



RESTORATIVE JUSTICE PRACTICES FOR CHILDREN IN CONTACT WITH THE LAW IN ESTONIA & ROMANIA

Joint Rapid Needs Assessments
2023

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Introduction

This report contains the outcome of the national needs assessments of the implementation of restorative justice in juvenile cases in Estonia and Romania.

The report addresses the main needs, gaps and strengths of the implementation of practices for children in contact with the law, as well as the existing methodologies on child participation in the two countries.

In Estonia, restorative justice is an approach that has been in practice for the last few years, with only mediation being used as an alternative to punishment in the past. Today, the approach to restorative justice has been introduced more broadly and with more flexibility, including as a preventative method. It has been in focus since 2018, when discussions on the special treatment of minors began.

In Romania, on the other hand, restorative practices are less used for several reasons. First, there is a low level of awareness on the possibility of using restorative justice among the general public, justice authorities and other professionals, as well as the parties involved in crime (victims and aggressors) and children. Second, mediation services operate as private services. Additionally, there are differences between mediation practices as private services and the work of the public justice system which is regulated by legal procedures and rules. Finally, there are no initial and continuous training programmes on restorative justice for professionals organised by the existing training institutions in each system (e.g., National Institute of Magistrates, National Institute for the Training and Improvement of Lawyers, Police Academy). This needs assessment was drafted using both a literature review as well as empirical data. The data collection took place at the beginning of 2023 and has followed a rigorous methodology, as can be seen below. Both studies in Estonia and Romania have used the same research method to look into, on one hand, the current restorative justice practices with children in contact with the law, and on another hand, the tools and methodologies used by professionals to promote child participation.

In **Estonia**, a total of eleven individuals and two focus group interviews were conducted:

- Interviews with policymakers covered the understanding and implementation of restorative justice in Estonia, its best practices and challenges, as well as their understanding of child-friendly proceedings and experiences, and the involvement of children.
- Interviews with practitioners covered the understanding and implementation of restorative justice in Estonia, its best practices and challenges, their understanding of and experiences with child-friendly proceedings, and the involvement of children.
- Interviews with young people from the target group addressed their experiences with the legal system and the principles of child involvement.

¹ Annegrete Johanson has led the work on the Rapid Needs Assessment in Estonia, while Ecaterina Balica has done the same in Romania.

In Romania:

- Three interviews were conducted with professionals such as the Child Ombudsman Counsellor, Probation Counsellor, and a Child Protection Representative.
- Three questionnaires were completed by police officers.
- Two focus groups were conducted, one with professionals from the justice system (judge, prosecutor, lawyer, mediator) who came into contact with children, and one with the staff from Youth Detention Centres.
- Two interviews with young members of the Child Advisory Board of the i-RESTORE project took place to identify how children are involved in participatory processes and their views on restorative justice.

The conclusions of these two national assessment reports will feed into a Roadmap with recommendations of joint activities between the two countries, aiming to take place over the next two years within the framework of **i-RESTORE 2.0 project**².



² <https://tdh.ro/en/i-restore-20-accessible-quality-restorative-justice-processes-children-contact-law-europe>

I. Executive summaries

Estonia

This report contains the results of a needs assessment carried out in January 2023 in Estonia concerning the implementation of restorative justice in juvenile cases based on individual and focus group interviews.

Restorative justice as an approach has been in use for the last few years, with only conciliation³ used as an alternative to punishment in the past. Today, the approach to restorative justice has been introduced more broadly and with more flexibility, including as a preventative method. It has been in focus since 2018, when discussions on the special treatment of minors began.

Currently, the main service provider as a state agency is the Victim Support Department of the Social Insurance Board⁴. The Restorative Justice Team is comprised of more than 100 trained restorative justice volunteers who mediate cases involving minors in criminal proceedings, at the beginning, during but also after the criminal proceedings have concluded. The structure of the report is as follows. The report begins with an executive summary, followed by a presentation of the main needs, gaps and strengths identified in the implementation of restorative justice practices for children in contact with the law in Estonia. This will be done through interviews with policymakers, relevant authorities and other stakeholders. This is followed by a section on restorative practices that have been developed for young people. Next, the main needs, gaps and strengths in existing methodologies on child participation for children in contact with the law will be addressed. Finally, the report will be concluded with recommendations based on the needs and gaps identified. Opinions and views of some experts working in criminal child justice and/or restorative justice will be shared.

Romania

Professionals in the justice and child protection systems and young people in the Child Advisory Board in Romania believe that restorative justice can be used to solve conflicts involving children. Justice professionals believe that mediation or other restorative practices can be used for less serious offences, particularly property offences or low-level violence. Professionals from the Probation Service do not recommend the use of mediation for minors with a criminal record. Prosecutor does not recommend the mediation for individuals accused of sexual offences, particularly if they were committed by an adult against a child.

Overall, restorative practices are less used for several reasons. First, there is a low level of awareness of the possibility of using restorative justice among the general public, justice authorities and other professionals, parties involved in crime (victims and aggressors) and children. Second, mediation services operate as private services. Additionally, there are differences between mediation practices as private services and the work of the public justice

³ The court or the public prosecutor's office can, with the agreement of the parties, apply it to level II offences. The mediation service is provided by the Social Insurance Board and is carried out by trained victim support workers. The aim is to reach an agreement between the suspect and the victim to make reparation for the harm caused by the crime. The victim's interests are the primary consideration in the mediation process.

⁴ Sotsiaalkindlustusamet. (n.d.). Avaleht. <https://www.sotsiaalkindlustusamet.ee/>

system which is regulated by legal procedures and rules. Finally, there are no initial and continuous training programmes on restorative justice for professionals organised by the existing training institutions in each system (e.g., National Institute of Magistrates, National Institute for the Training and Improvement of Lawyers, Police Academy).

Although they appreciate the need for methodologies and consider methodologies necessary to regulate the work of professionals in the field of justice and child protection, few institutions have specific methodologies in place regulating how to work with children in contact with the law. Most operate based on national legislation in the fields of criminal law and child protection,⁵ special laws regulating the work of some institutions,⁶ international conventions⁷, EU Directives and recommendations⁸. Few professionals mentioned that there are general methodologies, procedures and programmes at the level of institutions that were designed for work concerning children⁹. Only the General Directorates of Social Assistance and Child Protection¹⁰ have specific procedures for various categories of children (e.g. victims of human trafficking, domestic violence, etc.).

Several key needs were identified. First, there is a need to inform the general public, justice and child protection professionals, teachers and children about restorative justice. Second, there is a need for initial and continuous training of justice and child protection professionals, especially professionals in small towns and rural areas. There is a need for the specialisation of justice and child protection professionals in cases involving children (i.e. professionals who only handle cases with children). There is a need to amend and supplement certain legislative provisions, such as the special procedure for mediation need to be introduced, etc. Special units for minors should be established within relevant institutions and services, such as the Probation Service, mediation services, the Public Prosecutor's Offices, lawyer offices, etc.). There is a need to develop methodologies that were designed for work concerning children in contact with the law. Finally, there is a need for effective institutional collaboration between the institutions involved in dealing with children.

This report is mostly looking into methodologies and practices with children in contact with the justice system, since there is no developed restorative justice practice in Romania. Information regarding the level of development of restorative practice in Romania was included in a previous report.¹¹

⁵ New Criminal Code <https://legislatie.just.ro/>, Code of Criminal Procedure <https://legislatie.just.ro/>, Law no. 272 of June 21, 2004 (**republished**) regarding the protection and promotion of children's rights <https://legislatie.just.ro/Public/DetaliiDocument/207248#A420>

⁶ Child Ombudsman, Probation Directorate, Mediation Council, Youth Detention Centres.

⁷ UN Convention on the Rights of the Child <https://www.unicef.org/child-rights-convention/convention-text>

⁸ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse <https://rm.coe.int/1680084822>

⁹ Child Ombudsman, Detention Centers for young people.

