



**i-RESTORE 2.0**

Accessible Quality Restorative Justice  
processes for children in contact with the law

# RESTORATIVE JUSTICE PRACTICES FOR CHILDREN IN CONTACT WITH THE LAW IN THE NETHERLANDS & GREECE

Joint Rapid Needs Assessments  
2023

Annemieke Wolthuis and Ioanna Stentoumi



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**Halt.**



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## Introduction

This report exposes the outcomes of a needs assessment on children and restorative justice (RJ), based on a desk review and on several inquiries carried out with stakeholders. It covers the **Accessibility of Restorative Justice Practices** for children in contact with the law in Greece and the Netherlands. The report is a part of the i-RESTORE 2.0 project, coordinated by Terre des hommes Romania and with partners from Estonia, Greece, Romania and the Netherlands.<sup>2</sup> Greece and the Netherlands form a twinning team, as do Estonia and Romania. They will cooperate closely and study visits between both countries will be organised as part of the twinning arrangement to increase knowledge and expertise.

In the Netherlands, for the past several decades, RJ was not integrated within the criminal procedure and was mainly used as out-of-court settlements or diversionary measures which keep children outside of the formal criminal procedure, often sanctions at police level. This has changed. RJ is now finding its place in the justice system, including in the justice system for minors. Children and young people are offered restorative approaches through three different paths, namely via a diversionary measure Halt,<sup>3</sup> via mediation in criminal cases or via mediation outside of criminal cases. How this is regulated and undertaken in practice will be shared in this report. Inspiring examples of restorative developments can be found outside of the field of the child justice system, such as in schools, neighbourhoods and youth care.

In Greece, measures and practices are slowly being implemented today, although during ancient times, restorative approaches were a part of justice practices. On the island of Crete, an informal type of dispute resolution has been practiced since the twelfth century B.C. until today. This *sasmos* (resolution) is an assisted and confidential negotiation between families to prevent or settle crimes committed to defend the family honour. The local mediator, the *sastis*, is a person of merit, widely known and accepted by the community. However, there is still room for progress, especially when it comes to how children are approached in the justice system. Even though laws and regulations are in place, there is not yet enough expertise among professionals to fully implement them. There is a difference between Greece and the Netherlands, where the Netherlands seem to be further ahead regarding RJ for young people.

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<sup>1</sup> The Dutch report includes input from Jolan van den Broeck and experts in the field. Part of the text is based on recent chapters and articles prepared by Annemieke Wolthuis and other Dutch colleagues, as mentioned in the text and references. Views from different experts are included to ensure the information is up to date. The Greek report was written by Ioanna Stentoumi with the support of Panagiota Kanellopoulou from Terre des hommes Hellas. Several interviews and focus groups including stakeholders were held to complete the information.

<sup>2</sup> The project i-RESTORE 2.0 builds on the lessons learnt from “i-RESTORE - Protecting Child Victims through Restorative Justice” (EC project 847345, Sept 2018-Nov 2021). What clearly emerged from the work conducted with children, practitioners and policymakers in the past two years in Romania, Greece and Albania, is that merely developing models of restorative justice would have no impact on children if this did not go along with ensuring that these models were effectively accessible to them, girls and boys alike. More information on the current project can be found here: <https://tdh.ro/en/i-restore-20-accessible-quality-restorative-justice-processes-children-contact-law-europe>, last accessed on 26 February 2023.

<sup>3</sup> This measure is further detailed below, in section II.1.3.1

However, Greece is open to change, with laws and regulations in place which leave space for more initiatives. There are also promising developments taking place in schools and through several local projects.

Both countries have a list of needs for the future that the i-RESTORE 2.0 project can aim to address in the coming year and a half. Key stakeholders who provided input for this report include judges, Public Prosecutors, lawyers, probation officers, police officers, mediators and people working for child protection or non-governmental organisations (NGOs) in both countries, amongst others. These stakeholders will also be consulted during the next stages of the project, either through the policy network, the trainings and/or during the twinning arrangements.

The structure of the report is as follows. First, an executive summary of the situation in both countries will be presented. Then, both national reports will be shared, starting with the legal and policy framework of RJ for children and young people. The section that follows will look at restorative practices that have been developed for children and young people.<sup>45</sup> Additionally, the main needs, gaps and strengths of existing methodologies to promote child participation in cases where children are in contact with the law will be addressed. This will be done by looking at the institutional framework, promising practices and existing evaluations. We will conclude with a review of upcoming needs based on the gaps identified in both countries, and a list of proposed actions for the twinning arrangement. The opinions and views of several experts working in child justice and/or RJ will be shared and mentioned throughout the text.



<sup>4</sup> In the Netherlands, we are using “children and young person” instead of “juvenile” in line with the UN Convention on the Rights of the Child and General Comment 24 of the Committee on the Rights of the Child (CRC). Children are the group aged up to 18 years old, according to the CRC. We consider young people as the group between 16 and 23 years old, since in many countries, laws for children can also be applied to adolescents.

<sup>5</sup> See: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>, last accessed on 14 March 2023.

# I. Executive summaries

## The Netherlands

RJ is slowly finding its place in the child justice system. Since the seventies, there has been increased awareness that a criminal justice system that is based on punishment has a counterproductive effect on the lives and futures of children in conflict with the law. Alternatives, including victim-offender mediation and restorative conferencing (sometimes referred to as family group conferencing), found their way into the child justice system. A unique example of this is Halt, a diversionary measure that was introduced 40 years ago, which provides an alternative for young offenders, and which recently incorporated a restorative approach. The programme consists of working several hours, performing learning tasks and presenting apologies.<sup>6</sup> Over the past few years (2019-2022), around 15,000 minors were referred to Halt each year.

During the last decade, there has been an increase of victim-offender mediation outside of the justice system, as well as mediation in criminal cases. RJ developments have increased in schools and in civil society. In 2011, the introduction of Article 51h of the Code of Criminal Procedure has created an obligation for the Office of the Public Prosecutor and the police to inform victims and suspects of the possibility of participating in mediation and, if the victim agrees, to support both parties in this process.

RJ has also been given more attention in upcoming government plans. The Minister for Legal Protection<sup>7</sup> stated in an official letter in 2018, followed by official policy rules for RJ provisions in 2020, that all youth justice cases must be assessed for their eligibility for an RJ intervention. Mediation is the most common form used in the Netherlands. Other types of RJ interventions, such as restorative conferences or restorative circles, also fall under this provision. Additional funding was allocated to restorative services to ensure that RJ would receive a stronger position in youth justice.

Another positive development in the Dutch child justice system is the increase of awareness among policymakers and professionals to follow international standards for children's rights, including the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,<sup>8</sup> and binding EU Directives, such as the Children's Directive EU 2016/800,<sup>9</sup> the EU Victims' Directive 2012/29,<sup>10</sup> and the principles of the UN Convention on the Rights of the Child. These standards uphold a comprehensive framework and provide guidance for the implementation of child-friendly justice in national laws and practices. In this view, a restorative approach and meaningful participation from stakeholders are prerequisites for

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<sup>6</sup> Halt website, available here: <https://www.halt.nl/over-halt/organisatie/cijfers>, last accessed on 26 February 2023.

<sup>7</sup> This is a special assignment added to the Minister of Justice and Security which includes procedural safeguards and a responsibility for the implementation of legislation concerning RJ.

<sup>8</sup> Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17 November 2010, available here: <https://rm.coe.int/16804b2cf3>, last accessed on 26 February 2023.

<sup>9</sup> EU Directive 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings, 11 May 2016, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>, last accessed on 26 February 2023.

<sup>10</sup> EU Directive 2012/29 of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 25 October 2012, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>, last accessed on 26 February 2023.

working towards a more child-friendly approach.

However, there are some challenges. For instance, young offenders are not always well-informed about their rights, they can be treated as adults after their arrest by the police and may be charged as such by prosecutors.<sup>11</sup> While child suspects are allowed to speak during Court proceedings, they may prefer to remain silent out of fear of incriminating themselves. Many young victims and offenders are unaware of what their right to be heard means and how it can be related to RJ interventions or mediation. The range and variety of restorative interventions that young people can be referred to is limited and not that different to the restorative interventions available to adults.<sup>12</sup>

## Greece

RJ is not a new feature of the legal system in Greece. It is reflected, for example, in the writings of Aristotle ("*epanorthotikon dikaion*" / "restorative law") and in a dispute resolution process used on Crete since the twelfth century B.C. to address disagreements between families. Today, Greek criminal, civil and juvenile law all contain provisions that promote conciliation and mediation processes between offenders and victims.<sup>13</sup>

There are four main contexts in which children between twelve and 18 years old can be involved in restorative processes in Greece: 1) criminal proceedings based on the provisions of the Greek Penal Code for Child Offenders (conciliation procedures), 2) penal mediation as an alternative resolution in cases of domestic violence ([Law 3500/2006: Combating Domestic Violence \(unwomen.org\)](#)), 3) in civil and commercial cases ([Law 3898/2010 - Νόμος 3898/2010 - Διαμεσολάβηση σε αστικές και εμπορικές υποθέσεις | Νομοθεσία | Lawspot](#)), and 4) in the school system.<sup>14</sup>

We should clarify that according to Act 4619/2019 ([Άρθρο 121 - Ποινικός Κώδικας \(Νόμος 4619/2019\) - Ορισμός | Νομοθεσία | Lawspot](#)), minors now refer to children who have completed their twelfth year of age, rather than their eighth year of age, as previously provided for in Art. 121<sup>15</sup>. The essential change that occurs in Art. 126 of the Criminal Code ([Άρθρο 126 - Ποινικός Κώδικας \(Νόμος 4619/2019\) - Ποινική μεταχείριση των ανηλίκων | Νομοθεσία | Lawspot](#)) concerns the minimum age for which the actions of minors start to have criminal interest, which is moved from the eighth to the twelfth year. The actions of minors under the age of twelve are subject to social welfare services and not criminal courts. The treatment of minors does not aim to punish, but to educate and support them in their social inclusion and to prevent them from committing other criminal acts.

Even though these laws are in place, not many measures relating to RJ for minors are implemented in practice yet. More generally, the lack of awareness and specialised knowledge

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<sup>11</sup> Defence for Children, available here: [https://www.defenceforchildren.nl/media/2653/20171001\\_dc\\_folder-aanhouding-jonge-verdachten\\_a5-web.pdf](https://www.defenceforchildren.nl/media/2653/20171001_dc_folder-aanhouding-jonge-verdachten_a5-web.pdf), last accessed on 26 February 2023.

<sup>12</sup> Berger, M. & Wolhuis, A. (2021). Herstelrecht geeft kinderen en jongeren autonomie, Tijdschrift Conflictthering, 2, 23-28.

<sup>13</sup> Terre des hommes, European Forum for Restorative Justice, Restorative Justice Netherlands, "Restorative justice in cases involving child victims in Greece", i-Restore, December 2020, available here: [https://www.euforumj.org/sites/default/files/2021-05/Report%20Greece\\_iRestore\\_3feb%20high-res%20%20%281%29%20%281%29.pdf](https://www.euforumj.org/sites/default/files/2021-05/Report%20Greece_iRestore_3feb%20high-res%20%20%281%29%20%281%29.pdf), page 8, last accessed on 26 February 2023.

<sup>14</sup> Ibid., page 6.

<sup>15</sup> The previous article can be found here: <https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/A-PINANI-EPIS.pdf>

of young people on this topic remains a matter of concern. In many cases, this results in the perpetuation of stereotypes and in the blaming of minors for systemic deficiencies. It is important that the professionals working in this field have a deep understanding of the systemic causes for certain youth behaviours.

