The mediators would then call the parties to explain this process and meet with them separately, along with their family members, for a preparation meeting prior to a possible face-to-face mediation. At this stage, the professionals would conclude, based on the meetings with the parties, if mediation was appropriate.

If mediation was to be followed, it needed to take place within 14 working days from the moment a judge would divert the case to mediation. If parties reached an agreement during the mediation meeting, the centre would monitor if the agreed reparation of damages, due to the crime, was fulfilled within a maximum of 30 working days. The centre also offered services such as social work, psychological and/or legal counselling. However, apart from these, there was no follow-up on reoffending or on the victim's recovery. In Annex 1, two case studies used in the RJ Experimental Centres have been compiled.

It is important to add here that these RJ Experimental Centres were implemented during a time when probation was the new alternative. The probation system was initiated at the beginning of 2000 and many experts at the time saw probation as the novel and efficient measure to fighting crime.

The results from the cases that these centres handled as well as the overall approach to the cases were very promising. The working methodology adapted much of the restorative conference model used in the UK, since the UK police delivered the training to the professionals in the centres based on that working methodology.

It is worth mentioning that 83% of the mediation meetings reached an agreement and parties reconciled within the RJ Experimental Centre in Craiova. 60% of the meetings had a similar outcome within the RJ Experimental Centre in Bucharest. Equally, an analysis of the costs involved showed that mediation in the Experimental Centres was 77% less than the expenses the judicial system would entail, including the costs of all professionals involved in working on a case. By the same token, mediation in the RJ Experimental Centres took 14 days, while a court decision could take up to 60 days.

Although these RJ Experimental Centres ended a few years ago due to a lack of funding, they are referred to as the best examples of RJ developed in Romania. These initiatives were the foundations of the Mediation Law adopted in 2006. They also illustrated the gaps in the criminal justice system with

<sup>[2]</sup> Radulescu, S. & Damboeanu, C. (2008). 'Evaluari privind eficacitatea implementarii justitiei restaurative in Romania' in Revista Romana de Sociologie, serie noua, anul XIX, nr. 1-2, p. 109-138, Bucuresti. Retrieved: <https://www.revistadesociologie.ro/pdf-uri/nr1-2-2008/05-Radulescu.pdf>

regards to knowledge and acceptance of such practice by different professionals. Regrettably, these issues persist in the current practice of mediation, 16 years later.

## B. Current practice of mediation in Romania

In 2006, Romania adopted the Mediation Law (192/2006), the first of its kind, that regarded the profession of mediation in both civil and criminal cases.

The authority that oversees the activity of mediation in Romania is the Mediation Council. It is also the authority that recognises degrees and professional qualifications for the profession of mediator. On April 5, 2020, according to the Mediation Council, there were 10,646 authorised mediators across Romania and 23 authorised training providers in nine cities of Romania – Alba-Iulia, Bucuresti, Buzau, Brasov, Cluj-Napoca, Constanta, Craiova, Dolj, Iasi and Timisoara.

But the title of the mediator precedes the Mediation Law from 2006. According to COR<sup>[3]</sup> of the Ministry of Labour, five working occupations include the title of a mediator, with some occupations existing since the 1990s:

- School mediator (COR 341905) - which was created for the Roma community and works to facilitate the relationship between the school and the family of the child;
- Social mediator (COR 532902) - which was created to help people in need in different small communities to deal with public authorities or businesses; many social workers in child protection services followed a course to become a social mediator as well; the difference between a social mediator and a social worker is that the first cannot obtain social rights for people;
- Health mediator (COR 532901) - which was created to help people in small communities, Roma communities included, with a lack of hygiene resources;

- Mediator Counsellor (COR 235922) - which was created in order for school counsellors to become mediators in schools if they followed a specialisation course;
- Mediator (COR 243202) - which was created following the **Mediation Law 192/2006**.

Upon adoption of the **Mediation Law** and the training and authorisation of mediators, many of the newcomers considered that all the previous occupations as mediators needed to be erased and the new formation should be followed. At the same time, there were mediators who had been involved in the work at the community level as mediators since the 1990s and some of them, along with other professionals, considered that the mediator created in 2006 was limited. The mediator, according to the **Law 192/2006**, is mostly set to deal with cases of litigation, family conflicts and criminal matters.

Therefore, it is essential to highlight the full portrayal of **restorative practice** in Romania as seen in the field. A restorative practice is seen as a form of intervention that helps an individual or a group of individuals to overcome a difficult situation, a past, current or a future one. A restorative approach can be seen as the presence of a community worker in a community who helps people navigate the issues they face with public authorities. A restorative approach can be referred to an intervention in a family to navigate a complicated situation and make decisions. It can also be held as a circle meeting that takes place regularly in a school to discuss different issues and prevent possible conflicts or find alternatives to expulsion when a child misbehaves. It can also be seen as un-remunerated work by an offender as an alternative to detention because the offender makes amends to the community. Some professionals also make reference to a service offered to a victim of human trafficking, through which the victim is helped to heal. Restorative practice is, therefore, seen to address a conflict that has happened, or is happening, or a potential future one in the hope of preventing it and it can be applied at any time. It is also meant to address feelings and emotions, which is central to restorative practices.

<sup>[3]</sup> Classification of Occupations in Romania - [http://www.mmuncii.ro/j33/images/Documente/Munca/COR/03052019\\_ISCO\\_08\\_lista\\_alfabetica\\_ocupatii\\_cor.pdf](http://www.mmuncii.ro/j33/images/Documente/Munca/COR/03052019_ISCO_08_lista_alfabetica_ocupatii_cor.pdf)

**Mediation**, however, is seen as a facilitated dialogue or assisted negotiation to an issue that happened or is under development. Mediation cannot happen in the absence of a conflict or crime. It can sometimes be seen as very transactional, meaning parties tend to primarily discuss money-related aspects, or it can also address feelings and emotions.

On the other hand, there is no concept of **restorative justice** in the Romanian culture. Elements of RJ in Romania are seen in the practice of mediation implemented in civil and criminal cases, either during a judicial process or before a judicial process takes place. Thus, restorative practices can include mediation, circles or family decision-making groups.

### C. Working with children and the use of restorative justice

Restorative practices have been implemented at the community level, including at schools, in families, amongst neighbours or in the criminal justice system.

In the criminal justice system, the commonly used practice is mediation, implemented within the realm of the **Law 192/2006**. However, there is no particular focus on juveniles. Equally, it is difficult to collect statistics on mediation in general, in cases of juveniles and adults, because some courts can conclude the decision mentioning the mediation agreement, while other courts can only mention that parties reconciled and the complaint was withdrawn, even though this was on the basis of a mediation agreement.

At the community level, the practice is very diverse, for both juveniles and adults, being applied with different terminologies. For this reason, it can be difficult to track these practices, as most are independent activities either done by individuals passionate by such practices or implemented by various NGOs through different projects. A few known vocal NGOs which have been promoting RJ practices in the past few years are:

- Centre of Legal Resources (Centrul de Resurse Juridice) - the initiator of the RJ Experimental Centres;

- Social Alternatives (Alternative Sociale) - involved in the drafting of the **Mediation Law**;
- Save the Children (Salvati Copiii) - conducted a series of consultations with children on the issue of mediation;
- Terre des hommes - coordinates the i-RESTORE project that addresses RJ in cases of child victims.

Therefore, child victims of an offence can participate in mediation based on the **Mediation Law** at the judicial level, but, again, there is no collection of data in this regard. Child victims of conflicts in general, such as those in schools, can participate in mediation if such practice exists at the school or community level. Equally, child victims can receive assistance from the social services within the Ministry of Labour. The organisational structure of these institutions is further explained in the **Child Protection Law** below. In cases of human trafficking, for instance, child victims are assisted by the services within the National Agency Against Human Trafficking.

When addressing child victims, it is important to remember that child offenders have often been victimised themselves. Once a minor offender enters the criminal process, according to the **Criminal Code**, they can receive educative measures where there is a deprivation of liberty or a non-deprivation of liberty. Such measures are meant to educate and re-educate through school and educational training and by cultivating their consciousness with respect to social values. Therefore, juveniles can receive the following measures:

- They are sent to an educative centre or detention centre, both under the authority of the prison system; the National Administration of Penitentiaries (ANP) has two educative centres in Buzias and Targu Ocna for juveniles 14-17 years of age and two detention centres in Craiova and Tichilesti for juveniles 14-17 years of age and young people up to 21 years old; particularly within the educative centres, the focus is on their rehabilitation, which involves different forms of activities both inside the centres and outside in the community;

- They are put under supervision of the probation system in the following ways:
  - receive a civic training course;
  - are put under supervision either right away or are placed under supervision after release from a detention centre or an educative centre;
  - they need to consign at the end of the week. This is inspired by Spanish legislation which obliges the juvenile not to leave the house during the weekends for a period of four to twelve weeks, unless they are obliged to participate in activities imposed by the court;
  - are placed under daily assistance right away or are placed under daily assistance after the placement in a detention centre or an educative centre is replaced with this measure;
- the prosecutor can cease the criminal prosecution and order the obligation of un-remunerated community work, amongst other obligations or measures. In 2019, the Supreme Court of Cassation and Justice issued the decision 15/2019 through which juveniles older than 16 can be obliged to serve un-remunerated community work. This comes at the request of the General Prosecutor's Office to have a unitarian implementation of the **Criminal Procedural Code (CPC) Article 318 (6) c).**

While the main work done with juveniles in the criminal justice system is far from restorative justice, there have been initiatives that have a restoration component. These are limited but take place both in the prison system as well as in the probation system and entail training of professionals in the spirit of RJ and the use of elements of this practice in the professionals' everyday work.

It is important to mention that a few years back, the National Administration of Penitentiaries (ANP) implemented a pilot programme called Educate to repair (A educa pentru a repara) in a few prisons and aimed to develop, amongst offenders, a critical sense and knowledge of one's own actions and the understanding of the impact these actions can have on victims and society. The programme consisted of 30 meetings split into two sessions, with 90 minutes per meeting, and it included a group of ten-14 offenders from each prison this programme was implemented in. The first session of 14 meetings focused on conflict management and the second session of 16 meetings focused on developing restorative skills. During the meeting, 23 offenders had to acknowledge what they had done and speak to their virtual victims seated on an empty chair, known as a victim-awareness programme.

## 2. Statistics

According to the National Institute of Statistics (INS), the youth population in Romania on January 1, 2019, <sup>[4]</sup> totalled 4.277,636 juveniles and youths.

In the following, we can see the situation concerning children and youth that find themselves in both the child protection service and in the criminal justice system.

### Child protection

According to the National Authority for Protecting Child's Rights and for Adoption (ANPDCA)<sup>[5]</sup>, in September 2019, there were 51,168 children in the special protection system. Children in conflict with the law with no criminal liability are also within the data of ANPDCA. However, it is unclear how many of these children find themselves in specialised supervision within ANPDCA. In September of the same year, 11,931 cases of abuse, neglect and exploitation were registered by the child protection authority.

Table 1

Resident population in Romania on January 1 2019	
0 - 13 years old	2,822,127
14 - 17 years old	823,140
18-20 years old	632,369

Source: National Institute of Statistics

### Police

Children committed around 4,000 crimes in 2019. However, this is not the number of children who committed crimes, as one individual can commit more than one crime.

Equally, statistics from the Directorate for Investigating Organised Crime and Terrorism (DIICOT) on child pornography show that in 2019 alone, 67 cases were prosecuted by a criminal indictment.

Table 2

Crimes committed by juveniles in Romania 2019		
0 - 13 years old	No criminal responsibility	2,231
14 - 17 years old	No criminal responsibility	909
	Limited criminal responsibility	1,465
18-20 years old	Criminal responsibility	4,034

Source: The General Inspectorate of Romanian Police

<sup>[4]</sup> National Institute of Statistics - Resident population in Romania on January 1, 2019 - <https://insse.ro/cms/ro/contentpopulația-rezidentă-la-1-ianuarie-2019-și-migrația-internațională-în-anul-2018>

<sup>[5]</sup> ANPDCA - Statistics - <http://www.copii.ro/statistici-2019/>

## Prosecution and Courts

According to the Superior Council of Magistracy (CSM), less than 20% of minors, girls and boys, received a final conviction in 2019. In terms of the number of victims of crime, in 2019 at the level of prosecutor's offices, 2,222 minor victims were registered.

Table 4

Juveniles in the probation system in 2019	
Civic training course	17
Supervision	146
Consignment at the end of the week	8
Daily assistance	231
Placement replaced by daily assistance	13
Release from a detention centre, educative centre	37
<b>TOTAL</b>	<b>452</b>

Source: National Direction of Probation

## Prison

According to the statistics received from the ANP, last year there were 177 minors (14-17 years old) and 609 youth (18-21 years old) in the prison system. Although children should not find themselves under any form of detention, it is encouraging to see that we can find youth (those who turned 18 years of age) that are still in either an educative centre or a detention centre, which has better conditions than a prison and does not keep youth with adults. As explained above, there are two educative centres and two detention centres across Romania. The placement in an educative centre is a custodial educative measure that can be imposed on a juvenile for one to three years. The placement in a detention centre is the most severe educative measure that can be applied towards a juvenile and consists of the placement of the juvenile for a period between two to five years. The difference between these two types of centres is mainly the level of security and the freedom of movement inside and outside the establishment. In both places, the priority is given to educative and vocational activities. From the child's perspective, the

Table 3

Minors at the prosecution level and in courts in 2019	
Minors sent to court	3,850
Minors who received a final conviction	704
Child victims of crime	2,222

Source: Superior Council of Magistracy

## Probation

In 2019, the number of juveniles (14-17 years old) in the probation system accounted for 452 children. The majority of the offences committed by juveniles are offences against property (65%). Equally, there are no statistics regarding the youth population (18-21 years old) in the probation system as here they are considered adults.

difference between these two structures is not so visible. They both involve deprivation of freedom and long distances from their homes. The procedures of implementing all these educative measures are provided in the **Law 253/2013 regarding the non-custodial punishments and measures and the Law 254/2013 regarding the enforcement of the custodial punishments and measures.**

Table 5

Juvenile and youth people in the Romanian prison system 2019		
Juveniles	Educative centre	114
	Detention centre	63
Youth	Educative centre	98
	Detention centre	141
	Prison	370
<b>TOTAL</b>		<b>786</b>

Source: National Administration of Penitentiaries



### 3. Legislation & Policy strategy

Two main legislative documents that directly refer to mediation or child protection are of interest for this report. First, is the **Law 192/2006 regarding mediation and the organisation of the profession of mediator as amended by Law 154/2019**.

The **Mediation Law** refers to mediation as a form of solving conflicts, amiably, with the help of a third party specialised as a mediator respecting neutrality, impartiality, confidentiality and with the free consent of the parties. The parties can sort out their dispute even after a criminal process starts, but as shall be seen later, only up to a point.

To become a mediator in Romania, according to this law, one needs to have university-level studies with no requirement for a law degree, and most importantly, to have graduated from a training course for mediators. This course has to be accredited by the Mediation Council and must last for 80 hours with both theoretical and practical components. A mediator can only profess if they are also authorised by the Mediation Council, meaning that they must stay up to date with the statutory requirements. On April 5, 2020, according to the Mediation Council, there were 10,646 authorised mediators across Romania and 23 authorised training providers in nine cities of Romania. Once mediators are accredited and authorised, they need to annually follow a professional development

process, which is part of their qualification status. However, this is an independent initiative.

The Mediation Council is an autonomous body that organises the mediation activity in Romania. The mediators can conduct their work within an associative professional form, through which they can work with other mediators, can employ translators, jurists and other professionals or administrative personnel. The mediators can also be constituted in professional associations, get paid by the parties themselves and are obliged to improve their knowledge on the practice of mediation continuously.

Judicial and arbitral bodies can inform parties about the advantages of using mediation, and so, to direct parties to mediation if their case is feasible for such intervention. This service is not compulsory for the parties. When parties do contact a mediator, they benefit from a free informative session about mediation. Parties can get an information certificate if they do not want to proceed and this certificate can be added to their court file. Parties can benefit from this information session within 15 calendar days from a court order.

If parties agree to mediation, they sign a contract based on which the mediation takes place. All parties in the conflict can opt to be assisted by a lawyer, and during the mediation, parties can opt to



be represented by other people. Mediation cannot take longer than three months from the signing of the mediation contract, during which the court procedure is suspended.

Mediation meeting(s) are finalised in a mediation agreement and/or a minute stating the outcome of the mediation meeting. This outcome can be either (1) that parties reach an agreement or that (2) the mediator states the failure of the mediation or (3) by denouncing the mediation contract by one of the parties. If parties only agree to a partial agreement, along with the cases mentioned at points 2 and 3, they can address the court.

If the mediation agreement entails legal elements, the legality of the contract can be verified and attested by the parties' lawyers or by a public notary. Once this is fulfilled, the agreement is an enforceable title. Equally important is that once a mediation agreement is signed there is no follow-up to it.