¹⁰ National Authority for the Protection of Children's Rights and Adoption <https://copii.gov.ro/1/#>

¹¹ Cecilia POPA, 2020, "Restorative justice in cases involving child victims in Romania", December 2020, https://www.euforumj.org/sites/default/files/2021-05/romanian_research_report_irestore_en_101220.pdf

II. Rapid Needs Assessments

1. Estonia

1.1. Restorative justice in Estonia

The UN recommends that its Member States establish policies to develop and implement restorative justice and to create a culture that is supportive of restorative justice in communities, social and educational institutions, law enforcement authorities, and the criminal justice system more broadly.¹² The latter is also recommended by the Committee of Ministers of the Council of Europe and the fundamentals of criminal policy until 2030. The EU Victims' Rights Directive points out that restorative justice methods can be of great help to victims of crime, but their implementation should especially consider the interests and needs of the victims, by mitigating the damage suffered and preventing further harm.

Religious anthropologist Jaanus Kangur¹³ has divided the history of the formation of restorative justice in Estonia into three periods. The first initiatives reached Estonia before 2000, with programmes containing elements of restorative justice first reaching prisons. The second wave arrived at the beginning of 2000, when work in the prison system continued and restorative justice training began. In 2007, the provision of national mediation services started within the framework of criminal proceedings. Indeed, the Code of Criminal Procedure¹⁴ now allows for the termination of criminal proceedings due to the application of mediation in criminal offenses in the second degree. Additionally, the Victims' Aid Act¹⁵ regulates the provision of mediation services. The facilitators were victim support staff members from the Social Insurance Board¹⁶, who continue to apply mediation to this day. The third wave (2019) is considered by Kangur to be the most forceful. Thanks to external projects, the Social Insurance Board and the Ministry of Justice have developed several approaches. The Social Insurance Board has trained over 100 restorative justice volunteers, who are mediating various conflicts and offences, such as conflicts between neighbours, between colleagues, complex relationships in families, educational institutions, etc., as well as serious offences, including cases of sexual abuse within families. The awareness of society and specialists has been raised through various seminars, trainings and conferences, and materials introducing restorative justice have been published.

Today, the principles of restorative justice are being applied by the Victim Support and Preventive Services Department of the Social Insurance Board, which is a state agency. In addition, the police and the Prosecutor's Office, as well as several educational institutions, are applying the principles of restorative justice in their work. Additionally, trainings on restorative justice approaches are being ordered by NGOs, educational institutions, local governments, and others. In recent years, restorative justice, with its principles and practices, has reached an

¹² Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member States concerning restorative justice in criminal matters. (2018). <https://www.cep-probation.org/wp-content/uploads/2018/10/Recommendation-CM-Rec-2018-of-the-Committee-of-Ministers-to-member-States-concerning-restorative-justice-in-criminal-matters-.pdf> (last consulted on 05 March 2023).

¹³ Johanson, A. (2022). Taastava õiguse taskuraamat, <https://sotsiaalkindlustusamet.ee/media/2520/download>

¹⁴ Kriminaalkoodeks (29.07.2002). Riigi Teataja. <https://www.riigiteataja.ee/akt/184289>

¹⁵ Ohvriabiseadus (06.05.2020). Riigi Teataja I. <https://www.riigiteataja.ee/akt/106052020022>

¹⁶ Look footnote nr 3.

increasing number of institutions and people.

In 2018, special treatment began to be applied in cases involving minors, with a direction oriented increasingly towards the application of non-punitive methods, including the application of restorative justice methods. Consequently, several framework documents and developments contain references to the implementation of restorative justice, especially in cases involving juveniles.

In December 2022, the concept of restorative justice was adopted by the Prevention Council¹⁷, which is coordinated by the Ministry of Justice.

1.2. Trainings

In 2019, restorative justice training providers were trained by the Social Insurance Board, which is authorised to provide training using the 5:5:5 model of restorative justice created by Dr. Belinda Hopkins.¹⁸ In 2022, an additional group of training providers were trained- they now have the right to teach this model. In addition, there are some other NGOs and training providers in Estonia who are offering training on restorative justice and making the principles more accessible. However, training providers who have practical work experience and the right to provide training using practical models are in short supply. In addition, the head of the Restorative Justice Service and the head of Barnahus (Children's House)¹⁹ in Estonia are responsible for implementing restorative meetings as a practice of restorative justice in cases involving the sexual abuse of children within a family, and together they are also training other specialists in this approach so that the service can be offered more widely.

Cooperation has taken place with colleagues from Norway and Finland, and victim support mediators have also been trained by Norwegian restorative justice training providers.

The B. Hopkins model has been in use since 2019; however, the cases encountered are usually different than the ones provided for by the model. Therefore, combined approaches have been developed that consider the particularities of the cases. This means being flexible and victim-centred when applying restorative justice approaches. Thus, "a young person returning to the community model" has been developed, which includes restorative conversations, mediation, conferencing²⁰, and circles, as needed.

1.3. Methodology

The aim of the needs assessment was to assess, together with practitioners and relevant

¹⁷ Justiitsministeerium. (2021). *Taastava õiguse kontseptsioon*. <https://www.just.ee/media/2702/download>

¹⁸ The 5:5:5 model comprises of 1) five Core Beliefs which provide five foundation stones on which the culture depends, 2) the same 5-step framework for any restorative process is used to make these easier to learn and to use (this framework is based on, and linked to, the 5 core beliefs), and 3) five main restorative processes, each using the 5-step framework.

¹⁹ *Lastemaja*. Sotsiaalkindlustusamet. <https://www.sotsiaalkindlustusamet.ee/abivajav-laps-ja-taiskasvanu/laste-ja-perede-abistamine/lastemaja>

²⁰ A way of resolving conflicts involving not only the victim and the injured party but also the affected parties. The structure of conciliation is similar to mediation. It involves a meeting between the victim and the injured party to hear and express their experiences and to reach an agreement on the way forward. The process is facilitated by two neutral mediators and involves the parties' support persons (e.g. family or relatives-friends), community members or representatives of an agency/service (e.g. probation officer, victim support worker, social programme facilitator, child protection or social worker, school representative, etc.), as appropriate.

stakeholders, the needs of young people who will experience restorative justice. A report will be prepared based on the results of the survey, in which the strengths and bottlenecks of the system will be identified, focusing on specific and practical recommendations that will serve as the basis for further action.

The i-RESTORE 2.0 project includes empirical data collection, within the framework of which specialists working with children and young people are asked about the principles they follow when working with children, what the strengths and challenges of the system are, and what their understanding of restorative justice is.

Structured interviews (individual and focus group interviews) were used in the survey as a qualitative method. A total of eleven individual and two focus group interviews were conducted.

Interviews with policymakers covered the understanding and implementation of restorative justice in Estonia, its best practices and challenges, as well as their understanding of and experiences with child-friendly proceedings, and the involvement of children.

Interviews with practitioners covered the understanding and implementation of restorative justice in Estonia, its best practices and challenges, their understanding of and experiences with child-friendly proceedings, and the involvement of children.

Interviews with young people from the target group addressed their experiences with the legal system and the principles of child participation.

Data collection took place in January 2023. Two policymakers, twelve practitioners, and two young people were interviewed. It was important to involve specialists representing different systems and areas of work with children and young people. The specialists were each contacted separately to set up an interview time. All interviews were conducted online and recorded using Zoom. For the participation of underage children, consent was obtained from a parent. Recordings of the interviews were stored on a drive belonging to the Social Insurance Board and deleted after the report was prepared.

The results of the assessment are presented below; however, no distinction is made between the different groups, except for young people and specialists.

1.4. Understanding restorative justice with children in contact with the law

One of the biggest challenges in recent years has been understanding the term restorative justice. This was also confirmed by the current report. Restorative justice began to be discussed more broadly in 2016, when training among police officers first began. Non-punitive measures, including restorative justice, were covered during training. The training included instructions on how to implement restorative justice. The main methods were mediation, redressing damages, and compensation.

Since then, there have been very different views among specialists about what constitutes restorative justice and what are the methods of restorative justice. It also emerged

from these interviews that specialists who have had greater exposure to restorative justice in practice or who have participated in refresher training understand restorative justice to be more than simply conflict mediation. However, mediation remains the priority for people who have never been in contact with it, as some may be unable to see the broader impact of restorative justice.

Interviewees noted that during the early years of restorative justice (starting in 2016), the information was incomprehensible and confusing, with a lack of a clear understanding of whether and in which cases this approach can be applied. Their understanding has since improved, and specialists who are engaged in contact work apply elements of restorative justice in their work and, if possible, introduce the service and make a recommendation for referral to the service.

Of the 14 specialists, eight have been exposed to restorative justice through participation in practical training and six through their own participation in the process.