The gaps and expectations identified by this needs assessment mainly concern the necessity for training and supervision. There should be a two-folded approach: first, general information on the rights and needs of children and young people who are in conflict with the law should be available, and second, more in-depth information should be accessible on RJ, international human rights standards, options, and risks, as well as developing practice-sharing from other countries, including from the twinning partner the Netherlands.

## II. Rapid Needs Assessments

### 1. The Netherlands

#### 1.1. Relevant legal framework & policy

Since 2011, influenced by the EU Framework Decision of 15 March 2001<sup>16</sup> and its successor the EU Victim Directive,<sup>17</sup> Art. 51h of the Dutch Code of Criminal Procedure<sup>18</sup> is the legislative basis for RJ in the Netherlands. It initially only concerned mediation outside of criminal cases but was amended in 2017 to cover all phases of the criminal procedure: the pre-court/pre-charge level, the court level (trial and sentencing stage) and the post-sentencing level. It applies to both adults and young people.

The Dutch Code of Criminal Procedure defines RJ in Art. 51a, para.1, sub d: "*enabling the victim and the suspect or convicted person, if they voluntarily agree, to actively participate in a process aimed at resolving the consequences of the criminal offence, with the help of an impartial third party*".

#### The full legal provision of Art. 51h reads as follows:

1. The Public Prosecutor's Office shall promote notification by the police, at the earliest opportunity, of the possibilities of restorative justice provisions, among others mediation, to the victim and the accused.
2. If mediation between the victim and the accused has led to an agreement, the court is to take this into account in imposing punishment or a measure.
3. Upon having established that the victim has consented to mediation, the Public Prosecutor's Office shall encourage such mediation between the victim and the accused or the convicted person.
4. Further rules relating to restorative justice provisions, among others mediation, between the victim and the accused or between the victim and the convicted person shall be regulated by a General Administrative Order.

<sup>16</sup> Council of the European Union, Council Framework Decision on the standing of victims in criminal proceedings, 2001/220/JHA, 15 March 2001, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001F0220&from=EN>, last accessed on 26 February 2023.

<sup>17</sup> Ibid., footnote n°9.

<sup>18</sup> <https://maxius.nl/wetboek-van-strafvordering/artikel51h>

### 1.1.1. Child Restorative Justice Policy

In 2018, the Minister for Legal Protection established a new approach by stating that there was a duty to investigate if a RJ intervention is possible in all youth justice cases. He increased the budget by €300.000 per year as of 2019, ensuring that the mediation and RJ approach held a stronger position in the youth justice system. In 2019, a new policy plan was presented to fight youth criminality and improve the youth justice system. Priorities stipulated in the plan included a faster response to criminal offenses, shorter-term detention in small-scale institutions, and attention to RJ. Underlining the latter, the Minister guaranteed a structural budget and investment in information tools for professionals, victims, young suspects or offenders and their parents. Additionally, the 2020 Policy Framework<sup>19</sup> brought special attention to conferencing and included provisions on minimum qualifications needed by mediators to ensure high quality services. In this Policy Framework, special attention is paid to young people. In principle, in every criminal case where a child or young person is suspected or convicted, the authorities should consider whether the case is suitable for a RJ modality (i.e. mediation or restorative conferencing).

### 1.2. Relevant authorities and stakeholders

Relevant stakeholders in the Netherlands include the police, the public prosecutors, judges, mediators, staff of the mediation offices in the courts, probation workers, youth protection, the Child Protection Council, victim support groups and NGOs or foundations like Restorative Justice Nederland and Defence for Children that lobby to promote RJ for youth further. The following stakeholders presented their views on the inclusion of RJ in Dutch legislation: a public prosecutor, a youth lawyer, the director of a mediation organisation, a children's rights experts and staff working at Halt. Some quotes given during the consultations we did during the last few months are mentioned below.



<sup>19</sup> Minister of Legal Protection (2020). Beleidskader herstelrechtvoorzieningen gedurende het strafproces (Policy framework restorative approaches during the criminal procedure). The Hague: 8 January 2020. See: <https://www.rijksoverheid.nl/documenten/rapporten/2020/01/08/tk-bijlage-beleidskader-herstelrechtvoorzieningen-gedurende-het-strafproces>, last accessed on 14 March 2023.

*"In Dutch legislation (Code of Criminal Procedure), the first paragraph of Art .51h Sv states that the Public Prosecutor shall encourage the police to inform the victim and the suspect of the possibilities of RJ facilities including mediation at the earliest possible stage. It is not clear to me whether the police do this in all cases and, if so, how. There has been a pilot where this was considered. I do not know which mediators were involved. In my opinion, this possibility has not been worked out sufficiently clearly at the moment. As far as I am concerned, it is important to still pay attention to this and work out the possibilities between the police, the Public Prosecution Service and the Ministry.*

*The third paragraph stipulates that the Public Prosecution Service (Openbaar Ministerie: OM) facilitates mediation between victim and convict, if the victim is open to this. A lot of attention is paid to this from the working method at the table where different youth justice authorities discuss what needs to happen with the cases (Zorgvuldig, Snel en op Maat: ZSM). In cases of pre-trial detention, the Public Prosecution Service also pays attention to this from the moment of the Chamber hearings (pre-trial detention). It is intended that the updated version of the Directive and Framework for Youth Criminal Proceedings (policy line of the Public Prosecution Service for Youth) will also include this possibility of mediation in criminal law.*

*In the context of criminal law, this therefore involves mediation through the Court's Mediation Office. A well-run working process has been developed for this. Both OM, Child Protection Board and Judges can report cases to the Court's Mediation Office. It is not clear to me what Perspective Restorative Mediation can do in the case of mediation for criminal offences.*

*In my opinion, there is still a lack of clarity about the future possibilities of mediation in criminal justice. Is there sufficient funding for this from the Ministry of Justice and Security? Can the OM actually bring unlimited cases to the Mediation Office? Earlier, the Ministry indicated that there is limited budget available for this.*

*There is also the possibility of deploying mediation after the start of the investigation at the hearing (Innovation in Criminal Procedure Act) . A pilot was supposed to be running in the Eastern part of the Netherlands. I have not heard anything more about it." (The head of all coordinating public prosecutors in juvenile cases, February 2023)*

*“When it comes to minors, diversion, and therefore RJ, is becoming more prominent and policymakers are paying more attention to it. However, there is still room for improvement. For example, when it comes to the Halt intervention, we are limited to the ages between twelve and 18 years old by the Dutch Criminal Code. In 2014, the Adolescent Criminal Law entered into force, and made it possible to choose between juvenile and adolescent criminal law when it comes to people committing a crime and being between 18 to 23 years old. This is in line with the thoughts and spirits of the CRC as well as new pedagogical and neurological insights. Nevertheless, when juvenile criminal law applies to someone, it is not possible to refer the person to Halt because of Art. 77c Dutch Criminal Code.*

*In addition, not all RJ initiatives are well known with the thoughts and spirits of the CRC/General Comment No. 24. There are various RJ initiatives at the national level, which aim to prevent entry into the criminal justice system. From Halt’s point of view, we work towards preventing young people from committing minor offences to avoid having them enter the criminal justice system. However, we wonder if all of these (mostly local) initiatives can guarantee that youth professionals will apply the pedagogically-based and youth-specific approach.” (Halt policymakers, February 2023)*



### 1.3. Relevant practices

At the moment RJ can be used in the Netherlands, with mediation being the most common form, in the following instances:

- a) For all crimes: no crimes are categorically excluded, although, for the time being, the emphasis is on crimes with a concretely identifiable victim;<sup>20</sup>
- b) For all parties: adults as well as children between twelve and 18 years old, and, through adolescent criminal law, also young people up to 23 years old, provided that there is (i) a suspect admitting guilt or, in any case, a suspect who acknowledges the “basic facts” and wants to take responsibility for them,<sup>21</sup> and (ii) voluntary participation, and more specifically, the informed consent of all parties involved;
- c) In all phases of the proceedings: police, prosecution, trial, execution and post-execution.

In an interview from 2017, the current National Coordinating Public Prosecutor in child cases in the Netherlands replied to the question: “are any cases inherently unsuitable for mediation?”

*“To be honest, I can’t name any. If both parties are open to it, it is always possible. Mediation and criminal justice are not exclusive of each other. In serious cases where criminal charges will most likely be brought and the suspect convicted, and where prosecution will inevitably take place, you may find mediation important to restore relations. Fellow officers who have experience with mediation give it positive feedback. For example, in a case of street robbery in a park for which a criminal charge is brought to the offender, the victim can establish through mediation with the offender that the offender will not enter that park again. In this way, the victim takes back some control over their life.”*

Mediation *outside of* as well as *in* criminal cases is thus also available for young people from the age of twelve, which is the current age of criminal liability in the Netherlands. For example and as stated above, the programme Halt is available to young people, it is a diversionary programme in the youth justice system with restorative characteristics.<sup>22</sup> These

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<sup>20</sup> The Director of Perspectief Herstelbemiddeling, responsible for mediation outside of criminal cases, stated that the only crime they sometimes exclude is stalking (depending on the situation which often concerns safety and the risk of secondary victimisation).

<sup>21</sup> In situations of mediation outside of criminal cases, this is something to research during the preparation, including whether there is sufficient common ground between the parties and their expectations for conversation.

<sup>22</sup> The youth justice regulations form a separate part within the Criminal Law addressing children and young people ages twelve to 18. The laws can also be applied to young adults aged 18 to 23, the so-called “adolescents”, when that is considered suitable.

three options (mediation during criminal cases, mediation outside of criminal cases and the Halt programme) are the main RJ pathways available to address situations of criminal behaviour committed by young people. These will be explained below. Sometimes, restorative conferences on this matter are carried out by an organisation called *Eigen Kracht Centrale (EKC)*.

### 1.3.1. Halt

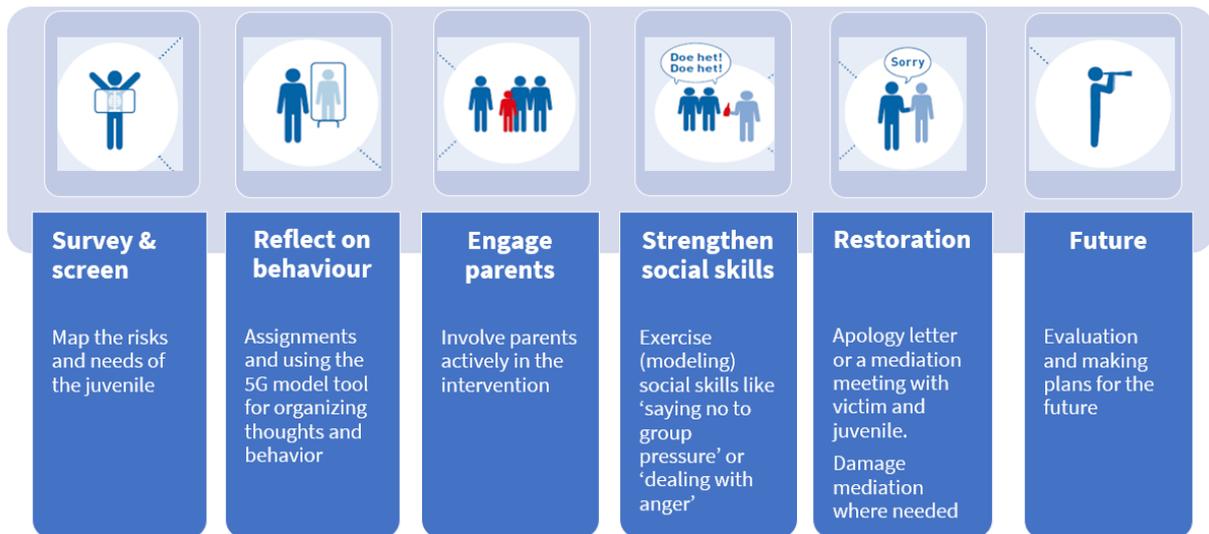
Halt is a juvenile intervention programme run by the organisation Halt which is subsidised by the Ministry of Justice and Security in the Netherlands. It offers young people charged with a criminal offense the opportunity to avoid a criminal record by complying with a negotiated agreement. The Halt intervention is based on pedagogical methods. Approximately 15,000 minors (between twelve and eighteen years old) are referred to Halt each year by the Dutch police, school attendance officers, or special investigation officers. These young people get the chance to fulfil an alternative sanction and to avoid traditional prosecution by the Public Prosecution Service. As a result, they avoid getting a criminal record. Halt uses RJ elements, such as apologising to the victim by letter or in a conversation which can also include financial reimbursement. An important element of the Halt intervention is raising consciousness about the offence(s) committed, for themselves, but also for the victim and society.