#### **Mediation can be used in cases of litigation, family conflicts and criminal matters.**

The **litigation** that can be mediated are cases of consumer protection, family law, matters related to possession, granting, relocation of borders, work conflicts and disputes for values up to 50,000 lei (approximately 10,350 euros on April 4, 2020).

Mediation can be used for **family conflicts** such as issues related to the continuation of the marriage, division of common goods, the exercise of parental rights, the establishment of the domicile of the child, the contribution of the parties regarding child care and any issues between spouses regarding their rights. For such conflicts, the mediator needs to make sure that the highest interest of the child is met. The mediator also needs to verify that there is no abusive relation or violence between parties that could influence the mediation and needs to decide if such practice is right for the case.

In **criminal matters**, the main focus of the research, mediation is only feasible for cases of crime for which withdrawal of prior complaint or reconciliation between parties is possible and where the defendant admits guilt. According to the **Criminal Code**, there are 33<sup>[6]</sup> crimes for which prior complaint is required or reconciliation between parties is possible and so for which mediation can be used.

For criminal cases, mediation needs to take place so that the victim will not be in contact with the perpetrator unless parties agree otherwise. The legislator created the legal basis for an indirect mediation, even if the principles of mediation envision voluntary participation, in order to avoid any confusion in the practice. Equally, the mediation agreement in criminal cases constitutes a sui-generis cause that removes criminal responsibility, which can only happen up to the indictment. Along with the mediation agreement, the mediator also drafts minutes to close the mediation procedure. These minutes mention whether parties benefited from the services of a lawyer and interpreter or if they gave up on such services. According to the only paragraph in the **Mediation Law** that relates to juveniles, Article 68(2), in cases of juveniles, the mediation procedure needs to follow the same guarantees as in the criminal proceedings.

When the new **Civil Code** entered into force on February 15, 2013, it included the obligation for the parties to participate in an information session about mediation. As a result, mediation cases increased. However, one year later, in June, the Romanian Constitutional Court issued the Decision 266/2014 which made it unconstitutional to oblige parties to become informed about mediation as it would restrict free access to justice. This placed a shadow over the mediation practice, as many media outlets portrayed mediation, in its entirety, as being unconstitutional.

Another Decision 397/2016 of the Romanian Constitutional Court that made mediation in criminal matters accessible only up to the indictment resulted in many

[6] Art. 193. Hitting or other violence; Art. 196. Culpable Assault; Art. 199. Family violence; Art. 206. Criminal threat; Art. 208. Harassment; Art. 218. Rape; Art. 219. Sexual assault; Art. 223. Sexual harassment; Art. 224. Home robbery; Art. 225. Office robbery; Art. 226. Private life robbery; Art. 227. Disclosure of professional secrecy; Art. 228. Theft; Art. 229. Qualified theft; Art. 230. Theft for use purpose; Art. 231. Prior complaint and reconciliation; Art. 232. Sanctioning the attempt; Art. 238. Abuse of trust; Art. 239. Abuse of trust by defrauding creditors; Art. 240. Simple bankruptcy; Art. 241. Fraudulent bankruptcy; Art. 242. Fraudulent administration; Art. 243. Attribution of a found good or a good that mistakenly ended in the possession of the perpetrator; Art. 244. Deception; Art. 245. Deception regarding insurances; Art. 253. Destruction; Art. 256. Perturbation of possession; Art. 284. Unfair assistance and representation; Art. 287. Failure to comply with court decisions; Art. 302. Violation of the secret of the correspondence; Art. 378. Family abandonment; Art. 379. Failure to comply with measures regarding the custody of the minor; Art. 381. Preventing the exercise of religious freedom.

professional complaints. Both the Supreme Court of Cassation and Justice and the Romanian Constitutional Court agreed that mediation in criminal cases is a sui-generis cause that removes criminal responsibility. However, the Romanian Constitutional Court also stated that mediation cannot be used throughout the entire criminal process because it should respect the same conditions that the procedure of reconciliation does, which is to happen until the indictment.

According to Dorin and Dorin<sup>[7]</sup>, the Decision 397/2016 led to a decrease in mediation cases and left many victims unable to access fair justice as they wished. In order to recover the financial loss, these victims who wanted to reconcile with their offenders, in cases of theft, were no longer able because the indictment was pronounced. For civilian cases, mediation can still take place and the victim can recover their financial losses. However, for penal cases, a mediation agreement has no consequence for the offender in the judicial outcome. As a result, the offender can be deterred from participating in the mediation process.

In October 2019, the General Prosecutor's Office of the Supreme Court of Cassation and Justice issued a release<sup>[8]</sup> to strengthen the response to qualified theft, arguing that while such crime did not decrease, the judicial response did by adopting softer solutions. Such solutions are referred to classified cases through the reconciliation of the parties or by withdrawal of prior complaint, referring, therefore, to mediation. The Mediation Council sent a response, but as of now, there is no conclusion on this matter.

In February 2020, the Supreme Court of Cassation and Justice issued the Decision 33/2019 through which mediation in cases of divorce was no longer possible.

The general perception of the professional body is that such decisions are affecting the practice of mediation, and instead of moving forward in this practice, there is a move backwards.

The second piece of legislation of direct interest for this report is the **Law 272/2004 regarding the protection and promotion of child rights.**

**Law 272/2004** regulates the legal framework for respecting, promoting and guaranteeing the child's rights and has, as a principle, the best interest of the child, a child being a person who has not yet turned 18 years of age.

Children have the right to be listened to in any judicial or administrative proceeding that involves them. Authorities have an obligation to hear a child who turned ten, and if younger than that, a child's opinion can still be listened to if the competent authority considers their hearing to be useful. Any child can ask to be listened to and can submit a complaint regarding the violation of their rights.

The social work public service is the authority taking all measures to detect, at an early stage, any situations of risk that children can find themselves in. Social work institutions, such as Social Work Public Service (SPAS), Directorate of Social Work (DAS), General Directorate of Social Work and Child Protection (DGAPSC), are subordinated to the local and county councils, respectively, and ANPDCA falls under the Ministry of Labour and Social Protection.

The authorities of local public administration have an obligation to involve community actors in solving issues that concern children. Such community actors can be businesspersons, priests, teachers, doctors, local counsellors, police and others.

Any child who is temporarily or permanently deprived of parental protection can receive special protection up to 26 years of age. Such special protection measures are placement, emergency placement and specialised supervision.

Children who can benefit from these special protection measures are: children who lost their parents or whose parents are unknown or who have lost their parental rights, children who cannot be in the protection of their parents for reasons not attributable to them, lost children or children abandoned in sanitary units (such as hospitals), abused and neglected children and children in conflict with the law who are not criminally responsible.

<sup>[7]</sup> Dorin, I. & Dorin, P. (2018). Procesul de mediere, conflict - comunicare - acord. Ed. Universitaria, Bucuresti.

<sup>[8]</sup> General Prosecutor's Office of the Supreme Court of Cassation and Justice - [http://www.mpublic.ro/ro/content/c\\_07-10-2019-16-10](http://www.mpublic.ro/ro/content/c_07-10-2019-16-10)

Parents, as well as the child who is at least 14 years of age, have the right to plea in court against the special protection measures.

The emergency placement is for children who are abused, neglected or subjected to any form of violence and for lost children or children abandoned in sanitary units. Specialised supervision is available for children in conflict with the law who are not criminally responsible. If there is parental consent, the specialised supervision is imposed by the commission for child protection, and where there is a lack of such parental consent, the court can issue this disposition.

The specialised supervision measure consists of keeping the child in his family and following obligations such as: attending school courses, benefiting from day-care services, following medical treatments, participating in counselling and psychotherapy sessions and being prohibited to attend certain places and to meet with certain people. If a child cannot stay in their family, the commission for child protection or the court can order placement of the child in their extended family or foster care.

Children who are abused, neglected, exploited or subjected to any form of violence can be heard in a judicial proceeding. The declaration of the child can be registered by audio-technical means with the child's consent and in the presence of a psychologist. According to the law, the child hearing can take place only in the council room, in the presence of a psychologist, and only after preliminary preparation of the child.

However, mediation is mentioned only once in this law, in Article 39(2), where mediation is referred to as an option in the plan of services for preventing the separation of a child from their parents. There is no wording of restorative practices.

At the moment of writing this study, the Parliament has adopted a law draft<sup>[9]</sup> to modify the **Law 272/2004**. Point 12 refers to modifications to Article 52 of the current law and adds a new reference to mediation, along with dialogue, and children and parents' active participation in preventing and fighting bullying. The draft law is yet to be promulgated by the President of Romania.

The **Law 211/2004 regarding some measures for assuring the protection of victims of crime** makes no mention to restorative approaches. The law states that judges, prosecutors and police need to inform victims about the support services available. The psychological counselling is offered by the services for victim protection and social reintegration of offenders that operate beside the courts. Soliciting such help can only happen after a police investigation is initiated or the court has been informed.

In addition, through an **Urgent Order (OU 24/2019)** more services for victim protection were included, such as those offered by the General Directions of Social Work and Child Protection (GDASPCs) under the Ministry of Labour, specialised institutions preventing and combating domestic violence, specialised institutions preventing and fighting human trafficking, services for supporting victims of crime if they exist within the local authorities or provided by private social providers. The protection of child victims falls under the **Law 272/2004 regarding the protection and promotion of child rights, Law 217/2003 for preventing and combating domestic violence or Law 678/2001 regarding prevention and combating human trafficking.**

The latest legislative modification that is of interest for this report is the **Law 221/2019 for the modification and addition to the Education Law 1/2011 regarding psychological violence - bullying**. In the methodological norms, made available at the end of February 2020, mediation appears in three situations:

- each school can adopt mediation in the implementation of an anti-bullying plan;
- mediation can be a service that schools can offer in order to prevent actions of bullying and improve relations between parents and children;
- the school or the school inspectorate can initiate a mediation structure in order to identify sources of conflict.

Few strategies are put in place at the national level concerning prison re-entry, child's rights, human trafficking, and education or drug abuse where children

<sup>[9]</sup> Draft law to modify Law 272/2004 regarding the protection and promotion of child rights - [http://www.cdep.ro/pls/proiecte/docs/2019/pr457\\_19.pdf](http://www.cdep.ro/pls/proiecte/docs/2019/pr457_19.pdf)

are considered beneficiaries. However, none of these strategies, with one exception, have included elements of mediation or restorative practices. The **National strategy for social re-entry of persons deprived of liberty 2015-2019**, which was continued in the new strategy for 2020-2024, has included the concept of mediation.

In February 2018, according to an information note regarding the implementation stage, it was estimated that 47% of the measures provided by the above-mentioned strategy were achieved. With the continuation of the new strategy for 2020-2024 (adopted on June 11, 2020), the aim is to develop institutional and inter-institutional capacity in the area of social reintegration of persons deprived of liberty; to increase the efficiency

and effectiveness of specialised intervention carried out during sentencing; and facilitate post-detention assistance at a systemic level.

The strategy refers to mediation in two instances:

- the agencies for work placement at the county level can offer mediation services, conciliation and information sessions related to the social reintegration process for people deprived of their liberty and their families and to any other interested person;
- in order to facilitate access to services during post-detention, mediation services can be offered for family and community reintegration.



## 4. Trainings & studies

### A. Trainings

The **Mediation Council**, the authority that authorises courses and trainings for mediators, has so far accredited 23 authorised training providers in nine cities of Romania – Alba-Iulia, Bucuresti, Buzau, Brasov, Cluj-Napoca, Constanta, Craiova, Dolj and Iasi si Timisoara that can deliver:

- the initial training course for becoming a mediator - the training lasts for 80 hours and has a 70% practical approach and a 30% theoretical approach;
- specialised trainings as part of the continuous professional development plan of mediators that could include different subjects within the mediation field.

These trainings do not particularly focus on victims' rights, children's rights or juvenile justice.

In addition, in Romania there are, as presented online, six **master programs at universities** specialising in mediation or including some mediation classes within their curricula. These are:

- Alexandru Ioan Cuza University in Iasi offering a Master on probation, mediation and social assistance of victims of crime;
- Babes-Bolyai University in Cluj-Napoca offering a Master on social work in the justice space; probation and mediation;

- Bucharest University offering a Master on probation, which includes in its curricula a restorative justice class;
- Dimitrie Cantemir University in Bucharest offering a Master on mediation of conflicts;
- Titu Maiorescu University in Bucharest offering a Master on mediation of conflicts in the law;
- West University in Timisoara offering a Master on communication and mediation in social conflicts.

Most of these master programmes seem to refer to mediation and not to RJ in a broader context, except for the programmes at the University of Bucharest and Alexandru Ioan Cuza University. This is somehow understandable considering that the **Mediation Law** does not refer to the RJ concept. However, it is unclear how much information, if any, these programmes do include on matters of child victims.

Different **institutions or organisations have delivered trainings**, over time, on matters of child's rights or are currently delivering them to professionals working with children. They have also **developed methodologies** to work with child victims. Some of these are:

- Foundation Family and Child Care (FOC) within Terre des hommes (Tdh) - Training in restorative practices in schools - 2003-2004

- ANPDCA - Trainings with professionals on **Law 272/2004** regarding the protection and promotion of child rights - 2004
- Centre of Legal Resources (CRJ) - Trainings in schools in restorative practices through the project *Quality in Education through Mediation and Restorative Practices (Calitate in educatie prin mediere si practici restaurative)* - 2012
- Tdh - Trainings on child's rights through the project *Court of Child's Rights (Curtea Drepturilor Copilului)* - 2014-2015
- Tdh - Training on juvenile justice through the project *AWAY* - 2018
- UNICEF & Centre for an Independent Journalism - *Guide for best practices regarding interviewing children (Ghid de bune practici privind relatarile cu si despre copii)*<sup>[10]</sup>
- The Federation of the Non-Governmental Organisations for the Child (FONPC) - *Methodological guide regarding the hearing of minor victims of violence (Ghid metodologic privind audierea minorilor victime ale violentei)*<sup>[11]</sup>
- UNICEF & Anti-drug National Agency (ANA) & AntiHIV Romanian Association — *Working methodology with youth at risk and users of drugs (Metodologia de lucru cu adolescentii la risc si consumatori de droguri)*<sup>[12]</sup>
- CRJ - *Practical guide for applying mediation and restorative practices in schools*
- Bucharest Police & Bucharest School Inspectorate - *Where there is no law, there is no agreement (Unde nu-i lege, nu-i tocmeala.)*<sup>[13]</sup>

## B. Studies

The research community in Romania has been extensively addressing restorative practices and child's rights, even if there is no systemic practice in this regard.

### **Nelu Nita, 2017 - Considerations regarding restorative justice for juveniles in Romania (Consideratii privind justitia restaurativa pentru minori in Romania)**

The paper compares the Romanian RJ system for juveniles to that in other countries. The author concludes that compared to countries with a common law system, such as the US, Canada, Australia etc. where RJ is used in serious crimes as well, the Romanian restorative approaches tend to rather only address misdemeanour crimes. The author also adds that following the adherence to the EU in 2007, Romania had a legislative "boom" by adopting a significant number of laws in order to compensate for the gap between the national legal framework and European legal standards. Most of these laws, drafted almost overnight, ended up being contested at the Constitutional Court. It, therefore, remains that whilst there is a legal framework similar to the one in other European countries, implementation is still lacking.

### **UNICEF, 2016 - Country analytical report. Children's access to justice. TransMonEE**

The report mentions that the Mediation Council planned on implementing an IT platform at the national level that will generate disaggregated data on mediation cases, including cases that involve children. This platform was estimated to become operational in three years and by the date of the report it was supposed to have happened in 2019. As of now, no such platform exists in Romania. The report also stresses the importance of the need for specific treatment towards child victims in criminal proceedings, such as:

<sup>[10]</sup> UNICEF & Centre for an Independent Journalism - Ghid de bune practici privind relatarile cu si despre copii - <http://www.unicef.ro/wp-content/uploads/Ghid-de-bune-practici-privind-relatarile-cu-si-despre-copii.pdf>

<sup>[11]</sup> The Federation of the Non-Governmental Organisations for Children (FONPC) - Ghid metodologic privind audierea minorilor victime ale violentei - [http://www.fonpc.ro/downloads/programe/model-interventie-multidisciplinara/Ghid\\_audierea\\_minorilor\\_victime\\_violentei.pdf](http://www.fonpc.ro/downloads/programe/model-interventie-multidisciplinara/Ghid_audierea_minorilor_victime_violentei.pdf)

<sup>[12]</sup> UNICEF & Anti-drug National Agency (ANA) & AntiHIV Romanian Association - Metodologia de lucru cu adolescentii la risc si consumatori de droguri - <http://www.unicef.ro/wp-content/uploads/Metodologia-de-lucru-cu-adolescentii-la-risc-si-consumatori-de-droguri.pdf>

<sup>[13]</sup> Bucharest Police & Bucharest School Inspectorate - Unde nu-i lege, nu-i tocmeala - <http://online.fliphtml5.com/ozet/bpxk/>

- protecting, as appropriate, the privacy and identity of child victims;
- informing the child victims of their rights, their role and the aim of the proceedings;
- allowing the views, needs and concerns of the child victims to be presented and considered in the proceedings.
- The report also raised issues related to the collection of unified data related to child victims.