Since 2019, the Social Insurance Board has had a separate restorative justice team. Since then, restorative justice has been free to develop. There is a national service that is accessible and free, although the service could be more accessible and broader in scope. Restorative justice no longer needs to be a reaction to a situation that has arisen, but it can be seen as a way of thinking that can be implemented in a wide range of areas, from the prison system to the nursery school.

1.5. Needs, gaps and strengths of restorative justice

Various restorative justice methods are applied in a few different contexts. Most of all, it has taken a foothold in criminal matters involving minors, and in many regions, it has already become good practice for the investigator or Prosecutor to always present the parties with the opportunity. Many volunteers have been trained in Estonia and are now able to implement



restorative justice practices and to mediate cases. A great deal of outreach work has taken place in Estonia over the past few years, which has raised the general awareness of the public. European colleagues have taken note of Estonia's development and are also supporting Estonian practices, so there is always someone to ask for advice when needed.

However, there is also a lot of room for improvement. For example, the implementation of restorative justice today is largely project-based, which fails to provide the necessary stability. It is up to ministries to ask for additional resources, but there are often many topics that need to be addressed and priorities that need to be set. Enough promotion and explanation are needed to demonstrate the necessity, efficiency, and effectiveness of the subject. It is essential here to find spokespersons and demonstrate, as multiple agencies on a common front, how necessary it is to continue the service from the perspective of prevention and savings.

Today, the service is largely only available in one place – within a state agency (Social Insurance Board of Estonia, Victim Support Department), where the intention is to employ trained volunteers to cover the entire state's need. The current form of offering the service, however, does not allow for this, as resources are required to cover the entire state and the different topics included. It would be necessary for service owners to be in different areas.

A new Victim Support Act²¹ will enter into force in the spring of 2023, containing a broader outline of the Restorative Justice Service. This act is certainly supportive. At the same time, the law does not limit its application, which allows for a relatively free hand in its implementation for the Social Insurance Board. There are some restrictions as to when restorative justice practices can be applied (e.g. it cannot be applied as punishment for grievous bodily harm, killings, or sexual offences). Even so, this does not mean that restorative justice measures cannot be applied in parallel with punishments or later upon the individual's return to the community. However, a great deal of work must still be done in society to broaden people's awareness of this.

With the support of projects, certain communities in Estonia have been able to train people who are able to resolve conflict situations in their community as soon as they arise, allowing for a quicker response and the ability to respond on the spot to incidents as they are occurring.

Certainly, there is plenty of room for development. There are cases that are not being referred to the Restorative Justice Service because of specialists who are sceptical about the practice or guided by unwritten rules.

Referral to the service depends on the awareness of the person referring and their own beliefs. There is a misunderstanding about the content of the Restorative Justice Service.²²

There are specialists who have worked for a long period of time in the field, but who lack faith in restorative justice approaches, and, in the absence of specific tools, implement various methods which they call restorative justice even though they are not. However, this will not bring about a sense of success, and the already existing scepticism will only grow. To change this, there should be a consistent training system. This training should be comprehensive and should also provide practical experience, among other things. Several

²¹ Ohvriabiseadus (01.04.2023). Riigi Teataja I. <https://www.riigiteataja.ee/akt/106012023001>

²² Author's note: until now the word 'conciliation,' which in Estonian indicates to make up with each other, has been used in law, meaning that the parties should come to terms. On 1 April 2023, a new Victims' Support Act will enter into force, where "mediation" will replace "the service of restorative justice and reconciliation", as it is more neutral and certainly simplifies further work.

interviews found that the brief introduction on restorative justice (which often take place in trainings) does not impart the experience and knowledge required to become a specialist. Existing laws allow for the implementation of restorative justice approaches; however, a system and training often need to be created, where the person referring cases to restorative justice has the skills needed to direct people to it.

The approach is universal in nature, it can be applied to different fields and topics, including at a lower cost than another service (e.g. therapy, social programmes, etc.), and can often yield a more valuable result than any other measure, especially in severe cases. A great advantage is the presence of a neutral mediator.

As a place for development, it was noted that the principles and tools of restorative justice could be applied in different areas – with child protection officials, in schools, working with young people who are incapable of guilt, and in the case of work conflicts. To do so, raising awareness is key and these topics should be discussed in different areas.

1.6. Cooperation between different agencies

Estonia is a small country, an aspect that often proves beneficial, as people, with whom there is direct contact, can be contacted quickly and collaboration can be initiated quickly. During the interviews, it was also noted that multiple people are working on multiple topics (i.e. one person is responsible for several different issues), which makes collaboration with each other easier and it does not lead to the creation of so-called “silos”²³.

Depending on the network, specialists go together to discuss interventions or conduct home visits. However, the interviews also revealed that the other member of the network is often seen as the person who should take the responsibility and a role, without taking it on themselves.

For many years, the question of who was the case manager in cases related to children persisted. This is now regulated in the Child Protection Act²⁴, with the child protection official having been assigned the task. This is also how the law assesses the need for assistance. This, in turn, certainly supports the work that has been done so far. Nonetheless, further clarifications should be introduced to ensure that the child protection official role works as required, that this role constitutes a basis on which to build further action, and that children and their families receive the help they need. A specialist working in the child protection system pointed out that while it is often possible for a child protection official to cooperate with a young person, it may be difficult and challenging to cooperate with the parents, and cooperation with a minor without parental consent is not permitted by current law.

The interviews revealed that there are specialists in the system who are doing their job wholeheartedly, but there are also those who direct a case away from their desktop at the first available opportunity, placing responsibility for and resolution of the situation onto the shoulders of someone else.

²³ Everyone working on their own without collaborating.

²⁴ Lastekaitseadus (01.01.2023). Riigi Teataja I. <https://www.riigiteataja.ee/akt/LasteKS>



1.7. Child-friendly justice

In recent years, there has been increasing talk of a child-friendly justice. Specialists in the field have received training, including on how to communicate with children within the framework of the procedure, the best environment for them, the speed in which the action needs to take place, etc. Although there has been a fair amount of training and the topic has been in focus, the level of knowledge and information varies greatly from region to region. The interviews revealed that specialists who operate in a very specific administrative territory and who enjoy close cooperation with specific network partners are better able to assess the situation of child-friendly proceedings than those who work with cases across Estonia.

One interviewee shared an example from the end of 2022, where a child in Grade 3 became aggressive at school and attacked another student and a teacher, requiring the police to be called. Two police officers came, placed the nine-year-old child in handcuffs, and led them out of school in front of everyone.

Another participant shared how the victim of severe violence was re-victimised by a police investigator who diminished what had happened, resulting in the victim feeling as if the investigator did not believe them and that they were to blame for the incident.

A change in attitudes is needed. It became clear from the interviews that a certain generation may often fail to view the child as an equal partner. For that reason, it is increasingly necessary to introduce restorative justice to the wider population.

In restorative justice, the focus is first and foremost on the victim. In most stories involving young people, the perpetrator of violence has at one time also been the victim.

Currently, in Estonia, restorative justice approaches are definitely not offered to every victim. One of the indicators of child-friendly proceedings could be the introduction and enablement of restorative justice. However, punishment is often the main response, and alternatives to punishment (e.g. community service or another sanction) are not considered. Once again, this is surely due to lack of awareness and widespread scepticism. There is a prevalent belief that punishment will solve most situations. The focus is often on the perpetrator and action is taken against them, with the victim fading into the background.

When it comes to assessing whether the criminal process in Estonia is more centred on the victim or on the perpetrator, the interviews showed that it is both. It often depends on the case and on the offence. Victim-blaming is more common in serious cases; however, in cases involving violence by children, the children are usually blamed, and punishment options are sought for them. Even so, the situation and positions have changed over time, with it often also depending on how the media covers the incident.

1.8. Involving children

We asked specialists in the field about their opinions regarding the involvement of

children, both in terms of the measures applied to them, but also by asking them for feedback. The consensus was that children were not sufficiently involved and that more attention should be given to this issue, and more opportunities should be provided. There are institutions and services where this was given more thought, although these are exceptions. There are projects and studies where young people are involved and given a voice, although it is not a systemic or consistent approach.

For instance, the police representative pointed out that the child and their representative could accept or reject a measure applied; however, in most cases, a programme of some kind is offered and if it is refused, a fine is imposed. Not enough has been said about young people being able to propose their own solutions, or if a young person offers a solution for their own action, it is unrealistic (for example, a reaction to alcohol use could be that the young person would no longer drink).