Since 1995, Halt is included in Art. 77e of the Dutch Criminal Code<sup>23</sup>. Halt is not mentioned by name but referred to as "a project". Art. 77e, Sub 1 states: *"the police investigating officer appointed for that purpose by the Public Prosecutor may, after obtaining the Public Prosecutor's consent, suggest to the suspect that he/she participates in a project. The participation serves the purpose of preventing the official report from being sent to the Public Prosecutor. A General Administrative Order shall designate the offences that can be disposed of in this way"*. These and other aspects are laid down in the already mentioned Guidelines and framework for the criminal procedure of youth and adolescents, including Halt 2021 issued by the Public Prosecution Office.

In the case of young people committing minor offences, the case can be referred to a settlement through Halt by the police or a special investigation officer. The key elements of the Halt intervention are:



<sup>23</sup> See: <https://maxius.nl/wetboek-van-strafrecht/artikel77e> accessed last on 14 March 2023.



**More help needed? We'll look for appropriate help.**

**Halt.**

One step of the programme consists of allowing the young person to come to terms with the consequences of their actions and to make efforts to restore them, either by writing an apology letter or through a conversation with the victim. Halt also mediates in cases of material and immaterial damage between the victim and the young offender. This form of RJ in child criminal cases is usually offered prior to prosecution. However, the Public Prosecutor may still decide to refer the case to Halt. The Halt intervention is limited to certain offences (as established in the Decree on the designation of Halt offences)<sup>24</sup> and for a maximum of twenty hours of work or learning schemes.

Halt offers a pedagogical and individual approach. Over the years, the RJ character of the Halt intervention has been expanded even further. A restorative interview between a young person and a victim is now also conducted in cases that lend themselves to it. In a restorative interview, a dialogue is guided by a Halt employee and conducted between victim and offender. Now, Halt focuses more closely on elements of RJ. The young person is given the opportunity to apologise and learn to see the consequences of his/her behaviour. If useful, the parents can be present. The restorative conversation is prepared intensively with the victim and the young person. This extra restorative justice step is considered by young people to be substantially more challenging than community service or paying a fine, as it involves interaction with the victim.<sup>25</sup>

The Halt staff member responsible for the young person during the Halt intervention is also the one who will support them as a facilitator during the apology or the guided restorative conversation, if the victim agrees to this. Currently, this modality was seen as sufficient in most cases, but in more complex situations it may be preferable to involve an independent and specialised mediator. General information about RJ measures is now included in the basic training for Halt staff. Internally, Halt has also appointed ambassadors within the organisation who are trained more intensively on RJ.

<sup>24</sup> See: <https://wetten.overheid.nl/BWBR0007217/2010-10-01>, accessed last on 14 March 2023.

<sup>25</sup> Halt website, available here: <https://www.halt.nl/>, last accessed on 27 February 2023.

"Do you have a nice example of your restorative work with young people?"

*"Halt conducts several preventive activities, for example in schools, a Halt staff member will hold office hours. Whenever a conflict between young people occurs, and no police report is or will be filed, they can be referred to the Halt staff member to discuss the case and talk about how to prevent this in the future. The types of conflict include physical/verbal aggression, school absenteeism, theft, wanton behaviour and using substances such as (soft)drugs/alcohol. The aim of the office/consultation hours is to contribute to a safe school climate. To do so, the Halt staff member, together with the young people, will work to improve the social resilience of the young persons concerned and will focus on mending the relationship between the young person and the victim/school.*

*Halt has incorporated a practice called "Youth Court," which can be merged with the practice described above. A Youth Court can be initiated by the school when a conflict between young people occurs and when one of the parties is at risk of suspension and/or when one of the parties intends to report the conflict to the police. Instead of suspension or a police report, all involved parties prefer the Youth Court, which can be seen as a peer-to-peer mediation practice. A group of so-called "Youth Judges," all trained in RJ practices, evaluate with the parties of the conflict what happened, what harm was done and what should be done to restore the (broken) relations. The "hearing" ends with a proposal to take restorative measures." (Halt policymakers, February 2023)*



### 1.3.2. Mediation in criminal cases

The 2020 Policy Framework for RJ Provisions in Criminal Proceedings states that the Public Prosecutor and the Judge are the main referring authorities for mediation, whether at the request of a Prosecutor, Judge, lawyer, suspect or victim in an ongoing criminal procedure. The case is then reported to the Court's Mediation Bureau. Participation is voluntary throughout the entire procedure. Under the (regular) guidance of two mediators in criminal cases, individual discussions are first held with the parties. Subsequently, if the parties agree, a joint meeting is held. These discussions are confidential and take place in the Court's Mediation Room. In criminal cases, mediation will aim to recover both the emotional and the material consequences of a criminal offence. Mediation offers the possibility to come to an agreement and to lay it down in a written document, which is signed by both parties. This agreement is then added to the criminal file. The Public Prosecutor and/or the Judge then take the agreement into account, pursuant to Article 51h of the Code of Criminal Procedure, when making a final decision on the criminal case or in the judgment.

At first contact with the police (at reporting, victims and suspects are informed of their rights, which also include information on RJ provisions available to them. A distinction is made between cases that are sent on (or not) to the Public Prosecution Service. If cases are not forwarded and the victim and/or suspect, after being sufficiently informed, want(s) to make use of RJ provisions at this stage, mediation outside of criminal cases is what they can use. In cases that are sent to the Public Prosecutor's Office, it is important that the victim and suspect are informed of the fact that mediation in criminal cases is the preceding provision that can be used. If the parties decide not to use mediation in criminal cases, they are informed of the possibility of mediation outside of criminal cases.

Because mediation takes place during the criminal procedure and can have legal consequences on the outcome of the criminal case, it is subjected to requirements that are both higher in quality and in number than mediation outside of criminal cases. Mediation in criminal cases is provided by registered mediators at the Mediation Council (*Mediators federatie Nederland MfN*-mediators) who have successfully completed the training for mediators in criminal cases and are registered with the Legal Aid Board.<sup>26</sup> Like the mediators in criminal cases, the mediators outside of criminal cases are well trained and carry a license because of the impact their work will have on the parties. Mediators at *Perspectief Herstelbemiddeling (PH)* have to follow an obliged training programme. The organisation also works with a licensing system, an onboarding programme (one year), supervision and reflection meetings and work supervision.

*"Mediation in criminal cases offers young people a possibility to fully participate in their own case. This counts for young suspects, but it also gives a voice to young victims."* (A mediator, February 2023)

<sup>26</sup> MfN Register, available here: [www.mfnregister.nl/](http://www.mfnregister.nl/), last accessed on 15 February 2023; and Vereniging van Mediators in Strafzaken, available here: [www.vmsz.nl/](http://www.vmsz.nl/), last accessed on 27 February 2023.

### 1.3.3. Mediation outside criminal cases

During mediation outside of criminal cases, the primary focus is on emotional and relational recovery. Mediation can take place in direct form, where personal contact takes place (face-to-face), as well as indirect form, where contact takes place through the mediator (shuttle or correspondence). Mediation can also take place online, this is likely to become more important in the future as it facilitates mediation between parties from other countries.<sup>27</sup>

Mediation outside of criminal cases is an informal process that does not necessarily lead to a written agreement. It is not intended to influence the decisions that will be taken during the criminal procedure, as its main goal is to provide a form of emotional and relational recovery for both parties. Also, the parties can come to an agreement, which can be applied in the future. The parties determine the pace of the mediation. Usually, separate intake interviews are held in each parties' homes first, followed by one or more preparatory interviews, and finally a meeting on neutral grounds can take place (usually a community centre). If indirect mediation is preferred, the mediator will shuttle the message back and forth between the parties.

Such mediation is mainly provided by *Perspectief Herstelbemiddeling (PH)*, previously known as *Slachtoffer in Beeld (SiB)*. This organization was founded in 1990 at the initiative of the Child Care and Protection Board (RvdK) in cooperation with Victim Support Netherlands (SHN), initially to carry out educational punishments whereby young offenders were confronted with the consequences of their actions on the victims. PH has provided mediation for young offenders since 2007, and for adult offenders since 2009, all financed by the Ministry of Justice and Security.<sup>28</sup> The mediators get specific trainings from the organisation and they do not need to be registered mediators, like is the requirement for mediation in criminal cases. The organisation searches for people with different backgrounds at the university level or in schools for applied sciences to have a variety of skills available. They work with supervision and have access to additional trainings. One mediator facilitates each mediation outside of criminal cases.<sup>29</sup>

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<sup>27</sup> Claessen, J., & Roelofs, K.J.M.M. (2020). Herstelrecht(voorzieningen) en mediation in strafzaken. In J. Boksem, P.A.M. Mevis, D.J.M.W. Paridaens, C. Waling, & H. D. Wolswijk (Eds.), *Handboek Strafzaken* - online Wolters Kluwer.

<sup>28</sup> *Perspectief Herstelbemiddeling*, available here: <https://perspectiefherstelbemiddeling.nl/>, last accessed on 27 February 2023.

<sup>29</sup> Claessen, J., Slump, G. & Wolthuis, A. (2023). The Netherlands, Restorative Justice; In: (Dunkel et al (eds) *Restorative Justice and Mediation in Penal Matters in Europe*, 2nd edition, to be published in 2023.

"What would you consider a good practice when it comes to victim-offender mediation with young people in your organisation?"

*"Difficult to answer, mediation as such has a lot to offer young people, and both offenders/accused and victims. Customisation is very important, especially for young people. It also depends on each case, and on what the young people wants and can handle.*

*One example is that one of our mediators helped a young girl talk to the person who had killed a member of her family. She had to wait a long time for that. She first wrote a letter. Despite being very young, she knew what she wanted very well, and the contact helped her to process more."* (Coordinator mediation outside criminal cases, Director Perspectief Herstelbemiddeling, February 2023)

#### 1.3.4. Restorative Conferencing and restorative circles

Restorative conferencing is less common than mediation in the current Dutch criminal justice field, although it is common to work with one or two support persons who accompany the party in mediation. Today, forms of restorative conferencing are mainly used in youth care and outside of criminal justice cases. In youth care, family group plans are a common feature and family conferencing has developed into a structural option embedded in law.<sup>30</sup> In 2015, the new (civil) Youth Law<sup>31</sup> granted citizens the right to make their own care proposal, via "the Family Group Plan". This can be developed by the parents, but also the friends, family, neighbours and sometimes professionals that belong to the social circle of the young person. The *Eigen Kracht Centrale* (ECK) and other organisations can help by facilitating conferences that result in the development of such plans. The process entails various people coming together from the social network of the young person to discuss what is needed to make the environment of the young person safe, to de-escalate conflict situations and to resolve problems, all guided by a trained coordinator. Such a procedure can prevent children from being placed outside of their family. This method is based on experiences in New Zealand and adapted to the Dutch context. In addition, ECK offers restorative conferences which can also be used in criminal cases. All conferences have the same goal, which is to make the young person's support system wider and to give them sufficient autonomy to make their own plans. The structure of restorative conferences is based on the work of the International Institute for Restorative Practices (IIRP), who work with a script. Restorative circles are also being developed by an independent organisation; *Herstelcirkels*. The circles are used in larger community conflicts and can be used in criminal cases as well, if there is sufficient funding and support for them. In practice, they mainly take place in schools and in places where there are socially

<sup>30</sup> Pagée, R. van, Lieshout, J. van, & Wolthuis, A. (2012). "Most things look better when arranged in a circle, Family Group Conferencing empowers society developments in The Netherlands," In Zinsstag, E. & Vanfraechem, I. (eds.) (2012). *Conferencing and Restorative Justice, International Practices and Perspectives* (pp. 217-230). Oxford: Oxford University Press.