**Andrea Parosanu, 2016 - Juvenile justice in Romania - Reform trends, legal aspects, sentencing practice and imprisonment trends**

In a report of the Prosecutor's Office attached to the High Court of Cassation and Justice from 2015, from a total of 3,548 charged juveniles, 2,488 (70.1%) were charged for property-related offences and 572 (16.1%) for offences against the person. The most common property-related offences were thefts (69.4%), theft being one of the crimes eligible for mediation. According to the author, the suspension rate of criminal proceedings in cases of juvenile delinquency doubled from 30% in 1991 to 62% in 2012. This increase was, however, primarily due to the establishment of the probation services in 2000. According to the same author, a nationwide survey run at the beginning of 2010s showcased that more than 70% of public prosecutors and judges saw victim-offender mediation as a "useful" and "very useful" procedure in dealing with crime, although when asked in more depth about this practice, it seems they were lacking knowledge about mediation.

**Nicolae Zecheru, 2013 - Mediation of criminal conflicts, alternative for the modernisation of the judicial system (Medierea unor conflicte de natura penala, alternativa pentru modernizarea sistemului judiciar)**

The author researched mediation in Romania and found that there is a need to inform the general public about such practice. The research that involved a sample of 270 respondents comprising of police officers, prosecutors and judges from Prahova region concluded that the obligation to promote mediation rests within the respondents' institutions, so that the general public are more informed of such practice. They also stated that

these institutions need specialised staff to direct cases to mediation.

**Andrea Parosanu, Ecaterina Balica & Ana Balan, 2013 - Mediation in penal matters in Romania. Evaluation study and perspectives**

The authors researched the prosecutors' and judges' opinions and attitudes on mediation and its potential for conflict resolution as well as other factors that had mediation being less used in the criminal field. The empirical study highlighted:

- the need to continue informing and training criminal justice professionals in mediation;
- to extend the applicability of mediation to offences other than those stipulated in the law;
- the need to have specialised mediators operating in criminal matters;
- a weak institutional collaboration;
- a lack of financial resources necessary to solve conflicts through mediation;
- low level of information on mediation of the general public.

**Ecaterina Balica, 2012 - Analysis of the application of strategies to prevent and combat violence in schools - Case study. Commission of the prevention of bullying**

The evaluation of the project *Quality in education through mediation and restorative practices* highlighted the implementation of three training courses in restorative practices for school directors and teachers and one training on the same topic for school counsellors. It also showcased the establishment of a network of 12 schools in Bucharest and the Ilfov region for the promotion of restorative conflict resolution methods, one context analysis in the same region for identifying the optimum parameters for implementing restorative approaches into the educational system and two study visits to England and the Netherlands in order to analyse European restorative models in schools.

**Ana Balan, 2011 - Juvenile justice in Romania. From best practices to institutions and procedures**

The author believes that the practice of juvenile

justice is considerably more advanced than the law is in regard to the execution of imprisonment sanctions and should continue with constructive solutions in the community. The empirical data collected showcased that in the case of mediation, juvenile offenders were willing to compensate the material damage caused to the victim, but expressed doubts in respect of admitting the misdemeanour or demanding pardon, as the victim might not agree to mediation and/or be open to accept the offender's repent.

**Save the Children Romania, 2011 - Report of the consultations with children and professionals within the project JUST <sup>[14]</sup>**

The report addressed the use of mediation for children in conflict with the law. One significant conclusion of these consultations was that children expressed that they were willing to pay back for the prejudice caused but were not so interested in admitting guilt and taking responsibility. It was stated, therefore, that mediation is seen only as a first step in the restorative process and other measures should also be foreseen, such as the development of multi-disciplinary intervention methods.

**Anamaria Szabo, 2010 - From restorative justice to restorative practices: Applicability in the social work field (De la justitie restaurativa la practici restaurative: aplicabilitate in sfera asistentei sociale)**

The paper evaluates the origins and values of restorative practice and the applicability of this practice in the social work field in Romania. Further suggestions referred to the use of restorative practices as part of a sentence and post-sentence.

**Sorin Radulescu & Cristina Damboeanu, 2008 - Assessments regarding the effectiveness of the implementation of restorative justice in Romania (Evaluari privind eficacitatea implementarii justitiei restaurative in Romania)**

**Sorin Radulescu, Dan Banciu, Cristina Damboeanu & Ecaterina Balica, 2004 - Assessment of restorative justice pilot project developed in Bucharest and Craiova**

These two studies evaluated the two pilot projects on RJ that took place in Romania in 2002-2003 and 2003-2004. In the evaluation for the period of 2002-2003, the researchers considered the 43 cases undertaken between September 2002 and June 2003 in these RJ Experimental Centres and a few issues were raised. First, police and prosecution felt that these centres would "infringe" their prerogatives, as they thought that only they, along with the courts, could decide on matters of reconciliation of the parties. Hence, even the courts did not inform the parties of the existence of the RJ programme. In the absence of a working methodology to address the obligations and the competences of the institutions involved and the inter-institutional cooperation, it was difficult to manage the work of these centres. The feedback collected during evaluations of this project also highlighted that even ex-officio lawyers were not well enough equipped to deal with juveniles. And although probation officers were always requested to attend the courtroom in order to represent young offenders, they were not always there, due to the fact that juvenile cases were dealt alongside adult cases with no clear order, making it difficult for probation officers to wait in the courts while they had work to do elsewhere.

The second evaluation for the period 2003-2004 showcased better cooperation between the RJ Experimental Centres experts and different authorities due to the trust that had been built up in the previous year of the implementation of the project.

<sup>[14]</sup> JUST project (Juvenile Justice) - Development of child rights based methods of intervention to prevent juvenile crime and promote re-integration of young offenders" was implemented in Italy, Romania and Greece during 2009-2011.





## 5. Research

### A. Methodology

The objective of this study was to understand best practices and current gaps on matters of restorative justice (RJ) with child victims, both victims and offenders, in Romania. Since Romania does not have a practice of RJ in cases of child victims as envisioned by the i-RESTORE project, the empirical collection of data that followed sought to answer how professionals work with children and what are the challenges and the best practices encountered.

The research used a qualitative methodology with semi-structured interviews. Six interview tools were developed, as follows:

- policymakers interview tool - that concerned themes such as initiatives/policies on RJ/child victims, challenges in using RJ, best practices used and training opportunities;
- practitioners interview tool - that followed the thematic of activities on RJ/child victims, challenges in using RJ, best practices used and training opportunities;
- high-school students Child Advisory Board (CAB) interview tool - that followed the thematic of child's rights, knowledge of RJ and benefits and challenges of RJ with children;
- child victims interview tool - that followed the thematic of child's rights, knowledge of RJ and benefits and challenges of RJ with children;
- Interview tool on analysing The Woolf Within video - that followed the thematic of knowledge of RJ, needs of the parties in conflict and benefits and challenges of RJ; a tool used only with CAB;
- Interview tool on a case study - that followed the thematic of needs of the parties in conflict and benefits and challenges of RJ; a tool used only with CAB.

The collection of data took place between January 27, 2020, and March 23, 2020, with 13 practitioners, nine policymakers and three meetings with children (Annex 2). Six more consultations were envisioned but did not take place for this study due to unavailability during the timeframe of the study. The focus was to include professionals who do work with children or in the field of child protection. Once a first pool of professionals was identified, the snowball method was used to find more professionals and carry out the other consultations.

Most meetings took place face to face, except for five consultations that were done by phone (three) or via email (two) due to time issues to schedule a meeting in person. Of these 25 consultations, 17 were individual meetings, four consultations included meetings with two professionals at the same time and four consultations took place in the format of focus groups.

The data analysis followed four codes for policymakers and practitioners (working with child victims/elements of RJ, challenges when working with children, best practices when working with children and trainings) and one code for children - children's opinions about RJ - which includes different aspects such as children's rights, knowledge of RJ, benefits of RJ, risks of RJ or parties' needs.

The study was designed to take place within 28 days, which had its own limitations. Therefore, this study is neither a detailed examination nor an exhaustive approach of restorative practices in cases of child victims. It does, however, highlight a significant review of the current work with children and the elements of restorative practices used in Romania.

## B. Research findings

### 1. Policymakers

#### 1.1. Working with child victims/elements of restorative justice

In 2002, for the first time, Romania experienced a RJ meeting between an offender (age 14-25) and a victim of crime, similar to the current practice in the United Kingdom. This was an initiative of the CRJ, a local NGO, with external funding from the International Development Department of the United Kingdom and the European Union. CRJ, in partnership with the Ministry of Justice, piloted two RJ centres, one in the capital of Romania - Bucharest, and the second one in another large city - Craiova, three hours away from Bucharest. Both centres focused on including young offenders up to 25 years of age. During the restorative conferences, or mediation as it was referred to, the only restriction was that parties were not allowed to negotiate financial compensation. The centres were also able to offer services of social work, psychological counselling and juridical assistance.

The experts of the RJ Experimental Centre in Bucharest,<sup>[15]</sup> two of the pioneers of these centres, mentioned that an essential component of these

restorative meetings was preparation. Each case was carefully prepared and evaluated from a legal, social and psychological perspective. Equally, significant attention was offered to the pre-meetings when mediators were discussing in person with each party and their supporters about the implication of this practice.

After having the RJ experience in the field, the experts concluded two significant lessons. First, that the restorative practice needs to be implemented as early as possible in the life of an individual and so focusing on how to introduce the concept in schools is extremely important. As a result of these RJ Experimental Centres, one of the experts<sup>[16]</sup> has worked on writing and implementing projects in schools with a component of restorative practice. And second, the restorative principles need to be inoculated in all professions.

*It is important to inoculate a restorative idea in all specialisations, of prosecutor, judge, police officer etc. On the one hand, it comes with the experience that resides from their profession and which is on a certain channel, and next to that, they can graft the mediation part, of a restorative discourse, to understand it better. Because each of them will be tempted to go towards their own profession, towards the way they used to think and see the action for a specific situation. Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.*

Currently in 2020, Romania has a mediation practice that has a legal basis in the **Mediation Law 192/2006**. According to the President of the Mediation Council<sup>[17]</sup>, this **Mediation Law** passed the constitutionality control three times in the past five years. The President considered this as rendering the law stable. There is certainly a need for continuous awareness on mediation since national culture is more inclined to solve the conflict in a court, as is shown with around four million files on the court role currently, both civil and criminal. People should learn about the benefits of solving conflicts through mediation and it needs to start from an early age. This is the reason why there are constant initiatives in schools by mediators to promote this practice. However, the President of the Mediation Council believes that more is to be done by

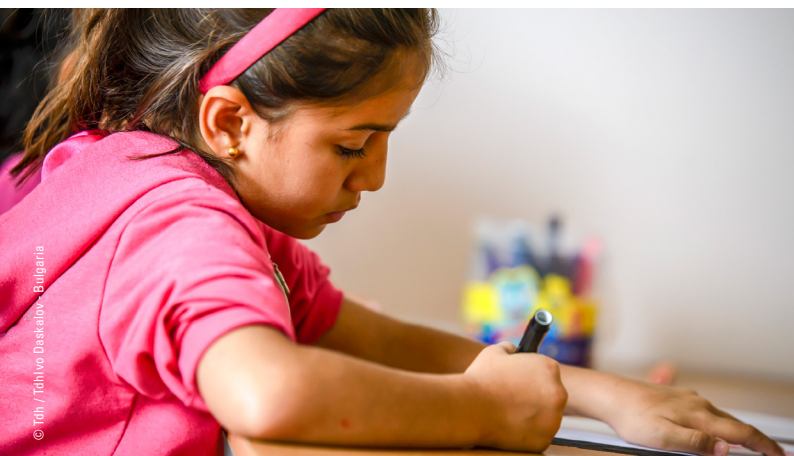
[15] Ema Seclaman & Elisa Goras, Experts, RJ Experimental Centre in Bucharest.

[16] Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.

[17] Mihai Munteanu, President, the Mediation Council.

the Mediation Council in promoting the practice, not only among the general population but also among other professionals.

When referring to the work with children in a mediation context, both the President of the Mediation Council and one of the mediators interviewed for this study<sup>[18]</sup> considered that it comes down to the tact of a mediator to work with such cases. The President of the Mediation Council mentioned that each mediator evaluates at an individual level if they are apt to take over a case with juveniles. The training of mediators lasts for 80 hours and has both theoretical and practical components on the general practice of mediation with no focus on children.



The President of the Mediation Council saw that the decision to have a mediation agreement with enforceable title brought weight to the work of a mediator. However, the mediator<sup>[19]</sup> considered that such a decision is against the principles of mediation. A mediation agreement is an agreement between the parties. If they want to apply it or not, it should be up to them. Plus, for an agreement to have an enforceable title, it needs to be certified by a lawyer, which implies further costs, she added.

In criminal cases, parties can reach a mediation agreement even without meeting in person. The law allows the mediator to have separate meetings and to go back and forward between the parties, if needed.

Answering to the claim that some see mediation as transactional, meaning parties tend to discuss mainly about financial aspects or any other similar gains, the President of the Mediation Council answered that this claim would not be very accurate.

*The generalisation [of how some cases of mediation are done] is not beneficial. [In a mediation] you need to see if the victim is a victim for the first time, or have they had the misfortune of being re-victimised? The perpetrator, is it their first offence or not? What were the cases that have generated the actions of the perpetrator? What is their history? Did they know each other before, did they not? There are a lot of things to take into consideration. To say now that mediation is only transactional, I am telling you it is not. To tell you that it is full restorative justice, again, I am telling you it is not. Mihai Munteanu, President, the Mediation Council.*

As one of the mediators<sup>[20]</sup> stressed, mediation should be applied in serious offences as well, because it could help people understand what happened and it could allow them to ask questions and heal. However, the tendency today is that even the number of less severe crimes are reduced from the list of crimes that can be mediated.

What the President of the Mediation Council considered is that the law should be left to work so that one can see later what needs to be changed.

UNICEF in Romania has seen a shift in the approach regarding children in the country. Ten years ago, their initiatives were more focused on transforming juvenile justice, meaning providing alternatives for children in conflict with the law, nowadays the focus is more on justice for children, meaning children's access to justice. Both UNICEF experts<sup>[21]</sup> believe that children should not be locked up, regardless if we are talking about educative centres. However, the focus today is more on the type and the quality of services children have when they enter the criminal justice system and that is where the focus is normally directed by the system.

[18] Ana Balan, Scholar and Mediator.

[19] *Idem.*

[20] *Idem.*

[21] Voica Tomus & Corina Popa, Experts, UNICEF.

*Now the focus, from what we used to call 'Juvenile Justice', respectively to remove children from detention and to promote restorative measures of another type than detention, is more towards a trend called 'Justice for Children', which practically means children's access to justice. What we mean by that is that even the simple reporting mechanisms of some situations could come under the incidence of justice. For example, complaint mechanisms of children who are victims of violence. Where do these [complaints] end up? Where is this happening?* Voica Tomus, Expert, UNICEF.

A Save the Children expert<sup>[22]</sup> highlighted the increase of investment in alternatives for children in conflict with the law compared with a few years ago. Save the Children themselves run a series of consultations with children and professionals on restorative practices in 2011. Equally, there have been constant initiatives on mediation in family disputes to limit the exposure of children to courts. Lately, the focus of most of the professionals in the field of child protection has been actively directed towards the new methodological norms of the new anti-bullying law. The Save the Children expert considered that most of the alternatives for anti-bullying are restorative and the focus is no longer on sentencing.

When speaking with the policymakers working in the prison and probation systems, the understanding is that, during the past recent years, there are fewer juveniles who find themselves under their supervision. By looking at the statistics received and mentioned above, less than 15% of the minors who committed crimes and are criminally responsible end up in either the prison system or probation. The other part, thus, falls within the situation where the criminal investigation is not undertaken. Unfortunately, for most of these children, there is no further assistance.

Academia equally invested in introducing RJ courses at university. One of the scholars<sup>[23]</sup> mentioned the introduction of restorative practices in different core and optional courses at the University of Bucharest.

She spoke about the Mediation Pills course (Pastile de Mediere) for first year students, a one-semester course on Mediation in Social Work, another one in Conflict Strategies and a course in Conflict Management Strategies for undergraduate students in their last year. Equally, the Master of Probation has designed within its curricula a course on Restorative Practices. However, none of the above-mentioned courses focus particularly on restorative juvenile justice.