Opinions are divided when it comes to the possibility of providing feedback. Some specialists believe that there are agencies and approaches that do not require a feedback facility since it is not a service such as, for example, the police. However, the vast majority were of the opinion that it is important to ask for feedback from young people themselves.

Specialists gave the question serious thought and recognised that child involvement is important, but that, in reality, it rarely works. There are initiatives where it is intended, but no consistent delivery has been achieved. Indeed, the representative of the child protection field pointed out cases with child involvement that had had bad results- these cases usually included children who did not understand what had been decided for them and why, and where intervention was presented as a sanction making it impossible for cooperation to be expected. The school's representative pointed out that youth engagement is important in their school, and that youth feedback is sought but not documented. However, there is a desire to change this so that it becomes part of the working culture. The Prosecutor pointed out that, when possible, they also ask young people about the effectiveness of the measure applied through their eyes, not just on the basis of feedback from the implementer.

1.9. The experiences of children and their understanding of restorative justice

Both of the young people (16-year-old girl and 18-year-old boy) involved had experience with restorative justice; one young person also had experience in a closed children's institution.

The experience with restorative justice was good, according to both young people. It provided them with an opportunity to speak and hear the other person in turn, with the support of neutral mediators, and to find solutions. They recommend this type of approach for different situations and cases. According to the young person in a closed children's institution, mediation implemented at an earlier stage could have prevented their stay at the closed children's institution.

Both young people who were interviewed had different opinions on inclusion. According to one young person with a substitute home background²⁵, the conditions for young people in a substitute home are worse than those for so-called "ordinary young people". They

²⁵ The Close Child Accommodation Service (KLAT) provides temporary 24-hour support and security for a child whose behaviour poses a serious risk to his or her own life, health or development, or to the life or health of others, and this risk cannot be eliminated by any less restrictive measure. A child can only be placed in a closed children's institution through a court.

did not know if this was because their child protection official was partly failing to pass on information or why, for example, the Prosecutor had not contacted him. Being an active person, they had endeavoured to look for contacts and solutions. In doing so, they had also met a wide range of sectoral specialists and policymakers.

The young person with experience in a closed children's institution²⁶ pointed out how many network meetings took place without them, and that they were not given an overview of what had been discussed in their absence. Instead, a decision was made on their behalf and only the decisions (without explanations) made by the adults were known to them. They also noted that they had the impression that their story and explanations were not taken seriously, or even believed, by the specialists working on their case. This made them feel unsupported. According to them, things could be different and young people should be involved and kept informed.

1.10. Recommendations

Several important recommendations came out of the conducted interviews. The need to raise awareness on restorative justice and child-friendly procedures emerged to ensure consistent outreach work. There is also a strong need for educational institutions and the legal system to think outside of the box. Additionally, interview conclusions found that both sides in the conflict have their own needs and their own story- it is important for them to share this and to be heard by the other side. This could be possible through awareness raising by sharing experiences and stories.

Also essential is the broader introduction of the restorative justice approach to educational institutions, such as in nursery schools, general education schools, as well as universities, so that conflict resolution skills and practical skills can reach a wider audience. There is certainly a need for a greater number of service providers at both the community level and in agencies.

Greater focus is needed, and concrete steps must be taken to engage young people in a meaningful way. This means consistently asking for feedback from young people on the measure being implemented and asking for their feedback after implementation. Additionally, young people should be explained why a certain measure was taken, to avoid them perceiving it as a punishment.

The following measures will aim to empower both sides, to ensure that they provide feedback and to enhance cooperation:

- Regular training is needed to raise awareness on restorative justice and child-friendly procedures.
- Awareness-raising should be carried out through awareness-raising campaigns, which could include testimonials and good practices.
- Knowledge must be transferred to teachers, social workers, individuals working in education, etc.
- Currently, the Estonian state does not have a central responsible person/actor for the development of restorative justice. The concept of restorative justice has been adopted,

²⁶ A substitute care service is a social service organised by a local government unit, the purpose of which is to ensure the well-being and rights of the child in the long or short term, to provide the child with family-like living conditions to meet his or her basic needs, to create a secure living environment conducive to the child's development and to prepare the child for adult life.

but as it is cross-cutting theme, each ministry concerned must plan activities and resources for the development of restorative justice in their own area, and they must appoint a central responsible person/actor to keep an eye on the concept.

- As there are many actors from different fields of work (education, social work, courts, prosecution, prisons, probation services, etc.), the process of implementing the concept of restorative justice has to be carefully planned. This is also the case for training, especially as it is aimed towards people from different fields. If only training is provided, with no additional coaching or supervision, this could ruin the implementation of restorative justice. Each ministry should at least organise support and supervision within its own areas of responsibility.
- The implementation of the concept is monitored by the National Prevention Council, which is coordinated by the Ministry of Justice. Each state and local government or non-profit agency is responsible for increasing the popularity of restorative justice in the area under their administration based on the purposes of their activity and the resources at their disposal. If necessary, sectoral networks or working groups may be formed with the aim of supporting the implementation of restorative justice.

1.11. Conclusions

This report was prepared within the framework of the i-RESTORE 2.0 collaborative project, with nine individual and two focus group interviews conducted among specialists in the field, and two individual interviews with young people who have experience with the legal system. The purpose of these interviews was to explore the needs of practitioners and relevant stakeholders regarding the implementation of restorative justice and youth engagement.

The Victim Support Department of the Social Insurance Board is currently providing restorative justice services in Estonia. Different restorative justice practices are being implemented – mediation, conferencing, restorative meeting, and restorative circle.

Interviews conducted within the framework of the survey revealed that awareness and implementation of both restorative justice and child-friendly proceedings vary across Estonia. Assessments are mixed, and some of the examples given by specialists during interviews are quite worrying. This needs assessment found that several gaps still remained. The use of restorative justice largely depends on the awareness and knowledge, beliefs, and principles governing the work of specialists. A consistent training system based on practices and experiences is needed for change to emerge and persist.

More efforts should be made to involve young people, both at the level of decision-making (they should at least have knowledge and an of understanding of the measures taken against them) as well as the feedback level- they should be consulted after the measure was implemented. The interviewees revealed that some individual specialists do ask for the opinion of young people, although the practice is uncommon. Many specialists have yet to think about this at all.



2. Romania

2.1. Research methodology

This report presents the results of a Rapid Needs Assessment on how restorative practices are implemented for children in Romania. Desk review and field research were carried out to prepare this report.

The aim of this approach was to analyse the needs, gaps and strengths in the implementation of restorative justice practices in cases involving child victims and children suspected or accused of committing a crime, as well as the methodologies of child participation in Romania, in order to make recommendations for the implementation of twinning arrangements with Estonia.

The research objectives were to identify:

1. The main needs, gaps and strengths in the implementation of restorative justice practices for children in contact with the law in Romania, through a presentation of the relevant legal framework, the relevant authorities and stakeholders involved, and the relevant practices.
2. The main needs, gaps and strengths in existing methodologies on child participation for children in contact with the law (institutional framework, promising practices, and child-led evaluation).
3. Recommendations based on the needs and gaps identified, and any proposals for actions for the twinning arrangement.

Methods and techniques

Semi-structured interviews and focus groups were conducted to achieve these objectives.

The interview guide used for the interviews and focus groups, as well as during the study visits, was structured along the following dimensions: 1) information on participants' experience related to restorative practices; 2) assessments of the legislation governing the work of professionals in the justice and child protection system (gaps and strengths); 3) collaboration between institutions that work with or on cases with children in contact with the law (gaps and strengths); 4) the methodology used in cases involving children (advantages and disadvantages); 5) practices related to the application of the methodology in cases involving children (gaps and strengths); 6) the involvement of children in the evaluation of the methodology applied when working with them.

Population involved

Interviews were conducted with practitioners in the justice system, professionals who work with children suspected or accused of committing a crime (police officers, prosecutors, judges, Probation Counsellors, lawyers, mediators, professionals in youth detention centres, Child Ombudsman Counsellors) and professionals who come in contact with child victims (lawyers, mediators, Child Ombudsman Counsellors). Five interviews were conducted (Child Ombudsman Counsellor, Probation Counsellor, youth detention centre representatives, child protection representative, police officers).

A focus group was conducted with professionals from the justice system (judge, prosecutor, lawyer, mediator) who work with children and a focus group with the staff from Youth Detention Centres.