<sup>31</sup> See: <https://wetten.overheid.nl/BWBR0034925/2023-01-01>, last accessed on 14 March 2023.

disrupted situations, like social services. The restorative circles are based on the method developed by Dominic Barter in the favelas of Rio de Janeiro. They are focused on recovery, restoration and on finding a new balance after a conflict. Everyone who is directly involved in the conflict is invited to participate in the recovery circle which consists of a preparatory circle, the actual restorative circle and a closing circle. Because everyone has an opportunity to speak and be heard, space is created to allow people to move forward together. The dialogue form of recovery circles is said to lead to faster clarity, lower conflict costs and better relations.<sup>32</sup>

### 1.3.5. Youth detention

In youth prisons (“Forensic Youth Justice Institutions”), RJ is regarded as one of the (mostly underlying) treatment goals. In practice, this means there is a focus on restoration within the individual’s network and insight in the “root causes” of the offence. Programmes focus on raising awareness about the impact of the offender’s actions on the victim and on the possibility for recovery. In some institutions, a specific recovery consultant is present to manage knowledge-sharing, to ensure structural attention is paid to topics like victim awareness, and to create opportunities for offenders to arrange a meeting with the victim. A similar consultant is also available in some adult prisons.



Since 2008, trials or pilots have been taking place in Teylingereind Youth Institution- for example, one trial focused on handling conflicts between staff and inmates. However, these trials depended heavily on certain individuals and structural arrangements were lacking.<sup>33</sup>

<sup>32</sup> Herstelcirkels, available here: <https://herstelcirkels.nl/en/1305-2/>, last accessed on 27 February 2023.

<sup>33</sup> Wolthuis, A. en M. Vandenbroucke (2010), Schade herstellen tijdens jeugd detentie, Proces, nr. 3, p. 150-164.

Today, attention to recovery is more present in the full program, with treatments and courses available in all youth prisons, including a programme called DAPPER which means literally BRAVE. DAPPER is part of the basic YOUTURN methodology used in youth prisons that is focus on insights and change. It consists of eight meetings of one hour each and has been implemented since 2015 in all youth prisons in the Netherlands. (Zebel, Vroom & Ufkes, 2016). Nevertheless, the use of RJ differs between institutions and, for instance, not every institution works with a RJ counsellor. The current Policy Programme of the Prison Department of the Ministry of Justice and Security<sup>34</sup> is called “Customised Deprivation of Liberty Programme” (*VOM, Vrijheidsbeneming op Maat*). It entails a different approach to youth in detention, by working towards five Small Scale Provision of Judicial Youth (KVJJ) and five Forensic Centres of Youth (youth prisons) in 2024, and by strengthening the collaboration with youth social services. The goal is to still have a new youth system in place by 2024 in which customisation is central and which aims to reduce recidivism. The intention is to include restorative work, but the current crisis to find sufficient and good staff seems to be the priority.<sup>35</sup>

### 1.3.6. Restorative justice in schools

In the past decade, mediation outside of the criminal procedure has also been developing in schools, for example where new methods such as “peaceful schools” and “Youth Courts” have emerged.

More than a thousand primary schools are registered as “peaceful schools”, and this number is growing. “Peaceful schools” involve the use of peer mediation, which was inspired by successful initiatives originating from the United States (Magazine RJN, 2018). These methods integrate a restorative approach in school programmes, teaching children and young adults to solve their conflicts by becoming or using a (peer) mediator. Furthermore, participation is stimulated through “Youth Courts.” These are established in many schools to train young judges to make decisions in cases of conflict among their peers and to allow children to participate in a restorative way. Since they are partly criminal offenders, they work closely with the local police and more recently with Halt. This can be described as a RJ based tripartite court model.<sup>36</sup>

## 1.4. Main needs, gaps and strengths

### 1.4.1. Figures

In 2020, over 14,000 children and young people were questioned as suspects by the police. Around 4,000 misdemeanour cases were disposed of in which a minor was declared guilty by the Court. Every year, 15,000 juveniles take part in a Halt intervention. *Perspectief*

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<sup>34</sup> See: <https://www.dji.nl/actueel/nieuwsbrieven/programma-vrijheidsbeneming-op-maat-vom-jeugd>, last accessed on 14 March 2023.

<sup>35</sup> See: <https://www.dji.nl/actueel/nieuwsbrieven/programma-vrijheidsbeneming-op-maat-vom-jeugd/2022/2>, last accessed on 14 March 2023.

<sup>36</sup> Wolthuis, A., Claessen, J., Slump, G.J. & Van Hoek, A. (2019). Dutch developments: restorative justice in legislation and in practice. *The International Journal on Restorative Justice*, vol.291, 117-133.

*Herstelbemiddeling* receives around 1,500 referrals each year, of which about 400 are juvenile cases. Figures from the Judicial Council show that more than 200 juvenile criminal cases are referred to mediation in criminal cases through the Mediation Agency every year, of which about half actually start. In 2020, 94% of the mediations started in juvenile cases were successfully completed with an agreement. Minister Weerwind's forementioned progress letter further reports that within mediation in criminal cases, there is increased focus on juvenile cases. With additional notifications by the Child Protection Council, the use of mediation in juvenile cases increased by 56% in 2021 compared to 2020. The success rate remained high at 89%.<sup>37</sup>

The Youth Chain Consultation on Mediation in Criminal Cases launched in 2020<sup>38</sup>, in which the Child Protection Council, Halt, the police, Youth Probation, Public Prosecution Service and the judiciary participate. This chain consultation has the ambition to ensure that in every criminal case involving a young suspect, RJ is explored as an intervention at the earliest stage possible. Then, according to the Minister, two RJ pilots at ZSM (*Zorgvuldig, Snel en op Maat*) locations have now taken place where referrals at an early stage turned out to be successful for the participants. Attention is also being paid to ensuring that good information is provided to reporting parties, including the legal profession, the Child Protection Board and Victim Support Netherlands. Thanks to the results of the pilots, the chain consultation will aim to identify the earliest possible moment in which special attention can be paid to mediation in criminal procedures.

#### 1.4.2. Institutional framework

The institutional framework is seen as providing the basics, but there is still room for improvement. In the field, there are different parties who lobby for additional laws, regulations and/or policy. The most unique is the Citizen's Law Proposal<sup>39</sup>, which was initiated by Restorative Justice Nederland and the University of Maastricht. This proposal includes more legislation and imbedding restorative practices, including for minors.

#### 1.4.3. Juvenile victims

The situation of juvenile victims is often underexposed in the child justice system. Moreover, there is a high threshold for young victims to consult a counsellor or to report the crime to the police. In a recent study by Defence for Children (2022)<sup>40</sup>, almost 300 child victims completed an online questionnaire, in which 64% of them said they had been victims of a serious crime, and 73% of them did nothing for a long time afterwards. They further indicated that shame partly prevented them from taking any action, but also that they did not know who

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<sup>37</sup> Berger, M. & Wolthuis, A. (2021). Herstelrecht geeft kinderen en jongeren autonomie, Tijdschrift Conflicthantering, 2, 23-28.

<sup>38</sup> And described in the letter of the Minister of Legal Protection of 18 December 2020, see: <https://zoek.officielebekendmakingen.nl/kst-29279-633.html>, last accessed on 14 March 2023.

<sup>39</sup> Claessen, J., Blad, J., Slump, G.J., Van Hoek, A., Wolthuis, A. & De Roos, T. (2018). Voorstel van Wet strekkende tot de invoering van herstelrechtvoorzieningen in het Wetboek van Strafvordering, inclusief Memorie van Toelichting. Oisterwijk: Wolf Legal Publishers.

<sup>40</sup> [https://www.defenceforchildren.nl/media/6019/20220222\\_defenceforchildren Onderzoeksrapport focus-wachten tot het overgaat.pdf](https://www.defenceforchildren.nl/media/6019/20220222_defenceforchildren Onderzoeksrapport focus-wachten tot het overgaat.pdf), last accessed on 14 March 2023.

to turn to, or they had little faith in the procedures and organisations, even if they knew who the perpetrator(s) was. Nonetheless, young victims indicated that it was important for them to feel safe, to be able to tell their story, to feel heard, to receive help and advice on what they can do. The same is often true for child suspects; they, too, find it difficult to talk, fearing consequences or shame. The system needs to offer the opportunity for children to speak up, as well as staff with the right skills to address these situations. The first i-RESTORE project completed in 2021 focused on juvenile victims in three countries and showed that the roles of victims and suspects were easily interchangeable, that victims are less visible in legislation and policy, that professionals involved need more knowledge about juvenile victims, and that involving young people through Youth Advisory Teams was important to further develop RJ. This can have a great impact on their individual well-being.<sup>41</sup>

#### 1.4.4. Promising practices

Current practices with Halt, mediation inside and outside of criminal justice can all be seen as promising practices, especially if these are carried out by professionals with sufficient experience and education in child-friendly justice.

“Could you tell a good story about your restorative work with young people? Can you say something about the victim as well as the offender?”

“For offenders, it’s helpful for them to understand the consequences of their acts. Especially with young people, it can help to prevent repetition. We often see that they acknowledge that something has happened, but they do not always understand the consequences. They gain a better understanding of the consequences when a victim tells them about it. It also helps them start with a “clean slate” for the future. For victims, it is important to be able to ask questions and to indicate what the impact has been. Agreements are also made for the future.

We currently have many cases of sexual violence, with regular cases involving young people partying in groups of friends. For example, there are cases when there is a friendly connection between both parties, but a boundary is crossed, sometimes under the influence of alcohol. Those involved are looking for a way to move on. Victims usually want to prevent this from happening again, but also to have the opportunity to talk about the impact this had on them. We regularly see that the perpetrator is extremely shocked by it and expresses regret. There have also been instances where the perpetrator resolves to explicitly ask for consent in such situations.” (Coordinator mediation outside criminal case, Perspectief Herstelbemiddeling, February 2023)

<sup>41</sup> Wolthuis, A., Biffi, E. & Laxminarayan, M. (2020), Restorative Justice in Cases involving Child Victims, i-RESTORE European Research Report, Hungary: Terre des hommes.

"What is good and what is lacking when it comes to awareness of (youth) public prosecutors and RJ?"