Another scholar<sup>[24]</sup> referred to courses on the Sociology of the Victim at the undergraduate level and courses on Public Opinion, Social Justice and Criminality at the master level that she is teaching, which include elements of RJ. Furthermore, she has been researching extensively on RJ in Romania, evaluating the RJ Experimental Centres and a few other programmes of restorative practices in schools. Still, as she mentioned, after 2013 there have been no requests for evaluations of similar initiatives. It is unclear if this is related to the fact that there is an absence of efforts on restorative practices in the past few years. The scholars<sup>[25]</sup> seem to observe a trend in the decrease in the quality of students enrolling in a university programme, these students being the potential future practitioners on restorative practices.

An essential element that worries some professionals and that has been stressed by one of the scholars<sup>[26]</sup> is that the way mediation is used in the Romanian context obliges mediators to have a minimum knowledge in law and/or legal studies.

*You must have a minimum knowledge of law studies to know how to read an indictment. How do you enter in a penal mediation if you do not know how to read a criminal file? Based on what they tell you? You don't even know what's written there? You don't have to judge, you don't have to see the offence, you're not the one to classify the offence within the rule of law, of course not, but you need to know at what stage in the judicial process you find yourself, at what procedural moment you find yourself. If you don't know what is the moment the*

<sup>[22]</sup> Roxana Paraschiv, Expert, Save the Children.

<sup>[23]</sup> Claudia Constantinescu, Lecturer, University of Bucharest.

<sup>[24]</sup> Ecaterina Balica, Academician, Institute of Sociology, Romanian Academy.

<sup>[25]</sup> Ana Balan, Scholar and Mediator and Claudia Constantinescu, Scholar and Mediator.

<sup>[26]</sup> Claudia Constantinescu, Lecturer, University of Bucharest.

*indictment intervened, where there's nothing else you can do or you don't know how much time is left in order to hurry up with the mediation procedure, you can mislead the parties.* Claudia Constantinescu, Lecturer, University of Bucharest.

## Summary of key findings

Romania experienced the first RJ initiatives back in 2002. Two of the lessons learned by the experts working in those centres are that RJ needs to be implemented as early as possible in the life of an individual and that the restorative principles need to be inoculated in all professions.

Currently, there are around four million files on a court role, both civil and criminal, and there is need for continuous awareness on mediation, the closest form to RJ, in order to have some of these cases mediated. However, the current tendency being witnessed is that the list of crimes that can be mediated is getting constantly shortened.

When addressing children in conflict with the law, the focus nowadays is more on justice for children, meaning children's access to justice, comparing to ten years ago when the different organisations' initiatives were more focused on transforming juvenile justice, meaning providing alternatives for children in conflict with the law. But as a general rule, less children enter the criminal justice system. In 2019, less than 15% of the minors who committed crimes and were criminally responsible ended up in either the prison system or probation.

The latest development on matters of restorative practices is the new anti-bullying law (2019) where the focus is no longer on sentencing. In addition, at the university level, professors are invested in introducing RJ courses in their curricula.

## 1.2. Challenges when working with children

During the implementation of the RJ Experimental Centres, challenges surfaced that are still relevant today. First, parties had little enthusiasm to participate in mediation and some of them tended to come to mediation only to discuss money-related aspects. Some would say that today this issue is still present and the reason why mediation is seen in some cases as being transactional. The General Prosecutor's Office of the Supreme Court of Cassation and Justice issued a statement last year in October, in which they raised concerns that cases related to theft and qualified theft tend to be mediated rather than sentenced, which, in their opinion, does not promote fair justice. The Save the Children expert<sup>[27]</sup> also pointed out that during the consultations with children on RJ, consultations that were part of a project they had few years ago, the interest of children was mostly focused on paying back the prejudice caused, but not so much on admitting guilt and taking responsibility.

Second, the mediators in the RJ Experimental Centre in Bucharest dealt with reluctant professionals, such as prosecutors or police, when it came to the use of RJ. There are voices nowadays raising the same issue that there are still professionals in the criminal justice system who do not embrace this practice. However, one of the experts<sup>[28]</sup> in the RJ Experimental Centre in Bucharest has also pointed out that "you cannot embrace something that you don't know."

Third, lawyers defending their clients seemed to be unwilling to accept mediation. Another expert in the RJ Experimental Centre in Bucharest<sup>[29]</sup> mentioned that they would contact the victim who initially agreed to participate, but that when calling them hours later they would say "my lawyer advised I should not take part in this meditation." More so, the mediators would receive phone calls from the lawyers themselves who were saying "I am the one who does mediation, not you", and so, the expert added, half of the cases did not go to mediation because "lawyers intervened at home." The President of the Mediation Council<sup>[30]</sup>

<sup>[27]</sup> Roxana Paraschiv, Expert, Save the Children.

<sup>[28]</sup> Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.

<sup>[29]</sup> Elisa Goras, Expert, RJ Experimental Centre in Bucharest.

<sup>[30]</sup> Mihai Munteanu, President, the Mediation Council.

raised this issue as well, pointing out that somehow there still seems to be a conflict between lawyers and mediators, even though this should not be the case as roles of both professionals are well defined in the **Mediation Law**. He also mentioned that both the Mediation Council and the Union of the Law Bars are working on an agreement and on a working methodology in mediation.

Fourth, as a culture, Romanians do not seem to have an attitude which is prone towards reconciliatory methods. This statement was addressed by UNICEF experts and the President of the Mediation Council. In general, Romanians tend to sort out their disputes in the courts, but this could be caused by the fact that mediation is relatively new. Although the **Mediation Law** was adopted in 2006, it has only recently gained traction and there is still a need for continuous awareness in this regard.

The RJ Experimental Centres operated until 2004 since the initiators did not manage to secure further funding and the State did not step in. The work in the centres was difficult because it involved plenty of fieldwork and fighting with a system that has never experienced RJ before. But if there was one fear, which one of the experts feared the most, was the enormous responsibility she had as a mediator.

*This mediation profession does not have an impediment of an intellectual nature, but it has an impediment of an emotional nature. I was afraid. I was afraid that something might happen to them, that the victim gets hit again. I was afraid that I would damage more than it has been damaged. I was afraid, and not for myself.* Elisa Goras, Expert, RJ Experimental Centre in Bucharest.

Another challenge that constantly arises is the existence of the five types of mediators, according to the COR. The President of the Mediation Council considered that there should be only one mediator, as established in the **Mediation Law**, because, otherwise, it creates confusion. However, other voices believe differently. The argument in this second instance is

that mediators existed before the **Mediation Law** was adopted and they were created in different forms because communities have different needs. These needs cannot be covered by the mediator as portrayed in the **Mediation Law** since the law is limited to cases relatable to the court.

By the same token, one of the mediators<sup>[31]</sup> reflected on the importance of leaving the profession of mediation free, meaning that it is not subjected to any authority and that mediators should not subordinate hierarchically to anyone. This profession should be allowed to develop organically, under some limits, indeed, but flexible ones. If before mediators could have freely associated with a professional association that protects the mediators' rights, in the new modifications to the law, these professional associations are now affiliated to the newly formed regional mediation councils that fall under the authority of the Mediation Council.

On another note, almost everyone in the field of mediation considered that mediation is going backwards, as the number of cases for which mediation can be applied keeps being reduced.

*All decisions of the Constitutional Court affected mediation negatively. The first decision, which referred to the fact that the information regarding the mediation procedure cannot be obligatory, it was assumed in the press and in society, that mediation is unconstitutional as a whole. [...] This was the first sudden fall of mediation. The decision of the Supreme Court of Justice that said that in criminal matters mediation is to only be used up to the indictment, reduced, again, the casuistry pallet drastically. Usually, parties used to come to mediation when they saw that the situation was getting worst, that they ended up in the court and the end was close.* Ana Balan, Mediator and Scholar.

Mediation, as mentioned before, also suffers from a lack of good publicity and the President of the Mediation Council<sup>[32]</sup> agrees that this is a responsibility of the institution he leads.

<sup>[31]</sup> Ana Balan, Mediator and Scholar.

<sup>[32]</sup> Mihai Munteanu, President, the Mediation Council.

<sup>[33]</sup> Roxana Paraschiv, Expert, Save the Children.

<sup>[34]</sup> Voica Tomus, Expert, UNICEF.

When it comes to both child victims and child offenders, the situation is far from ideal. With child victims it seems to be even worse than with child offenders. As stated by the Save the Children expert,<sup>[33]</sup> any contact that a child victim has with the judicial system is already a re-victimisation. She added that while the CPC allows the child victim to be protected, the court infrastructure does not allow that.

*Redundantly you have a provision in the CPC that tells you that the vulnerable victim can be heard outside of the courtroom if you don't have a council room. Most courts do not have a council room and do not have an audio-video recording system. In the courtroom, a victim is heard in the presence of their perpetrator. It's already a re-victimisation. What I know from my colleagues who work with victims in counselling sessions, depending on the position and beliefs of the judge, is that you have situations in which the perpetrator is allowed to address questions to the victim directly. I tell you sincerely that if there would be a child in my proximity and be a victim, I swear I don't know if I would advise the family to enter the judicial procedure or forget everything. Roxana Paraschiv, Expert, Save the Children.*

Related to child offenders, the UNICEF expert<sup>[34]</sup> highlighted that there is only one Youth Tribunal in the country, in Brasov, and it creates inequity for the children from other parts of the country to access a fair juvenile justice. Even if you have Court Special Formations within the courts, designed for the trials of minors, it is not enough, the expert said. She added that the State needs to invest in community-based practices and not in infrastructure that promotes detention.

In general, the professionals who work with child victims who enter the judicial process are unprepared to work with vulnerable children, from police to prosecutors, to lawyers, to judges and even to mediators. Another risk raised by one of the scholars<sup>[35]</sup> is that RJ could be implemented by people who have not understood the restorative principles.

## Summary of key findings

In general, Romanians do not seem to have an attitude which is prone towards reconciliatory methods. This could, however, be caused by the fact that mediation is relatively new. Even some of the professionals in the criminal justice system do not embrace this practice, and again, this is due to the fact that these professionals are not aware of this practice and its benefits. Therefore, there is a need for awareness campaigns on mediation.

When it comes to both child victims and child offenders, the situation is far from ideal. On the one hand, any contact that a child victim has with the judicial system already constitutes a situation of re-victimisation, because while the CPC allows for the protection of the child victim, the court infrastructure is lacking. On the other hand, in regard to child offenders, there is only one Youth Tribunal in the country, in Brasov, and it creates inequity for the children from other parts of the country requiring access to a fair juvenile justice. Moreover, in general, the professionals who work with child victims and who enter the judicial process are unprepared to work with vulnerable children.

### 1.3. Best practices when working with children

The model used in the RJ Experimental Centres was very authentic to the practice of restorative conferencing that exists today in the UK, New Zealand or Australia. The mediators used to follow a set of questions from a script and had a system in place for the joint meeting.

*We used a very well organised script; we knew who's talking and when they are talking. We even knew who's seated where. Usually, we were two facilitators in the room because one knew the case better and the other one helped. We sat in a circle, but the order [of the circle] also mattered. On the right side was the victim with the supporters. On the left side was the defendant with the supporters. And we, the professionals, sat next to each other, one to the side with the victim, and the colleague*

<sup>[35]</sup> Ecaterina Balica, Academician, Institute of Sociology, Romanian Academy.

<sup>[36]</sup> Mihai Munteanu, President, the Mediation Council.

*to the side of the defendant. Psychologically we supported each side. We always had in mind that during the meeting there can be situations when you need the support, even on small things, [of your colleague] to pass on the napkins box, pass on a glass of water, because it was a massive emotional discharge. You had to take care of the entire group dynamic.* Elisa Goras, Expert, RJ Experimental Centre in Bucharest.

With the extension of the RJ Experimental Centres in 2004, there was a definite improvement in the relations with professionals from the judicial system since they started to understand the relevance of mediation. It is unfortunate that these centres were not continued after that.

The President of the Mediation Council<sup>[36]</sup> highlighted that there is a soft-mandatory measure in the **Mediation Law**, Article 61 (3) and (4), to try the mediation procedure. The Mediation Council plans to initiate a series of eleven conferences in the country in the foreseeable future dedicated to all actors who want to collaborate on mediation and during which different issues can be raised and addressed. There are a few aspects that need to be improved in mediation, according to the President of the Mediation Council. First, to have the possibility to add mediation on the legal citation and so to possibly increase the chances for parties to choose mediation. Second, to have the opportunity to add benefits for choosing mediation, such as the exemption from paying the court stamp fee.

One significant aspect that could help mediation be accessed by more people, as seen by one of the mediators,<sup>[37]</sup> is to have the State fund the mediation, at least for some cases. Equally, massive training of judicial professionals to send cases to mediation could be implemented.

According to one of the UNICEF experts,<sup>[38]</sup> there are signs of hope. Indeed, she had met magistrates

from CSM who are collecting the data of all juveniles who enter the criminal justice system and show concern for their future. She also mentioned about the magistrates from the Magistrates Association, who developed eligibility criteria to become a children's judge. Moreover, the guide for interviewing children that UNICEF developed seems to be used by professionals.

The Save the Children expert<sup>[39]</sup> also mentioned the existence of different police and prosecutors who, in the absence of any proper hearing room for children, do seek collaboration with NGOs. She also highlighted that children who enter the prison system nowadays are better-taken care of than before. In addition, Save the Children is currently working on implementing the Barnahus concept in Bucharest where the hearing of children can take place. The questions will not be addressed by the judicial bodies but by the child protection experts who address questions received via an ear set from the judicial professionals. The child sits in a comfortable room with a limited number of people, such as the parents or the legal representatives and the child protection expert and everyone else sits in a separate room and watches through a glass window, from where they cannot be seen. However, they have yet to pass a significant hurdle in order to bring to life this concept in Romania: only judicial bodies can conduct the hearing, according to the current law.

When referring to child offenders, from both the prison system and probation, there is availability to collaborate on different initiatives that could include a restorative component. As mentioned before, there was a restorative initiative in a few prisons a few years back, through the implementation of the programme *Educate to repair* (A educa pentru a repara). There has also been training delivered for probation officers on restorative practices. The only problem with such initiatives is that they need funding.

<sup>[37]</sup> Ana Balan, Mediator and Scholar.

<sup>[38]</sup> Voica Tomus, Expert, UNICEF.

<sup>[39]</sup> Roxana Paraschiv, Expert, Save the Children.

<sup>[40]</sup> Claudia Constantinescu, Mediator and Lecturer with the University of Bucharest and Ecaterina Balica, Academician, Institute of Sociology, Romanian Academy.

<sup>[41]</sup> Claudia Constantinescu, Mediator and Lecturer with the University of Bucharest.

<sup>[42]</sup> Ecaterina Balica, Academician, Institute of Sociology, Romanian Academy.

<sup>[43]</sup> Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.



Two of the scholars interviewed for this study<sup>[40]</sup> do include different components of RJ in the courses they teach. It is easier to do so through optional courses for which there is no need to wait five years for the accreditation, as would be the case of a core class. One of the scholars<sup>[41]</sup> is now considering including elements of child victims in the classes she is teaching on restorative practices. Since being part of the evaluation team of the RJ Experimental Centres, the academic<sup>[42]</sup> has included lessons from those initiatives in the courses she teaches.

When one of the experts<sup>[43]</sup> conducted the trainings on the **Child Protection Law** back in 2004, the feedback received was a testimony of the importance of a multi-disciplinary approach.

*I understood then that judges, prosecutors do not see a file number in a child, any longer. [...] A judge told me that she apologises [but] now she knows how the spaces look like where she disposes the placement measure. The jurists from the child protection service who participated in the course said that before they couldn't have dared to say to a judge anything else than what was written in the file, and they used to answer strictly to what the judge was asking. Now they can call them and ask for advice. Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.*

## Summary of key findings

The practice used in the RJ Experimental Centres was as authentic to the practice of restorative conferencing that exists in the UK, New Zealand or Australia today. Indeed, it was the forerunner of the mediation practice today.

The **Mediation Law**, with all its flaws, has a soft-mandatory measure in its Article 61 (3) and (4), to try the mediation procedure. In addition, the Mediation

Council plans to organise a series of events dedicated to all actors who want to collaborate on mediation.

Regarding children in the criminal justice system, UNICEF developed a guide for interviewing children, which seems to be used by professionals. Save the Children is also currently working on implementing the Barnahus concept in Bucharest where the hearing of children can take place. The concept entails that the questions will not be addressed by the judicial bodies but by child protection experts who address questions received via an ear set from the judicial professionals. The child sits in a comfortable room with a limited number of people, such as the parents or the legal representatives and the child protection expert, and everyone else sits in a separate room and watches through a glass window, from where they cannot be seen.