Also, to identify how children are involved in participatory processes and their views on restorative justice, meetings were held with young members of the Child Advisory Board of the i-RESTORE project.

The field survey took place from 13 to 27 January 2023.

2.2. Main needs, gaps and strengths of the implementation of restorative justice practices for children in contact with the law in Romania

2.2.1. Relevant legal framework

Legislation governing the work of institutions dealing with children in Romania

The analysis revealed the existence of **international legislative instruments governing the work of all institutions** working with children in contact with the law. These include the UN

Convention on the Rights of the Child²⁷, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse²⁸.

Laws governing the work of several institutions working with children in contact with the law have also been identified: New Penal Code²⁹, Code of Criminal Procedure³⁰, Law No 272/2004 on the protection and promotion of the rights of the child³¹ (Probation Services, Child Ombudsman, Public Prosecutor's Office, Court, Lawyers). There are also laws or regulations that only regulate the activity of some institutions (see Table 1):



²⁷ UN Convention on the Rights of the Child <https://www.unicef.org/child-rights-convention/convention-text>

²⁸ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse <https://rm.coe.int/1680084822>

²⁹ New Penal Code <https://legislatie.just.ro/>

³⁰ Code of Criminal Procedure <https://legislatie.just.ro/>

³¹ Law no. 272 of June 21, 2004 (**republished**) regarding the protection and promotion of children's rights <https://legislatie.just.ro/Public/DetaliiDocument/207248#A420>

Table 1. The laws that regulate the intervention of institutions in cases of children involved with the law in Romania

Institutions	Law
Child Ombudsman	<p>Law no. 35/1997 regarding the organisation and operation of the People's Advocate institution.³²</p> <p>Law no. 273/2004 regarding the adoption procedure³³.</p> <p>National Education Law no. 1/2011³⁴.</p> <p>Law no. 272 of June 21, 2004 (**republished**) regarding the protection and promotion of children's rights³⁵</p>
National Directorate of Probation	<p>Law no. 252/2013 on the organisation and operation of the probation system, with subsequent amendments and additions³⁶.</p> <p>Government Decision no. 1079/2013 for the approval of the Regulation on the application of the provisions of Law no. 252/2013 on the organisation and operation of the probation system and 42 territorial structures, called probation services³⁷.</p>
Directorate of Social Assistance and Child Protection (Child Protection)	<p>Social assistance law no. 292 of 20 December 2011 with subsequent amendments³⁸.</p>
National Police	<p>Law no. 218/2002 regarding the organization and functioning of the Romanian Police³⁹.</p> <p>Law no. 360/2002 regarding the status of the police officer⁴⁰.</p> <p>G. D. no. 991/2005 regarding the approval of the Code of Ethics and Deontology of the Police⁴¹.</p> <p>Law no. 364/2004 on the organisation and operation of the judicial police⁴².</p>

³² Law no. 35/1997 regarding the organisation and operation of the People's Advocate institution Romanian version https://legislatie.just.ro/Public/DetaliiDocument/55157#id_artA143

³³ Law no. 273/2004 regarding the adoption procedure. Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/52896>

³⁴ National Education Law no. 1/2011 Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/125150>

³⁵ Law no. 272 of June 21, 2004 (**republished**) regarding the protection and promotion of children's rights <https://legislatie.just.ro/Public/DetaliiDocument/207248#A420>

³⁶ Law no. 252/2013 on the organisation and operation of the probation system, with subsequent amendments and additions Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/150667>

³⁷ Government Decision no. 1079/2013 for the approval of the Regulation on the application of the provisions of Law no. 252/2013 on the organisation and operation of the probation system and 42 territorial structures, called probation services. Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/154293>

³⁸ Social assistance law no. 292 of 20 December 2011 with subsequent amendments Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/133913>

³⁹ Law no. 218/2002 regarding the organization and functioning of the Romanian Police Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/157719>

⁴⁰ Law no. 360/2002 regarding the status of the police officer Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/36819>

⁴¹ G.D. no. 991/2005 regarding the approval of the Code of Ethics and Deontology of the Police. Romanian version <https://legislatie.just.ro/Public/DetaliiDocumentAfis/64811>

⁴² Law no. 364/2004 on the organisation and operation of the judicial police. Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/55359>

Youth Detention Centres (part of the National Administration of Penitentiaries)	<p>Law no. 254 of 19 July 2013 regarding the execution of punishments and custodial measures ordered by judicial bodies during the criminal process⁴³.</p> <p>Decision no. 157 of 10 March 2016 for the approval of the Regulation for the application of Law no. 254/2013 on the execution of punishments and custodial measures ordered by judicial bodies during the criminal process⁴⁴.</p>
Mediation Council	Law no. 192/2006 on mediation and the organisation of the mediator profession, with all amendments and additions on 29.07.2019 ⁴⁵ .

Strengths of the legal framework

Although professionals in the justice and child protection systems believe that the National Criminal Law should be amended and adapted to the current context, most of them consider that, in general, the legislative regulations are sufficient, as they offer a flexible sanctioning framework appropriate for each situation and emphasise the importance of maintaining the child's freedom.

The legislation ensures special conditions for the reintegration of children, such as access to educational programmes, medical, psychological and social assistance, vocational training courses, as well as early release after serving half of the sentence.

Weaknesses of the legal framework

Several weaknesses were identified, including a lack of enforcement regulations, a lack of enforcement mechanisms and a lack of interagency mechanisms to intervene in cases involving children. A special case was reported by Probation Counsellors who drew attention to the fact that: a) the length (2-6 months) for which educational measures are applied (these include daily assistance, recording at weekends⁴⁶, civic training internship, and supervision) are too short for the intervention of Probation Counsellors to produce the expected results; b) the deadlines within which there is an obligation to attend school are too short to be implemented properly; c) some educational measures (recording at the end of the week) do not produce the expected results and are inadequate in the current context.

Professionals from the Youth Detention Centre mentioned as a weakness the fact that, during pre-trial detention (which can last up to a year), minors cannot participate in school classes or structured educational programmes but can only do "*activities to maintain psycho-*

⁴³ Law no. 254 of 19 July 2013 regarding the execution of punishments and custodial measures ordered by judicial bodies during the criminal process. Romanian version <https://legislatie.just.ro/Public/DetaliuDocument/150699>

⁴⁴ Decision no. 157 of 10 March 2016 for the approval of the Regulation for the application of Law no. 254/2013 on the execution of punishments and custodial measures ordered by judicial bodies during the criminal process. Romanian version <https://legislatie.just.ro/Public/DetaliuDocument/177386>

⁴⁵ Law no. 192/2006 on mediation and the organisation of the mediator profession, with all amendments and additions on 29.07.2019. Romanian version <https://legislatie.just.ro/Public/DetaliuDocument/71928>

⁴⁶ According to the Law no. 286 of July 17, 2009 regarding the Criminal Code art 119 (1), recording at weekends is "The educational measure of registration at the weekend consists in the minor's obligation not to leave the house on Saturdays and Sundays, for a period of between 4 and 12 weeks, unless, during this period, he has the obligation to participate in certain programs or to carry out certain activities imposed by the court." Romanian version <https://legislatie.just.ro/Public/DetaliuDocumentAfis/109854>

behavioural and physical tone". Minors are entitled to more facilities (for example, minors have the right to six visits per month in comparison to young people who have four visits per month) but otherwise there is no difference between adults and minors.

2.2.2. Relevant authorities and stakeholders involved

In Romania, the activities carried out in cases concerning children in contact with the law require the involvement of institutions from the justice system (the same institutions that also deal with cases involving adults) and institutions that have special departments for cases involving children (the Child Ombudsman, the Child Protection, Youth Detention Centres). A similar situation is found when it comes to the application of restorative justice practices. Mediation in criminal matters is the format of restorative justice best known in Romania, although it does not seem to be frequently used in cases involving children. Professionals in institutions that work with children (the victims or those accused or sentenced) are never trained to intervene in cases with children.

Professionals from the justice system (police, Public Prosecutor's Office, judges, probation Services, Bar Associations, youth detention centres), from the child protection system (Social Welfare, Child Ombudsman) and from the education system (schools and school inspectorates) collaborate in cases involving children.