*"In the training of Youth Public Prosecutors, much attention is paid to mediation in criminal law. It is intended that the updated version of the Directive and Framework for Criminal Procedure for Youth Prosecutors will also include the possibility of taking cases to the Court's Mediation Office. In practice, a good running work process has been developed for this purpose."*

*At the same time, it is often unclear to officers what the Perspectief Herstelbemiddeling can do now that the OM and the ZM only refer cases to the Court's Mediation Office. Nor is it clear whether there is sufficient budget to refer all cases where mediation can add value to the Court's Mediation Office. This is an important concern that could be further elaborated between the Ministry of Justice & Security, the Courts, the Child Protection Council and the Office of the Public Prosecutor, February 2023."*

*"Yesterday, I had a case concerning a boy who broke a window who received a letter that he had to go to Court. He told me he already went with the school mentor to the person and they settled the case informally: the boy would assist with painting to cover the costs. I would like to see things like that take place more often." (Youth lawyer, February 2023)*



### 1.4.5. Child-led or other relevant evaluation

At the national level, some evaluation research has been done, but not much specifically focuses on children and young people.

The criminal mediation practice that existed within the Public Prosecutor's Office in Maastricht/Limburg between 1999 and 2022 was evaluated. In two studies of Claessen, Zeles, Zebel & Nelen (2015), the results of the research on the relationship between mediation and recidivism was published, it built on data collected on the aforementioned practice.<sup>42</sup> In this practice, criminal mediation took place primarily at the pre-trial level. There was room for direct mediation (face-to-face meetings), indirect mediation (written or shuttle mediation) and semi-mediation (a conversation between the offender, the public prosecutor and the mediator, because the victim did not want to take part in a mediation exercise but agreed for the case to be handled through such a conversation).

Both studies looked at all criminal cases that were eligible for mediation from 2000 to 2010; which concerned 1,314 cases. The first study shows that in approximately 70% of these cases, a mediation started and was successful (i.e. was concluded with an agreement or resulted in a good conversation, sometimes supplemented with oral agreements) and that, when the parties agreed to mediation, more than 95% of the mediations were successful. As far as the relationship between recidivism and mediation is concerned, this study shows that offenders with whom mediation has taken place in the form of one of the three modalities mentioned previously are significantly less likely to reoffend than offenders with whom no mediation has taken place. The researchers used a control group to confirm this hypothesis. As the figures show in the table below, there is a significant difference between the groups. This difference is mainly in the control group, which is where the largest number of offenders reoffended.

The first in-depth analysis of this study made it clear that the differences between the mediation groups and the control group cannot be explained by differences in offender and case characteristics (i.e. sex, age, country of birth, crime type and history) that could (possibly) exist between these groups. In a second in-depth analysis, figures from a validated recidivism prediction model from the Scientific Research and Documentation Centre (WODC) Recidivism Monitor<sup>43</sup> were used. The predicted recidivism rate turned out to be higher than the actual recidivism rate in each group. The difference between the predicted recidivism rate and the actual recidivism rate was found to be greater in the three mediation groups than in the control group. The difference between the predicted recidivism rate and the observed recidivism rate was significant in each mediation group.

The first study was repeated in the second study, but with a division between young offenders below 23 years old and offenders equal or over 23 years old. In the period between 2000 to 2010, about a quarter of all criminal cases that were eligible for mediation involved a young offender. The percentage of successful mediations turned out to be higher among young offenders than among older offenders (77.7% versus 68.1%). Of the young offenders,

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<sup>42</sup> Claessen, J., Zeles, G., Zebel, S., & Nelen, H. (2015). Bemiddeling in strafzaken in Maastricht II. Onderzoek naar de samenhang tussen bemiddeling en recidive. *Nederlands juristenblad*, (29), 2015-2025. And: Claessen, J. A. A. C., Zeles, G., Zebel, S., & Nelen, H. (2015). Bemiddeling in strafzaken in Maastricht III. Onderzoek naar recidive bij jeugdigen en volwassenen. *Tijdschrift voor Herstelrecht*, 15(4), 9-24. [1]. <https://doi.org/10.5553/TvH/1568654X2015015004003>

<sup>43</sup> See: <https://www.wodc.nl/onderzoek-in-uitvoering/statistiek-en-monitoring/recidivemonitor>, last accessed on 14 March 2023.

44.7% reoffended. Although there is no significant difference between the groups, the recidivism rate is highest in the control group (55.1% versus 40-45% in the mediation groups). However, recidivism rates for young offenders are higher in each group than in the groups with older offenders. From the first in-depth analysis it followed that the chance of recidivism for young offenders was significantly greater than for older offenders. Conclusions from the second in-depth analysis found that when mediation is carried out, the actual recidivism is lower than the predicted recidivism, while this was not the case in the control group.

"It would be good to elaborate on examples where suspects from pre-trial detention in the youth detention centre (Justitiële Jeugdinstelling: JJI) have participated in mediation in the criminal justice system. Those examples exist, but (I) do not have them on hand. Those cases involve juveniles suspected of more serious offences (for which they are in pre-trial detention), where rehabilitation can (also) bring something to the suspect and victim." (Public Prosecutor, February 2023)

## 1.5. Views of young people and professionals

### 1.5.1. Young people's voices

In a public speaking project taking place in Amsterdam Zuidoost, a neighbourhood of Amsterdam, in 2022, one of six sessions addressed restorative practices. The young people from that neighbourhood were interviewed about their experiences. One of them mentioned that he liked and learned most from the exercise involving a talking circle where a talking stick was used to discuss bullying and fighting and how to act in those situations. Additionally, the advantages of using a talking stick were noted as it increased the attention each person paid to each other: *"the class about fighting, which was also about bullying, was useful to me. I talked about what happened to me (in a restorative circle) and we talked about how I could deal with that. Involving others can help."* (Boy, 15)



A lawyer suggested:

*"There should be more awareness on RJ for young people, as well as short lines of communication with chain partners and the network. You also have to be mindful of the timeframe. Sometimes emotions are still too fresh and you may need to wait some time before the young people are ready to take part in the mediation. It is good to use "out-of-the-box thinking" at every stage of the procedure." (Youth lawyer, February 2023)*

### 1.5.2. Gaps identified by experts in the field

*"Access to restorative practices is not well imbedded in the Dutch child justice system. Only a very small percentage of youth cases are referred to RJ interventions. Additionally, current RJ practices could be more child-centred. Child-friendly justice implies that professionals are specialised and work from a need-based approach, which is tailor-made. At the same time, a RJ approach needs to be further developed in the youth justice system. Stakeholders such as the police and the prosecution are not yet aware of this approach and lack skills to work from a restorative approach." (Staff member Defence for Children and mediator, February 2023)*

*"With Halt, a great structure is available. In addition, much more could be done on RJ for young people. More opportunities to stay out of the criminal system altogether should be available, for instance by intervening earlier rather than waiting until the young person has entered the criminal system. More generally, I think criminal justice and restorative justice could strengthen each other much more. It should be easier, especially with young people, to use restorative justice before, during (part of the criminal procedure), and after the criminal procedure is over. The starting point should be what a young person needs. It is also interesting to look at the possibilities of restorative conferences and practices such as dialogue and restorative circles, and to apply them specifically to young people. We are now developing pilots for conferencing and recovery circles. I think a lot is already legally possible and we already have very nice facilities in place, but they often remain unused. Also, young people should have better access to RJ."*  
(Director Perspectief Herstelbemiddeling, February 2023)

*"It's not that common to have a Child Advisory Board in organisations, even though some of them make decisions in the best interests of the child each day. Therefore, it should be more customary to have a Child Advisory Board, especially whenever a product/guideline regarding children's rights is being developed, so that their opinion is considered before decision-making."* (Halt policymakers, February 2023)

*"Much more can be done to raise awareness. This can be progressive, at individual level. Awareness on RJ is far too absent in the societal mindset or in the system. Yesterday, I came upon another case that had already been solved between the parties (it concerned a smashed window), but the police didn't know about it yet. Police need to be more informed and they need to always consider whether a case can be handled differently."* (Youth lawyer, February 2023)

## 1.6. Conclusions & Recommendations

There is a wide range of restorative interventions that can be organised internally or obtained from a variety of RJ providers in the Netherlands. RJ policy and provisions have been expanding. The application of RJ measures in the prosecution and trial phase is growing. RJ got more attention in prisons but it is not yet a structural part of the general approach in (youth) prisons. Restorative provisions are not yet available everywhere and do not reach all

people who might benefit from them.

The main forms of RJ currently available in criminal cases are: Halt for young first offenders, mediation in criminal cases and mediation outside of criminal cases. These options have been explained, both from the legal and policy side, as well as the practice. It is also important to reiterate that RJ can be used in these circumstances: for all crimes, for all parties and in all stages of the criminal justice procedure.

For the past ten years, RJ has developed substantially and has gotten a stronger position in and around Dutch criminal law. A sustainable embedding of RJ in and around criminal law would require a more extensive and precise legal framework regarding existing RJ provisions, including mediation. Possible expansion can be reached through restorative conferences and the development and implementation of a maximalist RJ (going beyond the usual RJ provisions) with restorative sanctions. If so, RJ in the Netherlands could become mainstream in criminal law.

Partly on the basis of European legislation and regulations, more work should be done to improve the right of the parties to access RJ facilities. There should be a broader availability of different RJ measures, as well as more organisations and professionals working on restorative measures. As such, more information and training on RJ should be provided, and RJ should become a permanent part of the basic training of professionals, including the police, the Public Prosecution Office, judges, and execution partners.

To be able to reach these goals, further research, lobbying, smart innovation, and training is needed, with the cooperation of professional and direct stakeholders (victims, perpetrators, community, etc.). Further attention needs to be paid to raising public awareness and to better frame the discussions around RJ.



Do you have ideas how the position of child victims and child suspects can improve in the Netherlands?

“At the moment, it’s quite difficult to combine the skills of the various RJ oriented organisations. The current policy framework makes a strict distinction between the three RJ practices within the Netherlands. We would like to see more flexibility within the policy framework, to encourage exchanges and information-sharing between practitioners of each of the RJ practices.” (Halt policymakers, February 2023)

### 1.7. Challenges and recommendations for a participative and child-friendly restorative youth justice system

Even though we are proud of the developments of RJ in the Netherlands over the last decade, which include new diversionary measures, victim-offender conversations outside of the criminal procedure, mediation in criminal cases, and several RJ programmes in schools and in youth care, there needs to be further implementation of RJ measures in cases involving young people. A comprehensive rights-and-needs-based approach is needed to make sure that RJ is always offered as a first option. The Committee on the Rights of the Child, the Council of Europe and the European Union call upon the Netherlands to implement restorative practices and child-friendly justice, with an increased focus on participation. As such, changes, investments and innovation in the Dutch youth justice system will be needed soon. We propose ten concrete recommendations to achieve this:

- 1) The scope of Art. 51h must be extended to include specific provisions for young people, via a law on restorative provisions and policy. The law proposal which was initiated by citizens and experts, and which includes special provisions for young people, needs to be implemented.
- 2) A restorative approach, including mediation in criminal cases, should be added to the guidelines for youth criminal procedure<sup>44</sup> promoting that “in all youth justice cases it is investigated whether a RJ intervention can be applied”. This would mean that a restorative approach would become an integral part of the youth justice procedure, by being offered as a diversionary measure immediately after a victim reports a crime and/or after the arrest of a child suspect, but also as prosecution begins, when a child is held in police custody, or during pre-trial detention.
- 3) Children should be thoroughly informed about judicial and non-judicial proceedings and the different options they have. Child-friendly materials on alternatives and RJ need to be made available to children and their parents, including special tools for groups

<sup>44</sup> See: Guidelines and framework for the criminal procedure of youth and adolescents, including Halt, accessed latest at 14 March 2023.

with disabilities or psychological challenges. The information should also explain the possible consequences of each option.