## 1.4. Trainings on restorative justice and/or child protection

One of the experts<sup>[44]</sup> in the RJ Experimental Centres said that she and the rest of the team were trained on matters of RJ for two weeks when they first initiated these centres back in 2002. During the time when the centres existed, the team received further training from professionals from Wales, UK. The expert continued to draft and implement projects on restorative approaches for children. She delivered trainings for school directors, jurists and child protection professionals in 2003. "In 2005-2006-2007 she trained a pluri-disciplinary team of judges, prosecutors, teachers, police, doctors, priests and specialised personnel from DGASPC on the Law on Child Protection 272/2004. She, herself, enrolled in a mediator training once the Mediation Law was adopted. She also conducted training courses, with the help of Belinda Hopkins,<sup>[45]</sup> back in 2012, in the field of restorative practices for school counsellors, principals and teachers in some of the schools.

<sup>[44]</sup> Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.

<sup>[45]</sup> Belinda Hopkins is a senior practitioner and trainer, mostly specialised in youth conflicts (Transforming Conflicts, UK).

<sup>[46]</sup> Mihai Munteanu, President, the Mediation Council.

<sup>[47]</sup> Ana Balan, Mediator and Scholar.

<sup>[48]</sup> Voica Tomus, Expert, UNICEF.

<sup>[49]</sup> Roxana Paraschiv, Expert, Save the Children.

<sup>[50]</sup> Voica Tomus, Expert, UNICEF.

Related to the current general course on mediation, the President of the Mediation Council<sup>[46]</sup> said there is no approach on children in the curricula. The scholar and mediator<sup>[47]</sup> added that the issue is similar for the continuous professional trainings. She also mentioned that the plan for the future is for the training of mediators to be delivered by the National Institute of Mediation, an institute still inoperable.

When it comes to child protection, the UNICEF expert<sup>[48]</sup> recalled that in 2008 the CSM included a course on working with children for the formation of magistrates. Save the Children also trained many professionals from the General Directorate of Social Work and Child Protection (DGASPC) in different counties two years ago. The Save the Children expert<sup>[49]</sup> also stated that at the level of the National Institute of Magistracy (INM) and the National Institute for the Training of Lawyers (INPPA), there is a course on family law which includes elements of child psychology.

Mediators and professionals working in both the criminal justice system and at the community level, in general, do look for other trainings from international providers but on most occasions these are at their own expense. The UNICEF expert<sup>[50]</sup> mentioned that, for trainings to work, they first need to be assimilated as a continuous professional development, and second, to be integrated in these different institutions or institutes' curricula.

## Summary of key findings

The policymakers mentioned the following trainings, either that they know of or that they delivered:

- Training in restorative practices delivered by international providers to practitioners in Romania;
- Training for child protection experts on child's rights, by Save the Children;
- Training for lawyers on family law which includes

elements of child psychology, by the National Institute for the Training of Lawyers;

- Training for magistrates on working with children and family law, by the National Institute of Magistracy;
- Training to become a mediator according to the **Law 192/2006**, by 23 authorised training providers (and in the foreseeable future by the National Institute of Mediation);
- Training for social mediators in a Roma community, by Tecuci municipality;
- Training for school counsellors on restorative practices in 2012, by the Centre for Legal Resources;
- Training for a pluri-disciplinary team of judges, prosecutors, teachers, police, doctors, priests and specialised personnel from DGASPC on the **law on child protection 272/2004**, in 2005-2006-2007;
- Training for school directors, jurists and child protection professionals on matters of child's rights in 2003, by Terre des hommes.

## 2. Practitioners

### 2.1. Working with child victims/elements of restorative justice

More than 20 years ago, there used to be offences with a prior complaint addressed directly to a court, allowing judges to have a broader role in dealing with cases. According to one of the judges, a judge could have done an informal mediation circle.<sup>[51]</sup> He also highlighted that different types of courts have various limitations. For example, at the Court of Appeal there is not much that a judge can do. In general, a judge receives the mediation agreement and verifies if the document is operable and if the conditions provided by the law are met.

<sup>[51]</sup> Ciprian Coada, Judge, Court of Appeal Constanta.

<sup>[52]</sup> Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[53]</sup> Cristi Danilet, Judge, Cluj-Napoca Tribunal.

<sup>[44]</sup> Ema Seclaman, Expert, RJ Experimental Centre in Bucharest.

*What we could do at this stage is to guide the parties to reconcile because the reconciliation can intervene up to the final decision, but again, only for cases of withdrawal of the prior complaint. [...] I think, rather, the prosecutor or the police officer could guide parties [to mediation], so in the end, the file would not reach the court.* Ciprian Coada, Judge, Court of Appeal Constanta.

However, at the Court of Appeal even the withdrawal of the prior complaint is very unlikely as the complainant would need to bear all costs related to the judicial process. What the judges ideally see is for this process to happen as soon as possible in the judicial process.

There are efforts at the court level for children to gain the best outcome. For instance, if a parent does not pay child support, the effort is to avoid a conviction solution for the parent since it is clear that the child has nothing to gain from it.<sup>[52]</sup> When dealing with child offenders, another judge<sup>[53]</sup> mentioned that he is doing everything in his capacity to divert and look for alternatives, so that juvenile cases would not end up in a court.

All three judges agreed that mediation is not well known, and one of the judges<sup>[54]</sup> added that, as it is practiced today, mediation is far from a European practice. The role of mediation in Romania is quite small as there is no component on social reintegration, one of the judges<sup>[55]</sup> said.

*I don't think that we can talk about a real victim reintegration and a moral repair of the sufferings caused.* Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

The lack of knowledge about the mediation practice, and generally about the understanding of reparation, is embedded within a culture that does not have a discipline of juridical education. All three judges agreed that such teachings should be obligatory at secondary

school, high school and university, and whilst training to become a judge.

But for mediation to happen at an earlier stage, it is essential to highlight the types of offences referred here. If applying to cases of child pornography or child sexual abuse, the mediation is not well embraced by professionals, such as prosecutors and police. As the prosecutor<sup>[56]</sup> mentioned, cases of child pornography are heavy. Most children are abused by their own mothers and, in general, this kind of abuse happens by persons who know the children.

The Bucharest Police established in May last year a bureau to fight sexual abuse by unknown perpetrators. Both police and prosecution undertake work with specialists from DGASPC, even with private psychologists, to offer child victims support in the investigation process.

Police have no obligation, according to the CPC, to inform the parties about mediation, one police officer<sup>[57]</sup> mentioned. He added that he used to try to mediate parties in cases with limited evidence, but it was an individual initiative. However, he now works with the Homicide Bureau, where the investigation is the main activity. After a hearing, a juvenile offender can be sent back to his family for the duration of the investigation or be placed under police arrest if the child has no parents. In severe cases, juveniles are sent to a detention centre.

In general, if the offence happens between minors of whose age difference is less than three years, the case is closed.

At the prevention level, last year, the Romanian police carried out 17,718 prevention activities<sup>[58]</sup> throughout Romania. Since 2010, the prevention of juvenile delinquency has become a national priority.

The Anti-drug National Agency (ANA) is also running prevention campaigns for children who use drugs. It

<sup>[52]</sup> Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[56]</sup> Ionut Marcu, Prosecutor, Directorate for Investigating Organised Crime and Terrorism.

<sup>[57]</sup> Daniel Barbu, Police Officer, Criminal Investigation Direction, Romanian Police.

<sup>[58]</sup> The activities aimed at increasing awareness on how to not become a victim and, equally, on staying away from crime. Some of these activities concerned alcohol and drug abuse, bullying or reducing the risk of becoming a cybercrime victim.

<sup>[59]</sup> Mona Neclua, Expert, National Agency Against Drugs.

seems that the age of first consuming drugs dropped to eight years of age. Working with this type of child victim has a restorative approach in the sense that a prosecutor, before launching an investigation, requests an evaluation of the child from either the Bucharest Centre or one of the Prevention, Evaluation and Counselling Territorial Centres. These evaluations are conducted by a multi-disciplinary team consisting of social workers, psychologists and physicians who propose an intervention plan. Based on this evaluation report, the prosecutor decides to either cease the criminal prosecution and allow the child to participate in the counselling plan or change the proposed sanction with a lighter one. If the criminal prosecution is ceased, the child is obliged to participate in the activities suggested. If the child skips activities or does not show up at all, the centre informs the prosecutor who can then propose a sentence. This approach is part of the programme called “Therapeutic Justice”.

In the intervention plan, children can benefit from individual or group counselling, but children prefer individual counselling, the ANA expert<sup>[59]</sup> mentioned. This programme is also promoted in schools and within DGASPCs, and as a result, many DGASPC specialists send cases to ANA.

There are two different kinds of mediators, those who work mainly at the judicial level, dealing with civil and/or criminal cases, and those who work in the community, mainly in schools. One of the mediators<sup>[60]</sup> interviewed for this study is doing extensive work in schools. He has a partnership with the Bucharest Educational Inspectorate, through which he intervenes as a mediator in different schools in Bucharest. But he does not like to be called a mediator. He personally prefers the term facilitator because nowadays everyone understands what they want when referring to a mediator, the expert added. In his work, not only does he facilitate the discussions between parties, he walks around the school and interacts with children and adults in order to better understand the dynamics at play.

Another mediator<sup>[61]</sup> is mostly dealing with civil cases, particularly family disputes. She is also a lawyer and entered the bar in 2000 and in 2001 she became a mediator. She believes that mediation is an assisted negotiation.

*During mediation you help parents to make a paternal plan, determining, actually, how to exercise their parental authority; where will the child live, how are they [the parents] fulfilling their obligations? The separated parent can set a programme [to visit or have the child] or how to help financially. All of this is the subject of mediation, under the conditions in which the child can participate in this procedure. Ioana Marin, Mediator and Lawyer.*

She is a firm believer in child participation during the mediation, even if the child is younger than ten years of age (according to the law, authorities must listen to a child if he/she has turned ten already). She is constantly consulting with the parents regarding allowing the child to take part in the meeting. She also considers that being a lawyer is vital because, as a mediator, one needs to know what can be negotiated from a legal perspective. The expert is also very clear about the differences between a mediator and a lawyer since she is both.

*The mediator is seen by the parties in the conflict as a neutral and impartial individual. [...] Whereas, as a lawyer, you find yourself in a completely different position. [...] When you're the child's lawyer, you can't be seen by the parent, who's being sued, as a man of dialogue. [...] You're always going to be on the other side. You have a mandate determined by your client. Ioana Marin, Mediator and Lawyer.*

The school counsellor<sup>[62]</sup> interviewed for this study is also using restorative practices in schools. Starting in 2012, when she participated in a training in restorative practices initiated by one of the experts from the RJ Experimental Centre in Bucharest,<sup>[63]</sup> and delivered by Belinda Hopkins,<sup>[64]</sup> she has included these practices in her intervention in schools.

<sup>[60]</sup> Bruno Demaille, Mediator.

<sup>[61]</sup> Ioana Marin, Mediator and Lawyer.

<sup>[62]</sup> Claudia Stefan, School Counsellor.

<sup>[63]</sup> Ema Seclaman, Expert, RJ Experimental Centres.

<sup>[64]</sup> Senior practitioner and trainer, mostly specialised in youth conflicts (Transforming Conflicts, UK).

*[I use a restorative circle] usually when the class principal requests it, where they have no values [at the class level], or when these values are not respected, because there are small chicanes between children. Then, I'll work a few hours per week with the respective class. I do more sessions [with them] to assimilate some values, [...] to see what it means to respect these values. If it happens to be a very solid group and they understand very well [what I talk about], we have just one meeting, but usually, I have several meetings with them. Claudia Stefan, School Counsellor.*

She also includes the adults in her restorative circles, either the professors or the parents. Whenever she is confronted with a difficult situation, meaning family violence, she contacts the child protection service. According to her, all of her colleagues who participated in this training in 2012 have incorporated restorative practices in their work in schools. They also seem to be very well organised both at the Bucharest level and at the provincial level and meet regularly to discuss issues and best practices.

In 2018, within the Romanian Ombudsman, a department to focus on child's rights was created. They receive petitions from either the children or their parents or get notified *ex officio*, the Child Ombudsman expert<sup>[65]</sup> mentioned. But most of the petitions come from parents. The Child Ombudsman's department "mediates" the situation raised to them. They first address the institution that violated the child's rights. They can conduct field investigations, either announced or unforeseen, and after they draft a conclusion and inform the petitioner either with a favourable outcome or a negative one. But they never meet the petitioner. The Child Ombudsman's expert added that what they can also do is to issue recommendations to the complained institution.

If a case is related to a placement centre, the Child Ombudsman works with the colleagues from DGASPCs, or if they receive a complaint related to an offence, then they notify the prosecution. They can also represent a child in the court and work with other

organisations such as UNICEF.

The child protection service intervenes on the ground most of the time. The professionals from the DGASPC Sector 6 - Abuses Service said that they approach families as a whole whenever they intervene in respect of a child. They look at the family dynamic to see how a solution can best address the child's needs. They are sometimes called by either the police or prosecution, or at the courts when a child is heard, but, as the professionals mentioned, their intervention is passive, only to make sure that the child's rights are met. Equally, the DGASPC staff intervene in schools as well, when they are requested, and when they do, they try to involve everyone in the discussions.

At the community level, the psychologist<sup>[66]</sup> and community worker interviewed here, said that there are few interventions in different communities and in various forms. She gave an example of the family decision-making group method that she used in a family case management. She worked with a family where one of the members had cancer and the family had to make decisions that they normally could not make.

## Summary of key findings

In general, a judge receives the mediation agreement and verifies if the document is operable and if the conditions provided by the law are met. What the judges see ideally is for this process to happen as soon as possible in the judicial process.

Mediation is not well embraced by professionals, such as prosecutors and police, if applied to cases of child pornography or child sexual abuse.

Both the police and the Anti-drug National Agency run awareness campaigns to keep children away from crime. In addition, the Anti-drug National Agency is currently running a programme called "Therapeutic Justice" through which children who use drugs benefit from a specialised intervention to keep them away from detention.

<sup>[65]</sup> Robert Trusca, Expert, Child Ombudsman.

<sup>[66]</sup> Izabella Kaska, Psychologist.

<sup>[67]</sup> Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[68]</sup> Ciprian Coadă, Judge, Court of Appeal Constanta.

School counsellors seem to be very well organised both at the Bucharest level and at the provincial level and meet regularly to discuss issues and best practices.

In 2018, within the Romanian Ombudsman, a department was created to focus on child's rights called the Child Ombudsman.

Apart from the mediation used at the judicial level and in schools, there are other forms of restorative practices used by professionals in different communities, one of which is family decision-making group used in case management.

## 2.2. Challenges when working with children

As highlighted before by the policymakers, one of the judges<sup>[67]</sup> pointed to the same issue that mediation has an increasingly restricted area of implementation. When a mediation agreement is brought to their attention, another judge<sup>[68]</sup> said, judges do not know if parties have, indeed, reconciled.

*We take note of an agreement, we don't know in reality if parties agreed or they just simply wanted to escape the trial, if between them there is an attitude of regret, if they managed to overcome those moments. We don't know if there is a working session similar to what happens in other countries, where the victim meets with the perpetrator, where the relatives of both parties are asked to participate, precisely because we do not take part in this process. Ciprian Coada, Judge, Court of Appeal Constanta.*

When a child offender is under investigation, the evaluation report is done only at the request of a judge, late in the judicial process. One of the judges<sup>[69]</sup> said that it would be beneficial if the prosecutor would ask for this report, which could influence how the criminal investigation takes place. In many cases, the minor is placed into custody for 24 hours and, then, in preventive arrest during the criminal investigation. This

preventive arrest can be extended once or twice and the juvenile can end up being in detention for 180 days before his appearance before the court, throughout which time there is no contact with a probation officer. Also, the judge added, there are few specialised courts for minors.

If the minor cannot afford to pay for a lawyer, an *ex officio* lawyer can be allocated to the child, but in this case the child's rights can be easily overlooked. Apart from the fact that lawyers are not trained on how to work with children, usually, the *ex officio* lawyer meets briefly with the minor for the first time just before the court appearance and the lawyer has a purely legal perspective over the case. It is improbable for this lawyer to propose mediation. Mediation, again, costs money. If the minor could not afford a lawyer, and had an *ex officio* lawyer allocated to him, they are most likely not in a position to be able to pay for a mediator.

During the first years following the adoption of the **Mediation Law**, many people sought the opportunity to access a new profession from which they could make money. Mediators, thus, increased in the thousands overnight. One of the judges<sup>[70]</sup> mentioned that this led to the failure of this institution. A criminal mediation that was transformed into a business destroyed any restorative principle.

As mentioned before, the judges also stressed the importance of teaching juridical education among the population, as people are unaware of mediation, let alone about its benefits and implications in the judicial system.