Strengths in collaboration between institutions

In general, the institutions involved in dealing with children understand the importance of respecting children's rights and having the best interests of the child in mind. Institutions in the justice and child protection systems work together according to their legal powers and strive to intervene appropriately in each case. At the local level, institutions that have special facilities for children (e.g. special rooms in which the hearing of children can take place) and the necessary professionals to work with children make these facilities available to other institutions.

Among the practices of intervention in the resolution of cases concerning children, the Local Inter-sectoral Teams bring together professionals from several institutions, the child protection system, the police, the Public Prosecutor's Office, hospitals.

Gaps in the collaboration of institutions involved in working with children in contact with the law

The mediator's work seems to be carried out without collaborating with institutions in the justice or child protection system. In carrying out their activities, they make use of their personal professional relationships (for example when they need a psychologist in the case they are working on they will have to personally find one).

Other weaknesses were identified between collaborating institutions, the main weakness being the discrepancies in procedures between institutions (e.g. interventions within the Child Protection are different than those in other institutions). The Child Ombudsman stated experiencing **difficulties in collaborating with some County Police Inspectorates and Public Prosecutor's Offices**, who send in late replies or who do not reply at all when the Child Ombudsman requests information.

The Child Protection have reported several difficulties in working with detention centres. Indeed, this collaboration is limited to picking-up children from the centres for their integration. However, sometimes the Child Protection will only be notified at the last minute about the release of a minor from the detention centre. In several cases, the minor was released at midnight (with no advance notice), so the Child Protection could intervene properly and the mobile team of the Child's Telephone, which is available 24/7, needed to intervene even though this is not their usual area of work.

The Judge stated that there are situations where they need to request a second evaluation report from the Probation Service, as the first report is not well prepared.

The Prosecutor has reported that **the Public Defenders are sometimes not interested in the cases they receive**. The Prosecutor explained that this could be due to the low number of requests made by the Prosecutor to allow the Public Defenders to access the file. As a result, the Prosecutor noted that the lawyers only meet their client for the first time in the courtroom. Several police officers noted that there was a lack of collaboration protocols between the police and institutions from the judiciary system, public order, social assistance and Child Protection, which was seen as a weakness of the inter-institutional collaboration.

Investigation and prosecution activities are hampered by the lack of expertise from the National Institute of Forensic Medicine⁴⁷.

Difficulties were also mentioned in working with prosecutors' offices, police and social welfare units in small towns and rural areas.

⁴⁷ Prosecutor

2.2.3. Relevant practices

Participation in the restorative processes or activities with children in contact with the law

The analysis of the responses given by participants in the interviews and focus groups revealed that there are several categories of professionals who work with restorative justice in the justice or child protection systems. These categories included the following professionals.

1. Some professionals in the justice system have participated in restorative justice activities (as mediators) or have advised and accepted the mediation agreement or the mediation process in criminal cases with minors (Judge) and have participated in projects run by NGOs (non-governmental organisations) on restorative justice and its use in cases involving children.
2. Some professionals participated in projects organised by NGOs on restorative practices that could be used in conflict resolution but did not participate in mediation processes or activities.
3. Some professionals have knowledge of restorative practices that could be applied in cases with children in contact with the law (e.g. mediation, models of real justice, reparation for the harm caused, bringing victim and offender face-to-face) but have not participated in restorative activities.
4. There is also a category of professionals who have not participated in restorative justice processes and have no knowledge of restorative practices but who are directly involved in work with children and young people in contact with the law (e.g. children who have committed offences and are in detention centres).

Children Advisory Board - i-RESTORE 2.0

The young people involved in the project, regardless of their seniority in the project, have solid theoretical knowledge about restorative principles and practices. The knowledge was gained either during the activities carried out in the i-RESTORE project (phase I) or as a result of individual documentation- this is the case for young people with less experience in the project.

Participation of young people in restorative activities is quite limited. Some of them have been in direct contact with conflict situations resolved through restorative practices, due to their involvement in the I-RESTORE project or personal experience during their pre-university education. Some of them, because they documented themselves on restorative justice, can readily identify restorative practices used earlier in high school to resolve conflicts between peers or between peers and teachers.

Restorative practices that can be applied to children in contact with the law

Professionals in the justice system, as well as young people who participated in the research, believe that restorative practices can be used by teachers and school management at an early stage of the criminal justice process (i.e. police investigations) or even before criminal investigation bodies are contacted, when conflicts are still in the investigation phase.

Mediation is the best-known restorative practice and can be applied in cases of minors who have committed property offences or acts of violence of a lesser gravity.⁴⁸

Probation Counsellors believe that **restorative practices cannot be used in cases**

⁴⁸ According to the Law no. 192 of May 16, 2006 on mediation and the organization of the mediator profession, art. 67 (2) "In the criminal side of the process, the provisions on mediation apply only in criminal cases for which, according to the law, the withdrawal of the prior complaint or the reconciliation of the parties removes the criminal responsibility, if the author has admitted the act before the judicial bodies or, in the case provided for in Art. 69, before the mediator." Romanian version <https://legislatie.just.ro/Public/DetaliiDocument/71928>

involving children committing many offences. In this situation, it was suggested that restorative practices should rather be used in the community where children below 14 commit offences. Specifically, "*a bringing together of those in the community*"⁴⁹ to intervene "*before it's too late. [...] By the time they're 16, no one's really done anything for them. I'm still going through the files. They've been assessed at times, a few that have been through the child protection system. Institutions are missing from this description of them. That's the problem.*"⁵⁰

Difficulties in applying restorative justice to children in contact with the law

Some professionals have mentioned several difficulties in applying restorative justice to children who have committed offences. While for property offences, most professionals consider that mediation can be used, but for minors who have a criminal career, **mediation seems to not be an option** based on the answers received from some professionals,⁵¹ especially when the minor has already received a sanction (e.g. an educational measure, probation supervision or detention in a detention centre).

Although they have not participated in restorative justice activities but have participated in restorative justice projects, some professionals⁵² have expressed reservations about the use of restorative justice in crimes where the offender is of age and the victim is a child. Some prosecutors have expressed reluctance to use restorative justice because of the risk of secondary victimisation of child victims. In addition, they recommended the use of psychologists to evaluate children prior to the use of restorative practices to determine whether child victims can participate in mediation.

Many professionals in the justice system **do not recommend the use of restorative practices that bring the victim and offender face-to-face in sexual assault cases in general, and especially in cases where the victim is a minor and the offender is an adult.** The argument put forward by professionals in the justice system is the possibility of re-victimisation of the child victim.



⁴⁹ Probation Counsellor

⁵⁰ Probation Counsellor

⁵¹ Probation Counsellor, Youth Detention Centre

⁵² Prosecutor

Strengths of restorative processes

The respondents highlighted several strengths of using restorative practices in cases involving children. First, they brought up the resources that currently exist, resources that are seen as advantages.

These advantages are:

- The existence of a legislative framework allowing for the use of mediation and other restorative practices in the resolution of criminal conflicts.
 - The existence of an institution (Mediation Council) that can provide the necessary framework for the activities of professional mediators; it regulates and supervises the training of professionals, monitors compliance with legislation and with the principles and rules of professional ethics.
 - The existence of well-trained practitioners in the field of restorative practices in general, practitioners who have experience in the field of criminal mediation, and practitioners who know the techniques of dealing with children in contact with the law.
 - Mediators that have the necessary legal knowledge to carry out mediation activities in criminal matters.
 - There are already legal professionals (judges, prosecutors, lawyers) who have personally recommended mediation and have settled cases through mediation. These professionals can be a professional resource for future practitioners.
 - The new Code of Criminal Procedure provides for mandatory legal assistance both for the minor defendant and for the minor victim. In this context, the lawyers on the case can propose the use of a mediator to resolve the case, if necessary.
-
- In terms of the **strengths of restorative practices**, the respondents noted the following:
 - Mediation in criminal matters in general, but also in the case of minors, offers the advantage of "*quantification of the damage and expenses*"⁵³ "*because, if they opted for mediation, they would be able to obtain both compensation for the material or moral damage they have suffered, as well as legal costs.*"⁵⁴
 - Restorative justice gives the perpetrator the opportunity to be re-included and avoid stigma from society: "*that aggressor who is a child and has low self-esteem after everyone tells them that they were wrong*", has the chance "*to admit to their deeds, to ask for forgiveness, to reconcile with themselves, so that they see that they have a chance to change and that they are repositioned in society after admitting their guilt, especially in the instance that the victim forgives them.*"⁵⁵
 - **Children member of the Child Advisory Board in i-RESTORE 2.0** appreciate that restorative justice offers an alternative to punishment, that it allows for the violence/conflict to be limited to a single event, that the children involved in the conflict understand what the consequences of their actions are, it contributes to the personal development of the victim and the perpetrator. In addition, restorative processes are based on "empathy" which allows the conflict to be resolved and the victim to overcome victimisation.
 - The restorative dialogue between the children involved (victim and perpetrator) helps

⁵³ Prosecutor

⁵⁴ Prosecutor

⁵⁵ Mediator

the victim more than the compensation they might receive would.