- 4) The right to a multidisciplinary individual assessment of children involved in criminal proceedings, as provided in EU Directives, needs to be further developed. This assessment should emphasise a restorative approach. It will enable stakeholders to use restorative interventions as part of the special conditions for suspension, community service and behavioural measures.
- 5) Stakeholders, including the Child Protection Board, the police, Prosecution, and lawyers, need to receive information, training and guidelines on RJ in order to improve referral of cases involving children to restorative interventions. They need to be aware of children's particular vulnerabilities and protect children from harm and secondary victimisation.
- 6) Specialised RJ working methods in youth criminal cases, in addition to mediation involving a broader social network such as conferencing and restorative circles, need to be further researched and piloted.
- 7) Capacity-building strategies should be put in place for intermediaries and mediators, with qualitative requirements, training, special skills and intervention sessions. These strategies should take into account the age and the specific needs of children and young people, as well as set up a pool of experienced youth mediators who can guide others.
- 8) For young people with neurodiversity or intellectual disabilities, participation tools and restorative approaches should be made more available, including methods specifically designed to take language or learning difficulties into account. Cultural nuances also need to be taken into consideration, especially in the way meetings are organised and how questions and processes are translated into other languages.
- 9) There should be more research on how RJ is experienced by the parties involved, especially young victims, suspects, and offenders in criminal procedures, and evidence-based best practices should be identified.
- 10) And finally, children themselves should be involved and allowed to become self-supporting. A real and meaningful "participation society" would allow young people to give input to the maximum extent.<sup>45</sup>

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<sup>45</sup> Based on: Berger, M. and Wolthuis, A., Chapter 14 Child justice in the Netherlands, A boost for restorative and child-friendly interventions? In: Wolthuis, A. & Chapman, T. (eds.) (2022) Restorative Justice from a Children's Rights Perspective, The Hague: Eleven Publishers, pp. 253-271.

## 2. Greece

The first part of this report will provide an overview of the relevant legal framework and will explore any developments in legislation and policies. The second part will examine whether there have been developments in practice, based on an empirical study that draws on six consultations with stakeholders and a minor.

### 2.1. Legal framework

Regarding the Greek legal framework of RJ, there are elements of RJ in the following legal provisions.

- In civil and commercial cases:

Law 3898/2010 on mediation in civil and commercial disputes<sup>46</sup> provides that children can be indirectly involved in the cases, such as family or custody disputes. However, no specific provisions are in place for their involvement. Mediation is conducted by mediators registered in the Registry of Mediators of the Ministry of Justice<sup>47</sup> Law 4640/2019<sup>48</sup>, which transposes EU Directive 2008/52/EC of the European Parliament and of the Council into Greek legislation has refocused training and educational programmes for legal practitioners on civil, commercial, family and medical mediation<sup>49</sup> It should be noted that though provided for in civil and commercial law, mediation is also an alternative dispute resolution procedure used in a variety of different fields (for instance, within the community, in the workspace, as cultural mediation, school mediation, etc.)<sup>50</sup>

- In criminal law:

Law 3904/2010<sup>51</sup> on the rationalisation and improvement of the administration of criminal justice and other provisions introduced several procedures into national legislation. First, a procedure on criminal mediation was introduced for certain felonies against property.<sup>52</sup> Second, the scope of the provision which eliminates punishment due to practical repentance was expanded by the law to include the vast majority of crimes against possession and property (with the exception of robbery and extortion).<sup>53</sup> It also expanded the possibility of exemption from penalty in the case where the victim is satisfied of the above measures.<sup>54</sup>

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<sup>46</sup> [ΝΟΜΟΣ 3898/2010 \(Κωδικοποιημένος\) - ΦΕΚ Α 211/16.12.2010 \(kodiko.gr\)](#)

<sup>47</sup> Terre des hommes, ΑΠΟΚΑΤΑΣΤΑΤΙΚΗ ΔΙΚΑΙΟΣΥΝΗ ΣΕ ΥΠΟΘΕΣΕΙΣ ΠΟΥ ΑΦΟΡΟΥΝ ΠΑΙΔΙΑ ΘΥΜΑΤΑ, 2020, [Report Greece translated iRestore 18feb high-res.pdf \(euforumrj.org\)](#), page 7

<sup>48</sup> [ΝΟΜΟΣ 4640/2019 \(Κωδικοποιημένος\) - ΦΕΚ Α 190/30.11.2019 \(kodiko.gr\)](#)

<sup>49</sup> Terre des hommes, op.cit., page 37.

<sup>50</sup> Ibid, page 10.

<sup>51</sup> [ΝΟΜΟΣ 3904/2010 \(Κωδικοποιημένος\) - ΦΕΚ Α 218/23.12.2010 \(kodiko.gr\)](#)

<sup>52</sup> Ibid, page 17. Articles 301 and 302 of Code of Criminal Procedure mainly deal with restitution of the damage caused rather than conciliation between the victim and offender.

<sup>53</sup> E. Ververopoulou, "Restorative Justice as alternative form of Justice", *Democritus University of Thrace*, March 2022, page 52-53, articles 134, 135, 138, 140, 172, 207, 208, 208A, 208B, 211, 224, 264 par.2, 265 par.3, 268 par. 2, 270 par. 2, 273 par. 2, 275 par. 2, 277 par. 2, 279 par. 3, 285 par. 4, 286 par. 2, 290 par. 2, 290A par.2, 291 par.3, 292 par. 2, 386, 386A, 386B, 387, 389, 390, 394, 397 and 404 of the Penal Code.

<sup>54</sup> Christos Mylonopoulos, "Victim Satisfaction and Penal Mediation under Law 3904/2010", <https://www.mylonopoulos.gr/publication/article/3/i-%C2%ABikanopoiisi-toy-pathontos%C2%BB-kai-i-%C2%ABpoiniki-syndiallagi%C2%BB-sto-n-3904/2010.html>, last accessed on 28 February 2023.

With the new Criminal Procedural Code (Law 4920/2019<sup>55</sup>), the possibility of applying diversionary measures, ie procedures which avoid criminal prosecution, to prosecution was also extended.

According to Art. 45<sup>56</sup>, among other conditions, the Prosecutor might refrain from prosecution if the perpetrator demonstrated a clear intention to repair/restore the damage caused to the victim. Additionally, according to Art. 46 of the Greek Code of Criminal Procedure<sup>57</sup>, the Public Prosecutor may refrain from criminal prosecution of a minor and impose one or more of the restorative measures provided for in the Penal Code.<sup>58</sup>

- Criminal mediation in cases of domestic violence:

Law 3500/2006<sup>59</sup> introduced criminal mediation (Arts. 11 to 14) as an alternative resolution for cases of misdemeanour domestic violence, allowing the Prosecutor to suggest mediation to the parties prior to criminal prosecution or before trial.<sup>60</sup> The legislation further states that a child can participate in the process if represented by both the Juvenile Prosecutor and their guardian, and that children above the age of 14 can be present at the proceedings if they wish to be.<sup>61</sup> When an act of domestic violence has been perpetrated by a juvenile offender, the Public Prosecutor may also refrain from criminal prosecution in favour of victim-juvenile offender conciliation.<sup>62</sup>

- Juvenile criminal law:

The provisions of the Penal Code regarding juvenile perpetrators<sup>63</sup> reflect the new trends in the child justice system.<sup>64</sup> The fundamental principles governing juvenile criminal law include subsidiarity and proportionality, with the aim of an individualised treatment of the minor, their education and the prevention of recidivism.<sup>65</sup>

In the light of the above principles, the measures taken against minors under the provision of the Penal Code first focus on reform (Art. 122 Penal Code)<sup>66</sup>, which include: victim-juvenile offender conciliation,<sup>67</sup> restitution,<sup>68</sup> and community service,<sup>69</sup> therapeutic<sup>70</sup> and confinement in a Special Juvenile Detention Facility.<sup>71</sup> It should be noted that the particularities of the criminal procedure against young people impose the establishment of an "intermediate pole" between the Court and the minor. This role is undertaken by a Juvenile Probation Officer.<sup>72</sup>

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<sup>55</sup> [ΝΟΜΟΣ 4620/2019 \(Κωδικοποιημένος\) - ΦΕΚ Α 96/11.06.2019 \(kodiko.gr\)](#)

<sup>56</sup> [Άρθρο 45 - Κώδικας Ποινικής Δικονομίας - Αποχή από ποινική δίωξη | Νομοθεσία | Lawspot](#)

<sup>57</sup> [Άρθρο 46 - Κώδικας Ποινικής Δικονομίας - Έγκληση του παθόντος | Νομοθεσία | Lawspot](#)

<sup>58</sup> Terre des hommes, ΑΠΟΚΑΤΑΣΤΑΤΙΚΗ ΔΙΚΑΙΟΣΥΝΗ ΣΕ ΥΠΟΘΕΣΕΙΣ ΠΟΥ ΑΦΟΡΟΥΝ ΠΑΙΔΙΑ ΘΥΜΑΤΑ, 2020, Report Greece\_translated\_iRestore\_18feb high-res.pdf (euforumrj.org), page 15.

<sup>59</sup> [Νόμος 3500/2006 - ΦΕΚ 232/Α/24-10-2006 \(Κωδικοποιημένος\) - ΟΙΚΟΓΕΝΕΙΑ - ΕΝΔΟΟΙΚΟΓΕΝΕΙΑΚΗ ΒΙΑ \(e-nomothesia.gr\)](#)

<sup>60</sup> Ibid, page 16.

<sup>61</sup> Ibid, page 6.

<sup>62</sup> Ibid, page 15.

<sup>63</sup> [ΝΟΜΟΣ 4620/2019 \(Κωδικοποιημένος\) - ΦΕΚ Α 96/11.06.2019 \(kodiko.gr\)](#)

<sup>64</sup> Ibid, page 12.

<sup>65</sup> C. Kosmatos, Juvenile Law-Theory and Practice, ΝΟΜΙΚΗ ΒΙΒΛΙΟΤΗΚΗ, 2020, p.76.

<sup>66</sup> [Άρθρο 122 - Ποινικός Κώδικας \(Νόμος 4619/2019\) - Αναμορφωτικά μέτρα | Νομοθεσία | Lawspot](#)

<sup>67</sup> Art. 122 (1) e PC

<sup>68</sup> Art. 122 (1) f of PC

<sup>69</sup> Art. 122 (1) j of PC

<sup>70</sup> Art. 123 of PC

<sup>71</sup> Art. 127 of PC

<sup>72</sup> C. Kosmatos, ibid, p.78.

Since publishing of the aforementioned report,<sup>73</sup> there have been the two significant developments in juvenile criminal law. Firstly, Law 4689/2020<sup>74</sup>, which incorporated EU Directive 2016/800,<sup>75</sup> strengthens the rights of children who are suspects or accused persons in criminal proceedings or are subject to European arrest warrant proceedings. It includes a reference to RJ. This is provided for in Art. 10, which states that "*juveniles are imposed reform and therapeutic measures according to the provisions of the articles 122, 123 and 126 of Penal Code, as well as according to third and fourth subparagraph of Art. 283 par.1 of Code of Criminal Procedure.*" Art. 17 of the Law (which transposes Art. 20 of the EU Directive) provides that the concerned government authorities should ensure that the services supporting children, as well as RJ services, receive adequate training "*to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.*" Secondly, Law 4855/2021<sup>76</sup>, which amended Criminal Code and Criminal Procedural Code, has the ultimate goal of ensuring the absolute and effective protection of vulnerable social groups, e.g. young people, and of further harmonising Greek legislation with European standards that provide for the protection and evaluation of the rights of minors and adult victims, according to its explanatory note. It should also be noted that according to Law 4938/2022<sup>77</sup>, Juvenile Court Judges serve a two-year term,<sup>78</sup> instead of a three-year term. Additionally, Law 4947/2022<sup>79</sup> amended Art. 6 of CCP by stating that the one-member Juvenile Court consists of a President of First Instance Court or by a First Instance Judge.