If a minor defendant is brought to justice alongside an adult defendant, the court sessions must be public. The same happens when the minor is a victim and the defendant an adult. One of the judges mentioned that this is often the case when the child victim and the adult offender find themselves together in the court on the basis of "oral, direct, and contradictory procedures." In the spirit of the European Convention of Human Rights, the defendant has the right to participate in the

<sup>[69]</sup> Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[70]</sup> Cristi Danilet, Judge, Cluj-Napoca Tribunal.

<sup>[71]</sup> Ciprian Coada, Judge, Court of Appeal Constanta.

<sup>[72]</sup> Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[73]</sup> *Idem.*

trial and address questions to the complainant. There are exceptions for the victim not to have to be in the presence of their perpetrator only in the case of threat or shock, but as one of the judges<sup>[72]</sup> said, it is not clear who is evaluating the victim being threatened or in shock, and this is the case for both children and adults.

The judges also raised the issue of a massive reduction of personnel due to retirement. This trend started in late 2018 and is still ongoing. It, thus, makes it harder for the current judges, who are given the workload from their retired colleagues. Similarly, in the past few years, a less interdisciplinary collaboration with other organisations and professionals was pursued. This is detrimental to everyone's work.

If there are cases of juveniles who reached 25 or 27 years old and still find themselves in a detention centre or educative centre, instead of a prison, that is because, one of the judges<sup>[73]</sup> highlighted, there was no mention in their conviction decision of the sentence that once "the juvenile is turning 18, the measure is executed in a penitentiary." This is not in the spirit of the law, he added. It is, probably, because judges omitted to mention this as a pro-child measure, but because the law does not support it, the prosecution can always appeal.

What is not so much discussed when addressing child offenders is that even if they receive an educative measure, which is not a factor for recidivism, this measure represents a criminal record. A legitimate rehabilitation can only remove the consequences of a prison sentence, not of an educative measure and, therefore, such educative measure does stay in the operational record of the juvenile. The child will never be rehabilitated, the record never deleted. As it was stressed by the same judge, what we do with a 15-16 child offender is vital.

Whilst prosecutors do deal with challenging cases sometimes, they are not specialised in children and the prosecutor<sup>[74]</sup> interviewed for this study pointed to the

importance of having a case psychologist. The most cumbersome cases are those with little evidence and where the prosecutor needs to obtain detailed information from the child victims. Sometimes, the expert added, a prosecutor needs to hear the child three or four times to form a case. He also mentioned that having too many people present at the hearing of the child victim makes the hearing difficult. He continued to say that by having the child's legal representative, the lawyer, the case police officer, the psychologist and the prosecutor, the entire hearing gets compromised. He sometimes feels that "we rather protect the offender than the victim."

The prosecutor very much supported the Barnabus concept but he stressed that according to the law, this would not be possible since only the judicial bodies can conduct the hearing. The same issue was raised by the police officers, as well.

One of the police officers<sup>[75]</sup> also highlighted the issue that rape is an offence with prior complaint for which mediation can take place. However, he stressed that you could not ask the parents to have their raped eight-year-old daughter reconcile with her perpetrator. There would be no justice for anyone.

The police officer<sup>[76]</sup> from the Homicide Bureau mentioned that the stage in the criminal process when mediation is considered is also essential. According to him, at the criminal investigation stage, most juveniles do not admit what they did since they are still hoping for non-conviction and having them meet their victims would mean a re-victimisation for the latter.

He also stated that there is no procedure on how to work with juvenile offenders, and that according to him, in order to avoid re-victimisation, judges should not hear children as the hearing is already done by the police and/or prosecution.

Both experts from the Police Prevention Department<sup>[77]</sup> and the Anti-drug National Agency (ANA)<sup>[78]</sup> admitted

<sup>[74]</sup> Ionut Marcu, Prosecutor, Directorate for Investigating Organised Crime and Terrorism.

<sup>[75]</sup> Bogdan Trandafir, Police Officer, Sexual Abuse Department, Bucharest Police.

<sup>[76]</sup> Daniel Barbu, Police Officer, Criminal Investigation Direction, Romanian Police.

<sup>[77]</sup> Anca Cusmir, Researcher, Prevention Department, Romanian Police.

<sup>[78]</sup> Mona Necula, Expert, National Agency Against Drugs.

<sup>[79]</sup> Bruno Demaille, Mediator.

that most children do not know what is illegal. This is the reason why both the Prevention Department of the Romanian Police and ANA are constantly running campaigns to reach as many children as possible and educate them on illegal and harmful behaviours and their outcomes.

Another issue raised by the ANA expert is that when children approach them for help, in most cases, the specialists cannot get the parental consent because children do not want their parents to know. Similarly, it is also unproductive if parents drag their children to counselling since children will not cooperate. These are cases that need help but have gotten lost on account of these barriers.

When referring to schools, apart from the well-known conflicts between children or children and teachers, there are those generated by parents on WhatsApp groups. This trend is also noticed by DGASPC professionals who are asked to intervene in schools.

The work one of the mediators<sup>[79]</sup> is doing in schools is not seen as proper mediation by the Mediation Council. He was told that meeting 30-40 people in a mediation meeting or not signing a mediation contract before mediation, is not proper mediation. These efforts to define mediation within strict limits, as requested by the Mediation Council, he said, are detrimental to the practice. He also highlighted that the mediation course he did in France was 560 hours long, compared to the 80 hours mediation course he followed in Romania, which is a big difference in the knowledge and skills a mediator can assimilate. He added that this is also why many mediators in Romania appear and disappear quickly because there is no solid teaching of mediation. Most know how to apply the law but if they encounter a case of mediation with no application of the law, the mediator said, they do not know how to do mediation.

Another mediator<sup>[80]</sup> stated that professionals who work with children in the criminal justice system, from lawyers to police, prosecutors, to judges and even mediators, are not trained to work with this category of people, an issue that was raised before. Another

significant problem when working with children at the judiciary is that there is no multi-disciplinary team. This issue was also raised by UNICEF. The mediator also added that there needs to be an operative team. There is a disparity between the judicial people, such as those from police, prosecution and courts, and non-judicial people, such as those from child protection, legal representatives and even the lawyers. If the police and the prosecution do have a direct channel of communication, the same cannot be said for the rest. The judge is seen as “the best of the best”, she said, since nobody bothers them. Therefore, when working towards the best interest of the child victim, for example, all these players need to work together. How? Through an Operative Team that should be led by one of the judicial bodies, the mediator believes.

She also stressed, like a few others before, that too many judicial bodies are hearing the child for the same offence, sometimes multiple times each, which is a re-victimisation in and of itself. Equally, there are conflicts between mediators and police because some police officers consider that mediation “is stealing their offender.” This conflict between mediators and police adds up to the above-explained conflict between mediators and lawyers.

As mentioned before, child protection specialists raised the same issue mentioned by one of the mediators,<sup>[81]</sup> that some conflicts in schools are generated or amplified by parents on WhatsApp groups. Moreover, when they are asked to intervene in a school due to a conflict, they go just to find out that the teachers, the directors and the principal have already formed an opinion, which is “to move the child to a different school.” The child protection specialists also feel that they are called to intervene in a school too early. They believe the conflicts should be first mediated at the school level by all adults involved, including the school counsellor, and only after all efforts fail, should DGASPC be contacted.

The child protection specialists also stressed that their image is seen as the “child police,” which have people being afraid of them when they should not. In addition, their working programme does not match

<sup>[80]</sup> Ioana Marin, Mediator and Lawyer.

<sup>[81]</sup> Bruno Demaille, Mediator.

<sup>[82]</sup> Claudia Stefan, School Counsellor.



with the parents', in most cases, and is thus a reason why children cannot sometimes participate in their activities because parents cannot bring them to these activities.

The biggest problem of using mediation or any form of restorative practice in school is that there are not enough trained people in these practices that work in schools. The school counsellor<sup>[82]</sup> interviewed for this study, who is also a trained restorative practitioner, is dealing with two schools of 1,500 children in total. She said that, at the moment, "I can't say I met with all children." This is not a unique case. She also mentioned that this is not novel information. The education inspectorate knows the issue, the Ministry knows the issue and despite all this, they are still outnumbered. She also acknowledged that within DGASPCs the issue is similar, which makes the intervention for children difficult.



### Summary of key findings

In many cases, juvenile offenders can spend up to 180 days in preventive arrest before their appearance before the court. At the same time, these juvenile offenders, if they cannot afford a lawyer, are allocated an *ex officio* lawyer. If this is the case, they are very unlikely to access mediation, which costs money.

If minors, either as defendants or as victims, are brought to the court alongside an adult, again, either as victims or defendants, then the court sessions must

be public. There is a major issue, especially in cases of child victims and adult defendants, when the latter is allowed to address questions to the victim.

In general, professionals who work with children, such as judges, prosecutors and police do not have a specialised training on children. While these professionals very much support a Barnahus concept in Romania, the legislative framework needs to be changed since, as of now, only the judicial bodies can conduct the hearing of a child - an issue which happens multiple times by multiple judicial bodies. There is, thus, a need for a multi-disciplinary team approach when addressing children.

The professionals in the judicial system do not consider that mediation is appropriate for cases of sexual abuse of children or in cases of juvenile offenders who find themselves at the criminal investigation stage. In this last case, most juveniles do not admit what they did, as they are still hoping for non-conviction.

During the first years following the adoption of the **Mediation Law**, many people sought the opportunity to access a new profession from which they could make money. This led to mediation being transformed into a business, as seen by some professionals.

Mediators who do work in schools or at the community level, often get in trouble with the Mediation Council because their practices are not seen as being aligned with the regulations that the **Mediation Law** implies, such as signing a mediation contract before a mediation meeting. However, the number of professionals who use mediation or any form of restorative practice in schools, for instance, is very scarce due to a lack of training and bureaucracy.

### 2.3. Best practices when working with children

One of the judges<sup>[83]</sup> said that he is doing his best so that juveniles would not end up in the criminal justice system, namely by investing his free time in educating young students on issues related to the law. He has created a booklet on juridical education for children in schools. Despite some of these positive steps,

sometimes judges do not have an infrastructure where they can conduct a private hearing of a child. There are other means, however, that they use to make the setting as child friendly as possible. They can ask the public to step outside or push for the cases involving children to take place at the end of the session, to have everyone whose business is finished to leave by that time. They can also opt for videoconferencing. In the absence of a system that should offer these in a structural form, much depends on each judge.

As mentioned before, two of the judges<sup>[84]</sup> stressed the importance of having the social-psychological evaluation report done by the probation officer concerning a child offender at the prosecution level. This would increase the chances for better outcomes for the child if the court sees that the offender tried to repair the prejudice.

*The introduction of a probation officer at the beginning phase of the criminal prosecution, having the perpetrator possibly subjected to a first preventive measure, could bring more possibilities for mediation. A mediation on the civilian side that intervenes up to a certain point in a criminal case in front of the first court could produce effects even on the criminal side. Because, if the court, the first instance, sees that the damage has been repaired to a certain term, [the judge] has the possibility to attenuate a proposed punishment, even with a probation measure. Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.*

The new CP and CPC introduced juridical assistance as compulsory for the child victim. They also added the mandatory insurance measures, but unfortunately, the CPC does not mention who is supposed to execute them.

The prosecutor mentioned that the DIICOT has a good partnership with DGASPC Sector 1 and they work very well together in the process of assisting the child victim. As of now, there is no family room at DIICOT and they rely on their partners for the hearing process. He is also invested in making sure that children are well

even after his job is done by staying in touch with the children. This is, however, an individual effort similar to the ones mentioned by the judges.

The police officer,<sup>[86]</sup> working in the Sexual Abuse Department within the Bucharest Police, mentioned that they take all measures to reduce re-victimisation. For example, they write down the declaration after a hearing takes place. Within the police stations, the practice is different as they tend to take this declaration during the same time that they hear a child, which can take a more formal approach and can influence the child. The decision to do it differently, the police officer mentioned, is an individual one, after he participated in some expertise exchange sessions with colleagues from the French and British police on child-friendly approaches in their daily work. This expertise also led his bureau to never conduct hearings with children in the evenings or for hearings to be never longer than 20 or 30 minutes, or more than one time. The children are always allowed to speak at their own tempo, without suggestive questions. At the Bucharest police, they do have a special room for children and the police officer added that the prosecution also has a special room in this regard.

The police within the Sexual Abuse Department of the Bucharest Police do follow both the guide on hearing child victims of violence by FONPC and the international protocol NICHD on the investigative interview when working with child victims.

The ANA expert<sup>[87]</sup> also mentioned the existence of a working protocol between partners when addressing child drug-consumers, which has been in place for three years now. Whenever the DGASPC recommends the cases, it is always easier to work with those children because they come with a parental agreement, which, as seen earlier, could be a significant problem. She also stated that the last sessions from the therapeutic justice programme involve meetings on the management of emotions and dealing with group pressure, which allows for children consuming drugs or selling drugs to understand the extent of their actions.

<sup>[83]</sup> Cristi Danilet, Judge, Cluj-Napoca Tribunal.

<sup>[84]</sup> Ciprian Coada, Judge, Court of Appeal Constanta, and Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[86]</sup> Cristi Danilet, Judge, Cluj-Napoca Tribunal.

When referring to best practices in applying mediation, one of the mediators<sup>[88]</sup> said that he always works with other professionals depending on the issue raised during the mediation. For example, in schools, he works with school counsellors, whereas if a mediation implies medical aspects, he works with a doctor and so on.

As mentioned before, another mediator<sup>[89]</sup> stressed that she always makes sure that the child is part of a mediation process, as much as possible. She has observed a significant interest in mediation in cases related to family issues. Mediation in a family setting creates the habit of dialogue, she added.

*When I speak about divorce, I refer to all the critical accessories, not that two people separate, because it's ok, they will repair their life. But all the responsibilities, implications for the life of two, three children... there's nothing to adjust in the court. You need to adjust through mediation because what you decide today might not be valid in the next ten years. You need to start to build as a parent when you separate from your spouse, because there will be moments [...] when the conditions change [for your children], your life changes, your child's life changes, and you need to have this habit of dialogue with the other until your child becomes an adult. And this habit can be formed through mediation. Ioana Marin, Mediator and Lawyer.*

She also added that there should be mechanisms in place for professionals to work with each other in a multi-disciplinary approach and find solutions to this repeated hearing of children that takes place currently.

The Child Ombudsman expert<sup>[90]</sup> highlighted that at the level of each Court of Appeal, there is a specialist on children's rights who could represent children in the court, which allows, therefore, the Child Ombudsman to work with cases in other parts of Romania.

The specialists from the DGASPC Sector 6 stressed that if a case team would be formed by two people,

it would allow for better supervision and, thus, a better outcome when working with children. Having the NGOs complement their services is crucial for a successful intervention.

The school counsellor<sup>[91]</sup> is also used to cooperating with other services. During her intervention, she suggests different services or specialists to the children if she considers that they would help. She mentioned that having parents in restorative circles has been very beneficial.

*Adults are a bit more challenging to work with. Children understand faster and they reconcile more quickly. But in a restorative circle even parents are more cooperative. If, at the beginning, they come to cause a scandal, the fact that I have them sit in a circle discourages them from imposing their part. Claudia Stefan, School Counsellor.*

What she adds is encouraging; while the number of school counsellors is small compared to the number of children they have to work within schools (approximately 200 counsellors in Bucharest and 30 in each county), school counsellors seem to be very well organised: CMBRAE in Bucharest and CJRAE in the counties. They meet regularly to share best practices and deal with difficult cases.

### Summary of key findings

It is encouraging to see that there are individual initiatives by different professionals such as mediators, police, prosecutors and judges to better serve children. They are making sure that children have a voice in the mediation process, or that children are not heard more than necessary in the criminal proceeding, or, indeed, that they are not exposed to further re-victimisation in the court.

Equally positive to see is that some institutions use guidelines and protocols, including cooperating with other professionals, on how to better work with children.

<sup>[87]</sup> Mona Necula, Expert, National Agency Against Drugs.

<sup>[88]</sup> Bruno Demaille, Mediator.

<sup>[89]</sup> Ioana Marin, Mediator and Lawyer.

<sup>[90]</sup> Robert Trusca, Expert, Child Ombudsman.

<sup>[91]</sup> Claudia Stefan, School Counsellor.

## 2.4. Trainings on restorative justice and/or child protection

The judges agreed that the continuous training courses are no longer as numerous as they were ten years ago. One of the judges<sup>[92]</sup> mentioned that, lately, he took part in some courses provided by the National Office for Combating Discrimination, which focuses on the human trafficking phenomenon, equality of chances and other subjects related to discrimination. Another judge<sup>[93]</sup> added that he participated in a course in RJ back in 2004 with Tdh, but the number of trainings indeed decreased after 2014 (since the new codes entered into force). As magistrates, they are obliged to continuously train. However, the INM proposes three continuous training programmes per year. From each programme, very few are on juvenile justice or alternatives to the criminal justice system. The courses offered by the INM are more towards learning about the new established institutions within the justice sphere. From these three options, all magistrates register and whoever is selected for this year will not be chosen for the following years to allow other colleagues to enrol in these courses as well. As the prosecutor<sup>[94]</sup> pointed out, “you get them or you won’t.”