- Restorative justice "gives a voice" to young people to talk about their experience, especially those who have been victims and want to talk to the perpetrator and the mediator.

Weaknesses

Among the weaknesses of mediation practices in Romania, mediation professionals cite low access to mediation for at least two reasons. The first reason would be the lack of information about who can benefit from it (victims or aggressors), because information about conflict resolution is made only at the personal initiative of some professionals in the justice system (e.g. judges, lawyers) who know about restorative justice. The second reason is that mediation is part of the private service system, while the justice system is a public system operating based on strict procedures.

The low level of awareness of mediation and restorative practices was also mentioned by other justice professionals working on cases involving child victims or perpetrators. They drew attention to the following issues:

- The population does not have the necessary information on restorative practices and mediation in conflict resolution in general or in conflicts involving children.
- Professionals in rural areas are not familiar with the mediation procedure (e.g. the local police officer), which could resolve many cases and avoid overburdening the Public Prosecutor's Offices and courts.
- The young people from i-RESTORE Child Advisory Board also raised the issue of the lack of information. Unlike the other respondents, young people referred to the **need to inform children about restorative practices before they become involved in criminal proceedings**
- **The legislative framework does not facilitate the use of restorative justice**, according to the justice professionals:
 - The legislator has made provisions in theory, but measures to implement them, especially on cases involving minors who need special protection, are lacking.
 - The legislator has not developed a separate procedure for mediation in criminal matters.
 - The legislation should be changed so that the judge refers the parties to mediation.
 - The legislative gaps make it difficult for the judge to intervene when he or she finds, from an analysis of the criminal case, that the conflict could be resolved through mediation. Some judges recommend mediation "with insistence" to the parties, which is at the limit of their competence.
 - There is a risk that judges who recommend mediation may be perceived by victims' lawyers as biased against defendants.
 - Legal assistance is not continuous (the minor is assisted by a different public defender at the police, at the Prosecutor's office, in Court).
 - Psychological assistance during the criminal process is not continuous: the child is assisted each time by another psychologist sent by the Child Protection or an NGO.
 - There are situations where the presence of parents can affect the mediation process between the child victim and the child perpetrator.

The lack of training for justice and child protection professionals was seen as another identified gap:

- Professionals (police, prosecutors, lawyers, mediators, judges) working with children in contact with the law do not have access to initial or ongoing training in child-friendly justice and restorative justice.
- Training professionals is an individual rather than an institutional or systemic endeavour. The National Institute of Magistrates, the National Institute for the Training and Development of Lawyers, the Bar Associations, and the Police Academy, do not organize training courses in child-friendly justice or restorative justice.

Lack of intervention by child protection institutions when children commit crimes and are not criminally responsible. "Nobody does anything about minors under 14 who commit crimes (this does not include cases where a child would climb into their father's car once when they were 13 and crash it into a tree)... but who commit burglaries, thefts, robberies, break into soda or coffee machines in parks and... there was a case of one child who broke into 5-6 in one night."⁵⁶

The lack of adequate facilities address cases involving children can lead to victimisation, at the police, Public Prosecutors' Offices and courts. The risk is higher in small towns and rural areas.



⁵⁶ Probation Counsellor

2.3. Main needs, gaps and strengths in existing methodologies on child participation for children in contact with the law in Romania

2.3.1. Methodologies for working with children in contact with the law

Different methodologies were identified for working with children in contact with the law. These included the following.

1) **Institutions that have special departments or units dedicated to interventions for children and young people** (Child Ombudsman, Youth Detention Centres, General Directorate of Social Work and Child Protection). Some departments are guided by the general methodologies existing at the level of the institution (Child Ombudsman), others have specific procedures for each organisational structure for abused and exploited children, victims of domestic violence, victims of trafficking in persons (the Child Protection). **In the case of children who have committed offences but are not criminally responsible**, the measure applied is that of specialised supervision, applicable for a short period of time. The Child Protection's work with the case management method for this category of minors starts with the initial assessment and ends with post-intervention monitoring. In units where there are no methodologies (detention centres), but also in other types of departments for children, the work of professionals is based on national and international legislation for children, general institutional procedures, management decisions and recommendations, practices in the field assimilated during professional experience or training within projects.

2) Institutions that do not have special departments for activities with children in contact with the law (Probation Counsellor, prosecutors, mediators) and do not have methodologies. They are guided by national legislation in the criminal field and in the field of child protection (New Criminal Code⁵⁷, New Code of Criminal Procedure⁵⁸, Law no. 272/2004 on the protection and promotion of children's rights⁵⁹) and international legislation. They also act in accordance with the special laws on the functioning of these institutions (Probation Services, Mediation, Ombudsman), the occupational standards in the field and the recommendations, guidelines developed by the central structures.

In practice, justice professionals refer to the Code of Criminal Procedure and special laws for children, to which they add the methodologies for hearing child victims in Court, which was developed by NGOs.

Gaps in methodology-based intervention

The procedures of the Child Protection and those of the institutions with which it collaborates are not complementary and sometimes there is no continuity in the intervention of specialists. Time is lost trying to overcome unregulated situations, and usually they need to improvise to overcome barriers.

Strengths of the methodology-based intervention

Regardless of their level, professionals consider that the existence of intervention methodologies in cases involving children in contact with the law would be useful for different

⁵⁷ New Penal Code <https://legislatie.just.ro/>

⁵⁸ New Code of Criminal Procedure <https://legislatie.just.ro/>

⁵⁹ Law no. 272 of June 21, 2004 (**republished**) regarding the protection and promotion of children's rights <https://legislatie.just.ro/Public/DetaliiDocument/207248#A420>

reasons. This included the following:

- It would establish a direction in which to take action.
- It would establish priorities and ways of approaching children.
- It would allow actors to set objectives.
- It would specify the best steps to respond to the needs and interests of the child throughout the procedure.
- It would encourage actors from different institutions to act as a team and make collaboration easier.
- It would specify the competence of each institution.
- It would specify which professionals should intervene.
- It would provide an opportunity and a method for the children involved to obtain feedback.

Additionally, the following issues could be eliminated: suspicions about collaboration between professionals during criminal proceedings, inappropriate behaviour from some lawyers who encourage the client to reject alternative dispute resolution methods, and social workers who intervene only after a referral to the Child Ombudsman.

2.3.2. Promising practices

Thanks to the interviews, several promising practices were identified. First, **the Child Ombudsman** gives the child the opportunity to report abuse to the Child Helpline, to come into the hearing unaccompanied or to contact a Child Ombudsman Counsellor directly to report any abuse. The Child Ombudsman takes any referral/complaint made by the child seriously.

Examples of good practice in the use of mediation have also been identified in cases where **judges advise the parties involved to use mediation**.

In Săftica, Ilfov county, close to Bucharest, a **special methodology of examining the child victim, following the Barnahus model**⁶⁰, is applied. The examination is done primarily by the Prosecutor.

Local Intersectoral Teams (LIT), under the National Authority for the Protection of Children's Rights and Adoption⁶¹, have been developed where different institutions assign one person to be a part of the team and they work together to solve cases. The LIT members intervene directly and activate mechanisms from their own institution (police, hospitals, gendarmerie, Public Prosecutor's Office, etc.).

Finally, **the Child Protection's special hearing rooms for minors** in Craiova and Cluj are used by child protection specialists, police, judges and prosecutors. These rooms are equipped with audio-video recording systems. This initiative is funded by the French Embassy and are operating based on the French model.