- School mediation:

Mediation in school is still not institutionalised and therefore not practiced in all schools.<sup>80</sup> As stated by the Children's Ombudswoman during our interview, there is a complete absence of any provisions referring to school mediation in the law. School mediation, which is performed by teachers who are trained by professional mediators, is optional and only practiced if and when the school chooses. Unfortunately, there is no national policy. It is important to clarify that mediation consists of promoting the culture of peaceful conflict resolution and to encourage its application whenever a minor commits a crime. School mediation is a way of solving disagreements within the school, without needing to resort to criminal law. Should a minor commit a criminal offence, criminal law will be applied rather than RJ.

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<sup>73</sup> Terre des hommes, ΑΠΟΚΑΤΑΣΤΑΤΙΚΗ ΔΙΚΑΙΟΣΥΝΗ ΣΕ ΥΠΟΘΕΣΕΙΣ ΠΟΥ ΑΦΟΡΟΥΝ ΠΑΙΔΙΑ ΘΥΜΑΤΑ, 2020, Report Greece\_translated\_iRestore\_18feb high-res.pdf (euforumrj.org),

<sup>74</sup> [ΝΟΜΟΣ 4689/2020 \(Κωδικοποιημένος\) - ΦΕΚ Α 103/27.05.2020 \(kodiko.gr\)](#)

<sup>75</sup> Ibid., footnote n°9.

<sup>76</sup> [Νόμος 4855/2021 - ΦΕΚ 215/Α/12-11-2021 \(Κωδικοποιημένος\) - ΚΩΔΙΚΕΣ ΝΟΜΟΘΕΣΙΑΣ \(e-nomothesia.gr\)](#)

<sup>77</sup> [Νόμος 4938/2022 - ΦΕΚ 109/Α/6-6-2022 \(Κωδικοποιημένος\) - ΔΙΚΑΣΤΗΡΙΑ - ΔΙΚΑΙΟΣΥΝΗ \(e-nomothesia.gr\)](#)

<sup>78</sup> Art 30 par. 5 of the Code of the Organization of Courts.

<sup>79</sup> [ΝΟΜΟΣ 4947/2022 - ΦΕΚ Α 124/23.06.2022 \(kodiko.gr\)](#)

<sup>80</sup> Terre des hommes, ΑΠΟΚΑΤΑΣΤΑΤΙΚΗ ΔΙΚΑΙΟΣΥΝΗ ΣΕ ΥΠΟΘΕΣΕΙΣ ΠΟΥ ΑΦΟΡΟΥΝ ΠΑΙΔΙΑ ΘΥΜΑΤΑ, 2020, Report Greece\_translated\_iRestore\_18feb high-res.pdf (euforumrj.org), page 7.



## 2.2. Implementation of the legal framework: consulting with stakeholders on policy and practice of dealing with minors

### Stakeholders consulted

The following section will give a short overview of the stakeholders interviewed for this report, including the scope of their work and the authorities and professionals they cooperate with in their day-to-day work.<sup>81</sup>

- Lawyers, accredited mediator and trainer of mediators: they mediate in civil and commercial disputes based on Law 4690/2019<sup>82</sup>. In the context of school mediation, it is noted that the mediators are external partners that cannot directly contact students, therefore they train the teachers who will subsequently pass the knowledge on to the children.
- Officers from the Office of Juvenile Probation and Social Welfare Officers of the Ministry of Justice: they act as Juvenile Probation Officers participating in mediation procedures for restitution, provision of apology and elimination of the consequences of the wrongful acts. The framework of this procedure is defined the Circular No. 7/2019 issued by the Public Prosecutor of the Supreme Court<sup>83</sup> regarding the implementation of the reform measure of victim-juvenile offender conciliation under Art. 122 of Penal Code<sup>84</sup>. The service functions according to the legislation which has incorporated the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and applies all relevant practices.<sup>85</sup> The work of the Juvenile Probation Officer is defined by several pieces of legislation.<sup>86</sup> Additionally, the work of social welfare officers

<sup>81</sup> It should be noted that the presentation of their work is not exhaustive and systematic as we refer to the part of their work that is related to RJ and the description of the work provided by the stakeholders.

<sup>82</sup> [ΝΟΜΟΣ 4640/2019 \(Κωδικοποιημένος\) - ΦΕΚ Α 190/30.11.2019 \(kodiko.gr\)](#)

<sup>83</sup> [Εγκύκλιος 07/2019 - Εισαγγελία Αρείου Πάγου \(eisap.gr\)](#)

<sup>84</sup> [Άρθρο 122 - Ποινικός Κώδικας \(Νόμος 4619/2019\) - Αναμορφωτικά μέτρα | Νομοθεσία | Lawspot](#)

<sup>85</sup> Ibid., footnote n°8.

<sup>86</sup> Law 4619/2019, Arts. 122 and 239 of the Penal Code (PC), Art. 578 of Code of Criminal Procedure (CCP), Law 4689 (O.G. A 103/27.5.2020), Law 4478/2017 (ar. 68 & 69), Ministerial Decision No 56169/17-11-2022 (O.G. 6259/12-12-2022) and Law 4109/2013.

is defined by the Law 4305/2014 (Art.37 para.2)<sup>87</sup>, Presidential Decree 97/2017 (Art. 29)<sup>88</sup> and Joint Ministerial Decision No 56169/2022<sup>89</sup>. They cooperate closely with judicial authorities and prosecutors, social policy and psychological health institutions, as well as the Directorate of Secondary Education, the Child Protection Department of the Municipality, and with other relevant public authorities who work towards the implementation of community service projects.

- A Children's Ombudswoman: the experience of the Ombudswoman is based on the four principles and rights of the UN Convention on the Rights of the Child.<sup>90</sup> The role of the institution is preventive. It publishes information on children's rights, mediates between the state and the citizen, the state and the child, and the child and their parents (this is the main goal of the Ombudsperson). Ombudspersons cooperate with all the services and ministries involved in child protection, as well as other key stakeholders.<sup>91</sup> They are in constant cooperation with many Prosecutors' offices. The Ombudsperson is in contact with every public authority, so if a child is wronged by a service, they can support mediation to end the violation or repair the damage caused (e.g. delays in citizenship procedure, refusal of enrolment in school due to lack of documents, etc.). According to the Ombudswoman, the mediation procedure makes cooperation much easier because it facilitates smooth exchanges and less resistance. However, the Ombudsperson as an institution can only make recommendations and cannot impose penalties. Furthermore, the Ombudsperson does not intervene before judicial authorities. Nevertheless, as the Ombudswoman explained, access to justice is not one-dimensional, meaning that every child should be able to request restoration for the violation of their rights at all levels (civil, administrative and criminal).
- An NGO lawyer who offers legal support to unaccompanied minors residing in shelters. The legal aid provided covers asylum law, criminal law and gender-based violence cases. In her day-to-day work, the lawyer cooperates with the Asylum Services, Juvenile Prosecutors, other judicial authorities and police working on trafficking cases. Regarding the practical implementation of RJ, the lawyer requests for the application of a conciliation procedure for minors who are being prosecuted.
- Juvenile Prosecutors (as defined in the CCP) who participate in restorative proceedings regarding juvenile victims of criminal actions and juvenile perpetrators. In their day-to-day work, the Prosecutors cooperate closely with investigating authorities, who usually seek to extract from the children a non-confessional testimony in the presence of an expert.
- Police officers working in the Sub-Directorate of Child Protection at the Department of delinquency prevention. As the police officer mentioned, sometimes the police deliver

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<sup>87</sup> [https://www.dsanet.gr/Epikairothta/Nomothesia/n\\_4305.htm](https://www.dsanet.gr/Epikairothta/Nomothesia/n_4305.htm)

<sup>88</sup> Π.Δ. 97/2017 - ΦΕΚ Α 138/15.09.2017 (kodiko.gr)

<sup>89</sup> Κοινή Υπουργική Απόφαση 56169/2022 - ΦΕΚ 6259/Β/12-12-2022 - ΔΙΚΑΣΤΗΡΙΑ - ΔΙΚΑΙΟΣΥΝΗ (e-nomothesia.gr)

<sup>90</sup> These include non-discrimination, devotion to the best interests of the child, the right to life, survival and development and respect for the views of the child.

<sup>91</sup> These include the following: such as school units, the Former Regional Centres of Operational Planning, the diagnostic and counselling centres for families and children of all school units, mental health centres, municipal social services, private agencies working in child protection.

informal mediation:<sup>92</sup> *“we could say that a preventive measure is the provision of recommendations to the child upon the request of the parents in cooperation with Juvenile Prosecutor. If complaints and counter-complaints are filed by the minors, then the parents usually prefer the recommendations procedure. This is the mildest measure. We might call the other party before opening a case and if the minor demonstrates their will to cooperate and the criminal procedure might be avoided”*. In their day-to-day work, they cooperate with Forensic Services and the Laboratory of Forensic and Toxicology of Kapodistriakon University. They are in constant contact with the Direction of Forensic Investigations, General Chemistry of the State, the Juvenile Prosecution Office and children’s hospitals.

### 2.3. Methodologies on child participation<sup>93</sup>

**Regarding the methodology they have developed,** the abovementioned stakeholders mentioned the following:

A Juvenile Probation Officer, who worked in a provincial area of Greece and had some experience in RJ, stated that the main goal of the methodology they followed was to motivate the beneficiary to participate in the therapeutic-reformatory plan. A promising practice emerging from this methodology was identified: the development of relations with the beneficiaries enabled them to connect with positive experiences from their past, become self-motivated and take ownership of their lives. Even in cases of recidivism, they acquired the tools and networks within community institutions to eventually achieve their goals. Regarding minors and their families, the Juvenile Probation Officer stated that they were motivated and empowered to recognise the issues and to take responsibility for their restoration and reformation. The implemented methodology was largely reflected in the legislation.

The lawyer from the NGO, who was based in Athens and was very experienced in issues involving minors, mentioned that their methodology was based on providing effective support with an emphasis on prevention. The NGO helped minors acquire skills necessary for their future, and they motivated them to engage in school and other educational activities. The lawyer explained that the delinquent minors were punished so that they would realise that their actions had consequences (e.g. they had to return home earlier, they would not receive pocket money or they were not allowed to go out with their friends). At the same time, the NGO supported them psycho-emotionally so that they could fully understand the impact of their actions. Regarding the support of the children who showed a tendency for delinquency, the NGO followed specific standards and they used an interdisciplinary approach. Minors were supported by psychologists and social workers so that they could understand why they were involved with the law. If the violations were serious, the minors might be arrested and, in that case, the NGO cooperated with prosecuting authorities, while continuing to support the minors. This methodology was reflected in the statutory principles of the organisation and was shared with the professionals working with the organisation. The Child Protection Managers who were responsible for each shelter provided the guidelines for case management at an individualised basis. The main strength of their methodology, not only in RJ but throughout

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<sup>92</sup> Terre des hommes, ΑΠΟΚΑΤΑΣΤΑΤΙΚΗ ΔΙΚΑΙΟΣΥΝΗ ΣΕ ΥΠΟΘΕΣΕΙΣ ΠΟΥ ΑΦΟΡΟΥΝ ΠΑΙΔΙΑ ΘΥΜΑΤΑ, 2020, Report Greece\_translated\_iRestore\_18feb high-res.pdf (euforumrj.org), page 6.

<sup>93</sup> According to the interviews which Terre des Hommes Hellas’ researcher conducted with these stakeholders during January 2023.

their practice and experience with children, was that the minors were developing bonds with the professionals, they trusted them and even if they were involved in criminal proceedings, the NGO continued to support them and to help them fully understand the consequences of their actions, rather than exclude and punish them.