At the police level, one of the police officers<sup>[95]</sup> said that there are one or two training initiatives per year that might involve working with minors, but the system seems to be very much similar to the one that the magistrates spoke about. The request comes at the central level and one or two specialists are identified from the competent bureaus to take part in these trainings. However, colleagues do exchange amongst themselves the knowledge and skills assimilated.

In 2015, the Bucharest Police took part in an exchange of expertise with French and British police that helped to develop child-friendly mechanisms in their daily work, the police officer<sup>[96]</sup> mentioned. Even as recent as February 2020, the Bucharest Police took part in another exchange of expertise at the Embassy of

Great Britain in Romania. Those who attended the training are scheduled to deliver the lessons learned to their colleagues from police stations. Similarly, since 2017 they have been using the international protocol for child forensic interviewers (NICHD), as part of international practice.

The ANA expert<sup>[97]</sup> said that just last year some of their specialists were trained on working with children by colleagues from Tdh and DGASPC Sector 6. Apart from these trainings, that are delivered by outside partners, the specialists who work with children who use drugs meet regularly within the working methodology group to discuss best practices and challenges. One of the mediators<sup>[98]</sup> has just recently graduated from the master programme on probation with elements of alternatives to criminal justice. This included RJ as well, he mentioned.

Another mediator<sup>[99]</sup> said that after becoming an authorised mediator in 2001, she has been continuously looking to improve her knowledge in the field. Just two years ago, she took part in a Tdh training on child’s rights within the Court of Child’s Rights programme and in 2017 she participated in a multi-disciplinary course delivered by the INM.

The challenge for mediators, as expressed before, is that in order for them to continuously develop professionally, they need to individually invest in different courses or participation in conferences, as there is no general offer for their qualification need. But this is also a challenge for other professionals, such as school counsellors who work in schools or social workers and psychologists who work in the child protection system.

The Child’s Ombudsman has partnered with UNICEF for a series of trainings on child protection for the specialists within the Romanian Ombudsman. This year, two sessions are to take place, the Child Ombudsman expert<sup>[100]</sup> mentioned.

<sup>[92]</sup> Cristian Coadă, Judge, Court of Appeal Constanta.

<sup>[93]</sup> Raul Alexandru Nestor, Judge, Court of Appeal Ploiesti.

<sup>[94]</sup> Ionut Marcu, Prosecutor, Directorate for Investigating Organised Crime and Terrorism.

<sup>[95]</sup> Daniel Barbu, Police Officer, Criminal Investigation Direction, Romanian Police.

<sup>[96]</sup> Bogdan Trandafir, Police Officer, Sexual Abuse Department, Bucharest Police.

<sup>[97]</sup> Mona Necula, Expert, National Agency Against Drugs.

<sup>[98]</sup> Bruno Demaille, Mediator.

The specialists from DGASPC Sector 6 do rely on third parties in getting trained. Two years ago, Save the Children trained specialists in different DGASPCs. And apart from that, as their police colleagues mentioned, they also rely on exchanging information with their colleagues on specific cases in order to get help.

It seems that the course in RJ that the school counsellor<sup>[101]</sup> interviewed for this study attended in 2012 was very useful in her daily work. According to her, the other 20-30 colleagues were trained at the time, and most probably, they are using this practice as well in their work in schools. She is also a trained psychotherapist, a course that she enrolled in at her own expense. Moreover, as a professional obligation, the school counsellors need to participate in at least one course a year as part of their professional development strategy.

The psychologist<sup>[102]</sup> interviewed is another example of a professional being trained on restorative practices by foreign providers.

### Summary of key findings

The practitioners mentioned the following trainings they were part of:

- the National Institute of Magistracy is offering to its magistrates three continuous training programmes per year. From each programme, very few are on juvenile justice or alternatives to the criminal justice system;
- the Police Academy is offering to police officers one or two trainings per year; not always do they focus on working with minors;
- Series of training in child's rights for the Child Ombudsman experts, delivered by UNICEF, two trainings being scheduled for 2020;

- Exchange of expertise among police officers at the Embassy of Great Britain in Romania on child-friendly approaches on sexual abuse cases in February 2020;
- Training on the human trafficking phenomenon, equality of chances and other subjects related to discrimination by the National Office for Combating Discrimination in 2019;
- Training on working with children who consume drugs for the Anti-drug National Agency experts delivered by Terre des hommes and Save the Children Romania in 2019;
- Multi-disciplinary course for professionals working in the criminal justice system, delivered by the National Institute of Magistracy in 2017;
- Exchange of expertise with the French and British police on child-friendly mechanisms in the police work in 2015;
- Course on child's rights within the Court of Child's Rights programme for professionals working with children, delivered by Terre des hommes in 2014;
- RJ course for school counsellors delivered by the Centre for Legal Resources in 2012;
- RJ course by Terre des hommes in 2004;
- Series of training on child's rights for the experts in social services, delivered by Save the Children;
- Training on RJ delivered by foreign providers to Romanian professionals;
- Peer-to-peer information exchange at the police and social services level.

<sup>[99]</sup> Ioana Marin, Mediator and Lawyer.

<sup>[100]</sup> Robert Trusca, Expert, Child Ombudsman.

<sup>[101]</sup> Claudia Stefan, School Counsellor.

<sup>[102]</sup> Izabella Kaska, Psychologist.

### 3. Children

#### 3.1. Children's opinions about restorative justice

When talking to high school children, the **rights** they raised, with the help of Dixit cards, were the need to find their vocation or talent or the need to be helped to be happy all the time. They equally pointed to the affection that a parent has for their children, implying the need to be taken care of. They also mentioned the need to be allowed to express their wish or their choice and to be successful in life. One girl chose a Dixit card that showed an older woman being playful and she mentioned that it is essential to keep your childhood because "childhood is the most beautiful moment of life."

The child offenders<sup>[103]</sup> were more reluctant to use details when they spoke and they were mostly addressing their needs of being listened to and being helped. They equally highlighted the need to have fun, pointing out that being part of such an activity (the focus group) is making them happy and brings them "peace" and "light." They also expressed the needs of being treated as children, but also to be respected, understood and receive the chance to better education.

None of the consulted children had **heard** of RJ before and the following conclusions are based on their opinions that followed watching the short video: The *Wolf Within*. The video presents the stories of Will, a victim of a robbery, and Peter, his offender, and their journey in participating in an RJ meeting.

Right after watching the video, the children were asked to express their **feelings**. The high school children spoke about harmony and that people can help each other, that even though Will was robbed, he was a good man and helped Peter. They also mentioned how Peter "came out of the darkness into the light" and that he can "evolve" with the help of Will. They also said that people can change, but there needs to be luck to meet the good people who can help you improve and that Will is an even stronger man than Peter, because he offered to help.

The child offenders felt that a restorative meeting

allows for discussion and growth, that through such a meeting they could apologise to the victim. They also mentioned that "a bad person can walk on good footprints" and that it is good to learn from mistakes. They also felt that Peter had learned and he had rehabilitated and that Will is a good man who gave Peter a second chance. They added that at the beginning of the video, they thought that Peter and Will would end up fighting again, but seeing the opposite outcome, one of the children said that "maybe now we would have been out," referring to this outcome if they would have participated in an RJ meeting.

When asked what did they **think of a restorative justice meeting**, the high school children said that it is useful, but that it depends for which offence. They felt that a RJ meeting in case of homicide would be difficult to happen, as it depends on the culture and the victim. The child offenders expressed the same concern that RJ in Romania might not be that possible, because "it's hard with the Romanians," referring to the fact that they feel that Romanians are rather pro-punishment than pro-alternatives to detention.

When addressing the **needs of both Peter and Will**, the high school children believe that Will's needs are to overcome his fears and Peter's needs are to leave the past behind. The child offenders were a bit more particular, saying that Will's needs are to defend his family, reduce his chances of re-victimisation and overcome fear. Peter's needs are to build a family, stop consuming drugs and have money.

At the question if such practices can be **used with children**, the high school children said yes, while the child offenders said no. The latter feared revenge.

Both groups of children considered that it is easier for such a restorative meeting to happen if both parties do know each other because "they have a history together" and "you know who you're talking to," the high school children believe. The child offenders said that in this case, the other party "can help you" or "withdraw their complaint."

The high school children believe that to have a safe RJ meeting, there needs to be a good psychologist as

<sup>[103]</sup> Focus Group with six minors from the Detention Centre Tichilesti, Braila.

a facilitator, a pleasant meeting environment, rules in place and a pre-set of questions. They are also the ones who do not believe the participation of the parents is useful in such meetings concerning children. They added that parents would create fights among each other and would make the conflict about themselves. The children opted instead to have a friend as a supporter.

The children also believe that the State, through either the Ministry of Education or Ministry of Justice, should be the one organising such meetings and paying for them.

Within this study, two consultations with the school children were held. One of these discussions was based on the video,<sup>[104]</sup> addressed above, and this format was used for the child offenders as well. The second consultation<sup>[105]</sup> was based on a case study (Annex 3). The case study is a three-part story, of the offender (Jason), of the victim (David) and the RJ meeting and parties' supporters. Discussions were later had in order to get a picture of the children's opinions based on the case study, which was distributed first with limited information and, eventually, revealing the full picture.

In the beginning, the children stressed the importance of knowing about David as well, since they were only given information about Jason. When asked what, from those he received, was the hardest punishment for Jason, the children pointed out that "it could have been prison." They also stressed that it is essential for Jason to know details about David's injury because, otherwise, he (Jason) might only be upset about the fact that he was caught.

When asked what they believed David thinks, they answered that maybe David thinks of his perpetrator and he asks himself, "why me?" It would be helpful for David to learn more about Jason because David would then see him as a human as well, who made a mistake. However, the child who said this also said that if he were in David's shoes, he would not want to meet Jason.

When asked about the characters' mothers who participated as supporters in the RJ meeting, the children said that they were both concerned, but they felt that the mothers were more concerned about the loss of money than the physical or emotional damage.

The children considered that after the RJ meeting, Jason had "truly a full understanding of the unconsciousness of his actions." They also pointed out that Jason needs to be "reintegrated in the community." But they also said that Jason needs to find a way to pay back David through actions such as finding a job and giving his salary to David to cover medical expenses or to support David in his physical recovery.

### Summary of key findings

None of the consulted children had heard of RJ before and after learning about this practice, the children agreed that this practice allows for discussion and growth. The children also believed that a restorative justice meeting is useful, but it depends for which offence. While school children considered that RJ is beneficial for children, the child offenders were a little bit more reluctant, fearing revenge.

The children consulted in this study believe that it would be easier for RJ in cases where parties know each other because they have a history together and know how to communicate.

The high school children mentioned that for a proper RJ meeting to happen, it needs to have a good psychologist as a facilitator, a pleasant meeting environment, rules in place and pre-set questions.

<sup>[104]</sup> Focus Group with five high school students and part of the Child Advisory Board of Terre des hommes.

<sup>[105]</sup> Focus Group with nine high school students and part of the Child Advisory Board of Terre des hommes - some of whom participated in the first focus group as well.



## Conclusions & recommendations

As most of the respondents pointed out, Romanians seem to be tributary to a particular type of education that channels people to the court when a conflict or a crime occurs. Many of the professionals raised the importance of introducing at a very early stage courses on the rule of law and different responses to conflicts and crime to create a just society that is more open towards alternative conflict resolutions and restorative justice.

It seems that the principles of mediation used in Romania need to be re-grounded in the principles of restorative practices, which means being heavily oriented towards repairing the harm caused by a crime or a conflict as much as possible. The current mediation system does not fully align to these principles.

Equally, professionals need to learn that working with children is a new area of expertise in itself. Most professionals do not make clear distinctions between the particularities of working with children compared to working with adults.

Such developments of adjusting mediation to international standards of restorative practices and training professionals to work with children could be linked to building a multi-disciplinary team. Many persons

consulted for this research noted that professionals do not work much with each other and there is no concept of multi-disciplinary and inter-disciplinary teams. One of the professionals interviewed shared an example of how different professionals started to collaborate and understood each other's practices just after participating together in a course, which was a new and important experience.

Another expert went even further and designed an Operative Team, as she defined it, led by a judicial body, preferably the prosecution, and composed of every professional or institution that works on a specific case that concerns a child.

This Operative Team should be imperative for cases of child victims to be able to shift from "sometimes we protect offenders more than victims" quoted by a professional, to a "best interest of the child" approach, according to the **Child Protection Law**.

Child offenders are equally overlooked. As was very well portrayed by one of the interviewees, if a probation officer were to be introduced at an earlier stage of the criminal prosecution, resulting in the child being subjected to a first preventive measure, it could bring more possibilities for mediation. A judge drew



attention to the fact that although an educative measure is not a factor for recidivism, this measure represents a criminal record. A legitimate rehabilitation can only remove the consequences of a prison sentence, not of an educative measure. And, therefore, such an educative measure does stay in the operational record of the juvenile. The child will never be rehabilitated and the record never deleted. Therefore, the type of actions we take towards a 15 or 16-year-old offender are important.

If such multi/inter-disciplinary approaches would be envisioned, perhaps there would not be disputes between professions. As seen in this study, there seems to be three types of inter-disciplinary conflicts. Those between mediators and lawyers, those between mediators and the police and those between mediators accredited according to the **Mediation Law** and those defined in the Classification of Occupations in Romania.

There seems to be two kinds of mediators, those who work mainly at the judicial level, dealing with civil and/or criminal cases, and those who work in the community, mostly in schools. It is also clear that different restorative practices apply to different contexts carried out by different professionals. There are restorative circles implemented in communities and schools or victim-offender mediation implemented in either schools or in the criminal justice system in pre-conviction or pre-sentence. There are also family decision-making group approaches in case management. These practices have their particularity based on who is using them and in which context.

As long as there is only one Article in the **Mediation Law** that refers to minors (Article 68.2), it is clear that the restorative justice, or mediation as it is known in Romania, has no special concern for child victims. In general, the intervention for children is mainly on how they can better benefit from the current justice system that is already in place and not necessarily on creating new alternatives that could perhaps better address their needs.

The best practices observed are the efforts that are done at the individual level by professionals to best serve children in the absence of structural institutional interventions. These are admirable, but unfortunately, they are not sustainable.

One major issue that needs to be addressed in the foreseeable future is the fact that a child victim can get through the hearing process multiple times by multiple professionals. According to the current law, the hearing can be conducted by the judicial bodies, and all of them - from police to prosecution and the court - are hearing a child in the criminal justice process. Save the Children is currently working on implementing the Barnahus concept in Bucharest, which will allow for the hearing of children to take place only once and only by a psychologist. This is a promising initiative but lacks legal support. There should be legal amendments to the current legislation to allow for a better facilitated hearing of a child.

The trainings at the institutional level for legal professionals are scarce. The most common source of learning new approaches in their daily work seems to be provided by third parties either from the country or from abroad. When referring to the training courses in mediation or restorative practices, there is currently no defined focus on working with children included in these courses. It is, however, a gap that can be filled with future initiatives in this regard. For trainings to work, and as stated by one of the local experts, they first need to be assimilated as continuous professional development and, second, to be integrated into these different institutions or institutes' (National Institute of Magistracy, Police Academy, National Institute for the Training of Lawyers, Mediation Council etc.) curricula.

It seems that it is equally crucial to clearly explain to all professionals that just because mediation can happen, sometimes it should not happen. It needs to be checked case by case. Sometimes the reluctance towards this practice comes from observing mediation cases that do not work, which are either transactional or fail to comply with the restorative principles. Restorative justice is a potent tool as long as its principles are followed precisely. A good preparation, well trained mediators, attention to safety aspects and solid after-care are important factors.

Children are open to the idea of restorative justice, although it remains debatable if, in the event of being victimised, they would still want to meet their perpetrator. What is clear is that each child needs to receive a tailored approach by the professionals in case of need because, as one expert stated, "Every child has their own story!"