2.3.3. Child-led evaluation

The specialist of the Child Protection and the Youth Detention Centre stated that the beneficiaries of the programmes run in these institutions could evaluate the work of the professionals after each intervention. The mediators also include questionnaires in their

⁶⁰ <https://www.barnahus.eu/en/about-barnahus/>

⁶¹ National Authority for the Protection of Children's Rights and Adoption <https://copii.gov.ro/1/>

procedures which aim to evaluate the satisfaction of those participating in mediation sessions. Although some institutions offer the possibility for a child to contact the institution directly, there is no systematised evaluation of the professional intervention by the children involved (Child Ombudsman).

Other institutions do not assess professional intervention because minors and youth cases are in their custody for a short time and because they do not see the purpose of these assessments (Probation Counsellor).



2.4. Recommendations based on the needs and gaps identified, and proposed actions for the twinning arrangement

Legislative level

Several recommendations were made for the legislation level. This included the following:

- Criminal legislation needs to be evaluated and adapted to the current reality, practices and best interests of the child.
- Further recommendations should be made to amend the legislation on mediation to allow for the following: the use of mediation or restorative practices during the execution of the sentence; a psychological assessment of child victims before mediation; the presence of a psychologist in mediation between victim and offender; compensation of the victim by the state when the offender does not have the financial resources to compensate the victim; and finally, mediation costs should be covered by the state.
- Legislation should be amended to allow for the creation of interinstitutional mechanisms in the field of justice and protection for minors.
- Re-evaluation of non-custodial educational measures (daily assistance, recording at weekends, civic training internship, supervision) and their terms of application in the case of minors who enter the custody of the Probation Services.

Training of professionals

Training by professionals should include the following measures:

a. Elaboration of books and guides for professionals in institutions in contact with children. These books should include a comprehensive selection of national and international legislation, including European Court of Human Rights (ECtHR) and Court of Justice of the European Union decisions. The guides should include recommendations and examples from good practices.

b. Organisation of courses for legal professionals and other institutions:

Specific courses and trainings for legal professionals should be organised along the following lines:

- Specialisation of justice and child protection professionals in the field of child-friendly justice.
- Initial and continuous training of justice professionals in the field of child-friendly justice and restorative justice in the following institutions: National Institute of Magistracy, Bar Associations, Mediation Council, Police Academy. Other types of trainings should be included as well, include those organised by NGOs and other institutions.
- Police officers should be trained in restorative justice so that they can resolve more cases through restorative processes and help relieve the legal system of some cases.
- Meetings, conferences, information and training webinars should be organised to understand the problems and difficulties encountered by each professional category working on cases involving children.
- The trainings should include a module presenting the skills and experiences of institutions/professionals working on cases involving children, as well as the scientific results of mediation.
- Pre-university and university teachers and students should also have access to training in the use of restorative practices.
- Meetings should be organised (face-to-face or online) between several categories of

professionals (interagency) to better understand each other's areas of expertise, to communicate effectively during collaboration of cases and to share the same values.

- Working visits should be organised to get in direct contact with best practice models from other countries.

Other recommendations related to training include the following:

- The **initial and ongoing training of mediators** who work with children should include both knowledge specific to restorative justice and legal knowledge, as well as develop skills on how to specifically work with children.
- There should be a "**School for Parents**," where parents are trained to intervene preventatively before their child comes into conflict with the law.
- Psychologists should be introduced into the justice system for children and youth to help professionals interact with children.
- More psychologists and psychotherapists should be employed in Child Protection and in Youth Detention Centres.
- Special units/directorates for juvenile cases should be introduced within Probation Services and Child Protection, and their staff should be trained to intervene in such cases.
- Concerned institutions should be provided with the necessary equipment to correctly conduct child hearings (i.e. special hearing rooms for children). The Superior Council of Magistracy plans to equip courts across Romania with 47 hearing rooms by the end of 2023.⁶²
- Restorative justice should be promoted through tools specifically tailored to the target audiences, including the general population, professionals, children and parents.

2.5. Conclusions

The analysis of the research data revealed that there are currently several elements in Romania that can be useful to expand restorative practices when children are involved. These include the existence of a legislation allowing mediation, the existence of institutions (Mediation Council) with experience in restorative intervention, the presence of professionals (mediators) with experience in working with minors, and the presence of professionals in the justice system (judges, prosecutors, lawyers) who are familiar with mediation practices and recommend their use.

This report identified several issues concerning legislation, law enforcement methodologies and institutional practices in dealing with cases involving children. The strengths of the national legislation governing justice system for children and youth and the protection of children's rights include the focus on the best interests of the child, the flexibility of educational measures and obligations, prioritising the child's freedom and only applying custodial sentences in a few cases. The strengths of the legislation enabling the use of restorative justice (through mediation) were also highlighted. Professionals also pointed out a few legislative gaps, such as the lack of a separate procedure for mediation in criminal proceedings, the lack of enforcement regulations, the lack of enforcement mechanisms and the lack of interagency mechanisms to intervene in cases involving children. These issues make

⁶² According to the National Council of Magistracy during the Ministry of Justice's Working Group on Protecting Child Victims of Crime, meeting on 3 November 2022

it difficult to intervene in cases involving children in contact with the law. Several recommendations were made to improve the legislative framework.

Only a few of the professionals interviewed mentioned that there are general methodologies, procedures and work programmes in place at the institutional level that are specific to working with children and young people.⁶³ Most of them operate based on national criminal and child protection legislation,⁶⁴ special laws regulating the work of some institutions,⁶⁵ international conventions, EU Directives and recommendations.

The needs identified during the research are to evaluate and amend some legislative provisions so that the work of the institutions involved can be adapted to the current context and allow for the use of restorative practices to a greater extent. The main needs identified were the need to train professionals working with children, the need for to have professionals specialised in working with children, the need to extend models of good practice (e.g. the Local Intersectoral Teams, etc.), the need to involve children in the evaluation procedures, the need to develop common methodologies, and the need for more information on restorative justice.



⁶³ Child Ombudsman, Youth Detention Centres, General Directorates for Social Work and Child Protection

⁶⁴ New Criminal Code, Code of Criminal Procedure, Law 272/2004 on the protection and promotion of the rights of the child

⁶⁵ Child Ombudsman, National Directorate of Probation, Mediation Council, Youth Detention Centres

Recommendations for practice improvement

Estonia

- Regular training on restorative justice and child-friendly justice is needed to raise awareness.
- Awareness-raising should be carried out through specific campaigns, which could focus on testimonials and good practices.
- Knowledge must be transferred to teachers, social workers, as well as other relevant professionals.
- Currently, the Estonian state does not have a centralised role/actor who is responsible for the development of the restorative justice. The concept of restorative justice has been adopted in legislation. As restorative justice is a cross-cutting theme, each ministry directly concerned has to plan activities and resources for the development of restorative justice in its own field. A centralised role/actor would be responsible for overseeing and monitoring these developments.
- As there are many actors from different fields of work (education, social work, courts, prosecution, prisons, probation services, etc.), the process of implementing the concept of restorative justice has to be carefully planned. This is also the case for training, especially as it is aimed towards people from different fields. If only training is provided, with no additional coaching or supervision, this could ruin the implementation of restorative justice. Each ministry should at least organise support and supervision within its own areas of responsibility.
- The implementation of restorative justice is monitored by the National Prevention Council, which is coordinated by the Ministry of Justice. Each state and local government or non-profit agency is responsible for promoting restorative justice in the area under their administration, based on the purposes of their activity and the resources at their

disposal. If necessary, sectoral networks or working groups may be formed to support the implementation of restorative justice.

Romania

- Promote restorative justice through tools especially tailored to the target audiences: general population, professionals (from the justice system, Child Protection, schools, etc.), children and parents, and possible beneficiaries (victims or aggressors).
- Elaborate restorative justice training packages, which would include a training curricula, books and guides for professionals in institutions in contact with children (these books should include a comprehensive selection of national and international practices, while the guide should include recommendations and examples from practice).
- Training on restorative justice should be made available for justice professionals (police, prosecutors, judges, probation counsellors, lawyers, mediators).
- Training on restorative justice should be made available for students, teachers and managers of schools at pre-university and university levels.
- Meetings should be organised between professionals from the justice system and Child Protection and mediators to better understand restorative justice practices and to share good practices (these could be face-to-face or online).
- Working visits should be organised to get in direct contact with best practice models from other countries.
- Meetings between Romanian and Estonian professionals from each category should be organised (and other countries with experience in restorative justice), for example, meetings between police officers, judges, etc., from Romania and Estonia could be organised to discuss practical issues related to the implementation of restorative justice.



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