## Recommendations

Based on the literature review and the analysis of the interviews, the following recommendations are proposed that have a direct connection with the current legislation and its gaps:

- Broaden the scope of mediation and restorative practices in the **Mediation Law** to all types of crimes, not only to those ones where the complaint is withdrawn or reconciliation is possible;
- In this regard, it is optimal to constantly update “din mers,” a piece of legislation in order to use lessons from the practice to address legislative gaps;
- To introduce evaluation forms in the law in order to track the efficiency of mediation;
- The importance of a multi-disciplinary team of police, prosecution, court, probation, social services and mediators within an Operative Bureau, to handle cases involving juvenile victims and offenders;
- The adoption of a distinctive clarification between the mediation cases with children and those with adults; and accessible restorative services throughout the country where some practitioners are trained in working restoratively with children affected by a crime;
- The possibility to include community members in the mediation process in cases of juveniles, as it is the case in other Western countries; the community involvement is important because, on the one hand, it offers additional support to the victim, and, on the other hand, it helps offenders to reintegrate, and so, makes the mediation procedure fully restorative;
- The inclusion in the law that mediation can take place at any stage in the criminal process, as it used to be in the beginning;
- Accessible and free mediation and restorative services for young people and adults alike;
- The introduction of juridical concepts and restorative practice teachings at elementary school;
- Amendments to the legislation to allow for facilitated hearing of a child only once and only done by a psychologist/child protection specialist, following the Barnahus concept;
- The introduction of the evaluation report of a child offender in the early stage of the criminal prosecution;
- Updating the occupational standards of all mediation professions as defined in the Classification of Occupations in Romania;
- The assimilation of continuous professional development trainings on juvenile justice in restorative justice in the curricula of the National Institute of Magistracy, the National Institute for the Training of Lawyers, the Mediation Council and the Police Academy;
- The development of awareness campaigns on mediation among professionals and the general public;
- The organisation of inter-disciplinary courses, workshops and conferences on juvenile justice in restorative justice on a frequent basis.



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## Annex 1

### Case Study 1 - Restorative Justice Experimental Centre in Bucharest

**Context:** In February 2004, the RJ Experimental Centre in Bucharest took a case from the Court Sector 4 which involved five people (four defendants and one victim) for the crime known in the Criminal Code at the time as “Hitting or other violence.”

According to the statements in the court file, in September 2003, the victim S.M. (age 35) went out of his apartment building to discuss with a boy, N.M., whom a day before had physically assaulted his son of 16 years of age. N.M. was accompanied by several friends. Following a tough exchange of remarks, N.M.’s companions started to hit S.M. with their fists, feet and baseball bats that the boys had in their car. During the conflict, the victim, trying to defend himself, grabbed a baseball bat from one of the boys and by mistake hit a car’s windshield, a BMW car that belonged to one of the perpetrators. Following the altercation, the victim filed a complaint with the police station against those who assaulted him.

During the police investigation, the following perpetrators were identified: P.M. (age 21), C.M. (age 20), U.C.F. (age 19), and M.M.R. (age 19). The boy, N.M., with whom S.M. wanted to talk initially, was not involved in the conflict, his friends being those who

behaved aggressively. The victim suffered injuries for which the specialists from the Institute of Forensic Medicine estimated the need for three-four days of medical care. Also, after destroying the car’s windshield, the victim S.M. was fined 3.500,000 lei (meaning 100 euros at a rough estimation) by the Prosecutor’s Office attached to the Court Sector 4.

**The psychological and social evaluation of the case:** The team of the RJ Experimental Centre in Bucharest analysed the case, concluding that it meets the eligibility conditions provided in the project. The social worker and the psychologist contacted the parties and held meetings with each person involved in the conflict. The services offered by the Centre were presented and the agreement was obtained from the parties to benefit from these services and RJ was included.

The experts obtained information regarding the parties in conflict, the context of the crime, the attitude of the parties and their families regarding what had happened and the experts identified the needs of the parties from the perspective of the services the centre could offer.

The evaluation conducted by the social worker and the psychologist was discussed during the team meeting of the RJ Experimental Centre in Bucharest and a mediator and co-mediator were identified.

**Pre-mediation:** The mediator first contacted the perpetrators and then the victim. During the discussions with the perpetrators, it was demonstrated that the perpetrators acknowledged the crime and its implications, mentioning that they had not had an issue with the victim before and they only intervened to defend their friend, following which things got out of hand. The perpetrators stated that they regret their involvement and the behaviour they displayed in the conflict and they requested the support from the centre to be part of the mediation.

The victim declared that the altercation he had with the perpetrators affected, to a large extent, his personal life and his safety, because his child and his wife avoid leaving the house unaccompanied, being afraid of being assaulted as well. The fact that he needs to periodically appear in court, takes a lot of his time, damaging his professional relation with his boss who reproaches him for solving his personal problems during working hours. Thus, S.M. expressed his willingness to attend a mediation session, being interested in finding out directly from the perpetrators why they beat him and how they think the incident can be solved.

The experts discussed with each of the parties the possibility to invite to mediation support persons and by mutual agreement the date and time of the mediation was established. All participants were informed of how the mediation session will take place.

**Mediation:** At the mediation meeting, alongside the mediator, the team psychologist participated as well as the co-mediator. Neither the victim nor the perpetrators wished to have support people at the meeting.

During the mediation meeting, each party expressed their point of view regarding how the conflict developed, specifying how people were affected by it. The victim requested information from the perpetrators regarding their involvement in the issue, as he only wanted to discuss with the boy who assaulted his son. The perpetrators motivated their reactions based on the fact that after witnessing the dispute between him and their friend, they feared that the latter would be beaten if they did not intervene. In this way it came to the violence that they now regret. Moreover, the friend for whom they intervened is not a defendant in the criminal file, so they realise the inappropriate reactions they had and their consequences.

During the mediation meeting, it was discussed how the harm caused in the conflict can be repaired and the victim requested that the perpetrators commit in writing that they will have no further conflict with him or with any of his family members. The perpetrators apologised to the victim and committed in writing those points requested by the victim.

The victim said that he was satisfied with the discussions with the perpetrators and together they agreed to reconcile. Following that, at the next court term they will all appear together to record the reconciliation.

At the end of the mediation meeting, the parties signed a mediation agreement (a copy of which was sent to the court) which included an informative note regarding the conclusions and the decisions made during the meeting (and each of the party received a copy of it as well).

**Other services offered:** The social worker provided the victim with information on the steps he needed to take in order to obtain the ID card for his son (unrelated to the mediation case) and directed him to the police section where he can solve this aspect.

## Case Study 2 - Restorative Justice Experimental Centre in Craiova

**Context:** In January 2003, the RJ Experimental Centre in Craiova was notified by the Court in Craiova of a case in which three minor perpetrators and a minor victim were involved in an assault.

The incident took place in a school in Craiova, where students from a school, undergoing renovation works nearby, also had their classes. There has been a state of tension for some time among sixth graders caused by one of the tenth grade students who had been instigating the younger students to act aggressively towards their peers.

One day, a group of sixth graders entered the classroom where the student D.A. was studying and they verbally and physically assaulted him. Following the assault, the victim suffered a head injury with fracture of nasal bones. The parents of the victim reported the case to the police station and following the criminal investigation three perpetrators were

identified, F.A., R.P. and A.O.

The medical certificate issued by the Institute of Forensic Medicine attested the need for ten-twelve days of medical care.

**The psychological and social evaluation of the case:**

Following the notification received from the court, the social worker and the psychologist held meetings with each of the perpetrators and their families, as well as with the victim and his family. In order to obtain complete information and conduct the evaluation, the experts also contacted the school director, the classroom principles of all students in the conflict, the police officer who instrumented the case and other acquaintances of the parties who were able to provide relevant data about the incident, the perpetrators and the victim.

Following the first contact with the parties, only one of the perpetrators fully admitted guilt and the parents of the victim expressed reservations about their and their son's participation in the mediation meeting.

**Pre-mediation:** At the centre's office, the experts held pre-mediation meetings with the parties involved in the conflict and their parents, having as an objective to explain the mediation process, presenting the advantages in participating in the mediation meeting, evaluating the situation to conclude if the perpetrators admit guilt and feel remorse, discussing how parties see the resolution of the conflict and identifying the support persons. Following the discussions, all perpetrators admitted guilt and accepted to participate in the mediation meeting.

The parents of the victim reconsidered their attitude towards the perpetrators, mentioning that they want to hear what the perpetrators had to say regarding the incident and equally expressed that they do not want their child to go through the stress caused by appearing in front of a court.

**Mediation:** At the mediation meeting held by the mediator and assisted by the co-mediator, all three perpetrators and their parents participated, alongside the victim and his parents, the grandmother of one of the perpetrators, the school deputy director and a representative of the Dolj Police County Inspectorate.

The participants expressed their point of view regarding the crime and the possible solutions for moving forward. The victim requested that the perpetrators admit guilt in the mediation meeting, apologise verbally and make a commitment in front of all those present that in the future such incidents will be avoided.

The parents of the perpetrators proposed and took responsibility for paying the parents of the victim the medical expenses incurred by them, based on the medical bills. The victim appreciated the regret expressed by the perpetrators for what happened, mentioning that he wishes to grant them a second chance, especially since they are also coming up to the Easter holidays. At the end of the mediation meeting, which lasted for two hours, the parties in conflict shook hands, deciding to reconcile. The four students put aside any forms of resentments and decided to have adequate collegial relations in the future.

**Other services offered:** At his request and his parents', the victim benefited from individual counselling sessions in order to improve communication relations with his peers and in order to reduce the state of frustration caused by the high expectations of his parents. The perpetrator, A.O., participated for a month in individual counselling sessions to reduce the trauma caused by the death of his father and to improve the way of communication and the relationship with those around. Specific social work services were also provided to his family, consisting in the orientation and guidance of A.O.'s grandmother towards the Child Protection Commission in order to prepare the family placement file.

**Conclusions:** The society is still refractory to the intervention of family specialists, preferring definitive and radical solutions. Parents are the ones who decide completely, and without any mediation, for their children. They have the right to decide for them. The lack of knowledge about the child's development and, implicitly, the absence of institutions to provide support services for parents can often lead to wrong solutions. By setting up the RJ Centre, there was an attempt to find less drastic solutions for child offenders, to rehabilitate them through methods of awareness and responsibility and to protect victims and involve them in the process of reparation, as well as to offer specialised services to families.





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## Annex 2

### List of interviewees

#### ***Policymakers***

1. Mihai Munteanu - President, Mediation Council
2. Gabriel Oancea - Director, Probation Service in Bucharest
3. Ioana Morar - Deputy General Director, National Administration of Penitentiaries
4. Voichita Tomus & Corina Popa - UNICEF Romania
5. Roxana Paraschiv - Save the Children, Romania
6. Ema Seclaman Elisa Goras - Initiators and experts in the Restorative Justice Experimental Centres in Bucharest in 2002/2003/2004
7. Ana Balan - Scholar and Mediator; initiator of the Mediators' College in Romania
8. Claudia Constantinescu - Mediator and Lecturer, Probation and Mediation Master Programme, School of Social Work and Sociology, University of Bucharest
9. Ecaterina Balica - Researcher, Romanian Academy & Professor at the University of Bucharest

#### ***Practitioners***

1. Robert Trusca - Child's Ombudsman
2. Anca Cusmir & Angela Chirvasuta - Prevention Department, Romanian Police
3. Daniel Barbu - Criminal Investigation Direction, Romanian Police
4. Bogdan Trandafir - Sexual Abuse Department, Bucharest Police
5. Ionut Marcu - Prosecutor for cases of Child Sexual Exploitation, Directorate for Investigating Organised Crime and Terrorism - DIICOT
6. Cristi Danilet - Judge, Cluj-Napoca Tribunal, and author of Guide of Criminal Mediation in Romania

7. Ciprian Coadă - Judge, Court of Appeal, Constanta & Raul Alexandru Nestor - Judge, Court of Appeal, Ploiesti
8. Mona Necula - National Agency Against Drugs
9. 15 Professionals from the Abuse Service, Social Work and Child Protection Direction – DGASPC Sector 6
10. Bruno Demaille - Mediator in Schools and mediator in international cases
11. Ioana Marin - Mediator and Lawyer
12. Claudia Stefan - School Counsellor in two schools in Bucharest
13. Izabella Kasza - Psychologist, worked with Family Decision Making Group method in Cluj-Napoca

### ***Children/Child victims***

1. Five Children Advisory Board - Terre des Hommes
2. Nine Children Advisory Board - Terre des Hommes Session 2
3. Group of six minors from Detention Center Tichilesti

### ***Contacted without success***

1. National Agency Against Human Trafficking
2. Elementary School „Alexandru Ioan Cuza” from Braila, known for a restorative practice with refugee children in school
3. National Authority for Protecting Children’s Rights and for Adoption, Ministry of Work
4. Catalin Luca - Director, Social Alternatives NGO, Iasi & Georgiana Iorgulescu - Director, Centre of Legal Resources NGO, two of the biggest NGOs in Romania that were engaged in mediation/restorative justice/restorative practice initiatives (policy, legislative drafts, projects)
5. Group of child victims from DGASPC Sector 6 - Child Abuse Department



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## Annex 3

### Case Study used as an example when talking with young people

#### 1. Get to know the main character of this story

Jason (18 years old) used his mother's (Jackie) car to go out for a beer with friends. The mother was out for dinner and he had to return home before midnight and pretend that he had not gone out that night, because he had been forbidden to use the car after a few drunk driving precedents. He was already late when he decided to go home. He drove to the parking lot; felt he had hit something and saw people rushing towards his car. He was frightened and rushed home. Two hours later, the police arrived at his home to interrogate him. With his mother's car, Jason had hit a young man, David. The officers took him to the police station where the breathalyser showed he was under the influence of alcohol. From the court, the following notifications arrived: Jason had to engage in community work for half a year, his driver's license was suspended for three months and he had to attend a course for alcohol addicts.

#### 2. Get to know another main character of this story

David (16 years old) was out with his friends to celebrate his new student job, when the accident happened. After the accident, he was taken to the hospital by ambulance. His leg was broken in different parts and he had three surgeries in the first three months. Despite the rehabilitation therapy, doctors say that he will not be able to completely rehabilitate the use of his leg. For this reason, he could not go to court when Jason was judged. In addition to the physical injuries, David has suffered financial damages. The insurance has paid all medical expenses but did not cover the extras (for example the taxis for going to the hospital when no one else could accompany him or the nights in the hotel nearby where his parents stayed during the surgeries.) Also, David could not start working at his student job and missed several months of school, meaning that he may have to repeat the year.

#### 3. The restorative encounter

Immediately after the accident, David and Jason are informed about the existence of restorative justice services: if they voluntarily agree, they can decide to



meet each other in the presence of a trained facilitator. Also, because of their young age, their family members and/or supporters can participate in this encounter. They both reject the offer: David is too busy with surgeries and therapies, while Jason is afraid to meet face-to-face the person he hurt. Still, eight months after the accident, David contacts the restorative justice service and asks to meet Jason: he wants to tell him how his life has changed after the accident. At this point, Jason agrees to take part in the restorative meeting: he wants to apologise for what he did. David and Jason will be accompanied by their mothers, who are also informed and well prepared about the actual practice of a restorative justice encounter. The facilitator encourages Jason to explain what happened and then invites David to tell his part of the story; afterwards, the supporters also intervene. This is the moment when all stories are heard (dialogical truth.)

Jacky (47 years old), the mother of Jason, is really angry but she is also worried because Jason's father suffers from alcohol addiction since he was in high school. Also, she is very worried about having to pay David's medical bills and handle all the bureaucracy in this regard.

Dora (41 years old), the mother of David, is also really angry. She has been accompanying David to the hospital for the surgeries and therapies, taking days off from work when possible and arranging a babysitter for David's youngest sister (7 years old). This, in addition to the hospital costs, has had a financial impact on the family budget. Moreover, David could not finally start working at the student job, which was needed to help with the family's overall expenses.

# About us

## Terre des hommes

Terre des hommes (Tdh) is the leading Swiss organisation for children's aid. Each year, we provide assistance to over four million children and members of their communities in around 40 countries through our health, protection and emergency relief programmes.

To prevent violations of children's rights and better assist child victims in Romania, Tdh strengthens the child protection and justice systems. We also offer community integrated services and psychosocial support and encourage child and youth participation as well as social inclusion.

-  [www.tdh.ch](http://www.tdh.ch) | [tdh-europe.org](http://tdh-europe.org) | [childhub.org](http://childhub.org)
-  [www.facebook.com/TdhEurope](https://www.facebook.com/TdhEurope)  
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-  [www.instagram.com/tdh\\_ch](https://www.instagram.com/tdh_ch)


## European Forum for Restorative Justice

The European Forum for Restorative Justice (EFRJ) is the largest European professional network on restorative justice. It counts almost 500 members, including 80 organizations, working on restorative justice practices, research and policy in Europe and beyond.

-  [www.euforumrj.org](http://www.euforumrj.org)
-  [www.facebook.com/euforumrj](https://www.facebook.com/euforumrj)
-  [twitter.com/EuForumRJ](https://twitter.com/EuForumRJ)
-  [www.linkedin.com/company/efrj](https://www.linkedin.com/company/efrj)

## Restorative Justice Nederland

The foundation Restorative Justice Nederland is the innovation and knowledge institute for restorative justice and restorative practice in the Netherlands. Its main focus is on criminal law and other areas in which restorative work can be useful, such as in schools, neighbourhoods etc.

-  [www.restorativejustice.nl](http://www.restorativejustice.nl)
-  [twitter.com/Rest\\_Justice\\_NL](https://twitter.com/Rest_Justice_NL)

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