The police officer mentioned that there was no specific protocol on the approach of minors. The protocol was created and updated on an *ad hoc* and individual basis. Their approach depended on the individual, their age and the level of their criminal responsibility. The police officer also referred to the procedural guarantees provided by the legal framework; the preliminary inquiry was conducted following the principle of secrecy, the Prosecutor supervised the procedure, provided instruction and was always informed promptly whenever a minor was arrested or brought to the police station. There were cases where, under Art. 277 CCP<sup>94</sup>, a psychologist was appointed as an expert witness to be present during the testimony of the minor, while the presence of a lawyer during apology of the accused was mandatory.

The Juvenile Prosecutor emphasised that their intervention focused on the psyche of the child and on building trust through activities. S/he described the procedure: *“at first, they play alone, with the discreet presence of an adult, who will enter the room, engage in conversation for a few minutes, and leave. This process is repeated. Ultimately, they will meet the parents of the child.”*

The Ombudswoman noted that whenever a report about a violation was submitted, they always followed the mediation procedure, which was performed by someone from their office, even if the case did not involve criminal proceedings. They always applied the principles of criminal mediation, which entailed meeting the parties separately, assessing whether there was consent and willingness to cooperate, and then following up on the developments of the relationship. The Ombudswoman’s office followed the child protection policies and tools of ENOC (European network of Ombudspersons for Children)<sup>95</sup>, as well as the General Regulation, to ensure that the approach used with the child employed simple and understandable language. There were frequent trainings of Ombudspersons and their staff on this. The methodology was not reflected in the national legal framework, e.g. the law for the function of the Ombudsperson<sup>96</sup>. Subsequent legislation could be adopted to include the methodology used by Ombudspersons, as well as the specific procedural guarantees to use when working with children.

The Mediator could not specify which methodology they used, apart from law enforcement. Indeed, they applied the law on mediation in civil and commercial disputes, as it foresaw that any agreement reached in the context of mediation should be in writing, as well as approved and signed by the students participating in the procedure. The written agreements were held in the school’s archive. There were no specific legal provisions on school mediation. The general principles of mediation should be applied, e.g. confidentiality, impartiality and neutrality, no conflict of interest, active listening, respect towards the parties, dialogue etc. There were good practices and particular steps that should be followed regarding the psycho-emotional support of the children that could be a part of the training, which depended on the availability and willingness of the teachers.

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<sup>94</sup> [Άρθρο 277 - Κώδικας Ποινικής Δικονομίας \(Νόμος 4620/2019\) - Εκτέλεση του εντάλματος σύλληψης | Νομοθεσία | Lawspot](#)

<sup>95</sup> [Policy Statements - ENOC](#)

<sup>96</sup> [ΝΟΜΟΣ 3094/2003 \(Κωδικοποιημένος\) - ΦΕΚ Α 10/22.01.2003 \(kodiko.gr\)](#)



## 2.4. Strengths and gaps of penal mediation

**Firstly, regarding the strengths of the procedure,** the Juvenile Probation Officer highlighted that criminal mediation was a measure that contributed to the empowerment and the expression of the views of both parties and in the restoration of the relationship between them. It should be noted that a prerequisite for the success of the procedure was that both parties agreed on the facts of the case. However, even if the parties did not initially agree, they were given the opportunity to understand each other's view on the matter and to possibly change their own. It was possible that the juvenile perpetrator would emotionally grow during the procedure, would take responsibility for their actions and would be given the chance to restore the consequences of their action towards the victim and the community. These steps may even prevent recidivism. Furthermore, the Juvenile Probation Officer noted the strengths of their methodology, which promoted the professionalism, expertise and ethics of the professionals working in partner institutions. Together, they signed collaboration protocols and were working towards establishing programmes and projects to improve the effectiveness of the service and the support offered to beneficiaries, especially given the lack of appropriate programmes organised by the state.

Both the NGO lawyer and the Ombudswoman stressed the importance of the role of Juvenile Probation Officers, mentioning that they were trained, motivated and had acquired the necessary sensitivity. They were also seen as trying to ensure that the criminal mediation was conducted in the most appropriate way.<sup>97</sup> Juvenile Probation Officers gave instructions to the judicial authorities and they supported minors through regular sessions<sup>98</sup> Moreover, the NGO lawyer stated that there were NGOs– Terre des Hommes Hellas and A21- working in the field who were doing a great job. The NGO lawyer further stated that there were efforts to provide information.

**Secondly, regarding the gaps in criminal mediation,** the Ombudswoman mentioned that there were systemic legal gaps, due to the inadequate number of Juvenile Probation Officers, the lack of follow-up in their training, and possibly the lack of scientific supervision. The Ombudswoman further noted that a much broader application of the RJ's practices should be guaranteed. The needs of juvenile perpetrators and victims should be assessed on an individualised basis, according to the General Comment of the Committee on Rights of the

<sup>97</sup> Ombudswoman during her interview.

<sup>98</sup> NGO lawyer according to her/his interview.

child of the UN<sup>99</sup>. An interdisciplinary approach and assessment of the best interests of the child was required, to verify whether the child was able to fully provide consent. There was a lack of individualised and interdisciplinary assessment of the best interests of the child at all levels of the criminal procedure, not only criminal mediation, e.g. not even when a child was removed from their home or when they were taken to a judicial examination.

The mediator observed that criminal mediation was not a widely known procedure and was underdeveloped due to lack of infrastructure, insufficient staff, inadequate training and possible lack of experienced professionals. All the professionals involved (lawyers, prosecutors, teachers, etc.) should be qualified to work with children, so that they know how to properly approach children and to make them understand why they should attend a consulting or therapeutic programme. As the mediator stated during her/his interview: *“people see a violent child, but in reality, all of them are traumatised. The principles of RJ can be applied to children, but they must first be properly informed.”*

The Juvenile Probation Officer further noted the existing gaps in terms of training and supervision and stated that the Social Welfare Officers should have the power to legally oblige adult perpetrators to commit to their goals of personal transformation and to engage in collaboration and intervention plans based on their needs assessment.

The Prosecutor believed that there was a lack of adequate facilities and support of professionals and mentioned that the relevant legislative framework was thorough, but its implementation was inadequate. The Prosecutor also stressed the importance of supporting and supervising the parents, who, despite their intentions, needed education themselves. The police officer noted the importance of the prompt transfer of minors from inappropriate environments to proper accommodation facilities, because in the past minors were obliged to remain in hospitals for a lengthy period. Recently, the National Centre for Social Solidarity<sup>100</sup> addressed the issue and the procedure only took a few days now.

The NGO lawyer noted that the responsible actors, such as prosecutors and judges, were not adequately aware and informed about juvenile issues. The approach of the judicial authorities was not standardised, and it largely depended on the individual professionals. As the lawyer explained, they supported a minor accused of rape in one case where the procedure was punitive. It seemed that the judicial authorities did not intend to follow the principles of RJ, the Prosecutor was very rigid and treated the minor as if s/he were an adult. However, in another case, they represented a minor with a criminal record who had confessed that he had committed an offence and was convicted as such, but both the judicial authorities and the Juvenile Probation Officer chose the approach of giving advice to the minor. As the lawyer observed, there was a reconciliation of the minor with the system (the victim was absent), because he realised the seriousness of his action, he sincerely regretted committing it and presented his apologies. In addition, the lawyer noted the deficiencies of the language interpretation provided for unaccompanied minors. The lawyer further noted the lack of specialised knowledge on child-friendly approaches of the police officers, who, in some cases, addressed minors aggressively, did not always behave according to the gravity of the situation, privacy was not guaranteed during the depositions, and there were no separate spaces specifically designed for children, but even if there were -for example in the Department of Trafficking of Attica Police Headquarters-, they were not used.

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<sup>99</sup> [United Nations \(ohchr.org\)](http://www.ohchr.org)

<sup>100</sup> [Ε.Κ.Κ.Α. Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης - ΑΡΧΙΚΗ \(ekka.org.gr\)](http://www.ekka.org.gr)



## 2.5. Strengths and gaps of School Mediation

**Regarding the strengths of school mediation,** the mediator emphasised the contribution of the professionals who believed in the importance of the procedure and were supporting the programme. According to the mediator, school mediation was beneficial for the children. It was very important that they understood that it was an alternative way of solving their differences in a more peaceful and humane way before punitive measures were imposed by the school according to the law. It was useful for them to know that when they were bothered by something, they could reach out to the school mediator, who was one of their schoolmates, and that *“the principal’s office was not necessarily the final destination and a place of punishment.”*<sup>101</sup> As the mediator stated, *“we could say that the school mediator is the “peacemaker.”* The mediator also noted that school mediation was about prevention and that it could not be applied when there was a breach of law, in which case mediators gave the minor information on the official proceedings. *“When discussing illegal activity, the incident cannot stay within the school community and mediation cannot take place if there is violence.”*

The Ombudsperson, as an institution, has wide experience and knowledge of school mediation. The Ombudswoman described school mediation as an excellent way for children to become familiar with their rights in a very creative and practical way, which contributed to their empowerment and to the prevention of future incidents. According to her, school mediation as a procedure only presented strengths. It reflected the fundamental provisions of the Convention<sup>102</sup>, i.e. hearing the views of the child, an assessment of their best interests for any decision concerning them, respect and encouragement of their socialisation and freedom of expression (social, political, etc.). The Ombudswoman highlighted the importance of the application of this procedure in Greece, given that there was no organised child protection system. The culture of the school as well as criminal mediation -if conducted in an appropriate way using the rights tools- helped children to understand their responsibilities, their obligations, the damage they caused by their actions. If these issues were not addressed in schools, it could undermine the children's relationship to justice, the social cohesion and democratic culture. Children were not empowered and informed about their rights and obligations using appropriate language. Children who knew their rights were also aware of

<sup>101</sup> According to the interviews conducted in January 2023

<sup>102</sup> [Convention on the Rights of the Child | OHCHR](#)

their obligations, as well as the rights of other children, and were able to act as multipliers, to help deal with emerging crises and, as a result, could help prevent delinquency in practice.

**Regarding the gaps of school mediation,** the Ombudswoman highlighted the complete absence of any provision referring to school mediation. There should be a consistent and uniform child protection policy and a codification of provisions to allow for the consolidation of standards through secondary legislation and protocols. The Ombudswoman also mentioned that there were insufficient mediation groups, especially given the current climate, which saw high levels of violence and bullying which were being publicly discussed. Additionally, children were not aware of their rights nor the rights of others. As such, she stressed the importance of having adequately trained and experienced adults in the school unit who could support the mediator groups. As she stated, it appeared that the main actors were not willing to invest in the support of school units. There should be a legal provision stating that school mediation should be the main form of conflict resolution in schools. The multidimensional action of the Ombudsperson in this direction included discussions with the Ministry to develop inclusive, universal and systematic training of the school staff, as well as follow-up procedures, so that school mediation could be mandatory in all schools (rather than optional). Another crucial point was the existence of follow up-evaluations of pending issues regarding restoration, as well as long-term supervision. Indeed, municipal social services don't have protocols on child-friendly approaches, they do not even have their responsibilities fully defined.

The mediator explained that since school mediation was optional and not institutionalised, it was not practiced in all schools. When applied, it was not done in a unfirmed way - school directors could decide to adopt this measure to avoid behaviours which might have a bad impact on the school community. The mediator also noted that the legal framework that was applied (Law 4640/2019<sup>103</sup>) was inadequate. The application of the procedure was also undermined by the lack of expertise and adequate training for the teachers, as well as the lack of educational programmes organised by the Ministry of Education. Therefore, there were teachers that were not even aware of the existence of the programme.

**Regarding the participation of the children in the evaluation process,** only the Ombudswoman mentioned that children participated in the evaluation of their intervention. She noted that the theme of ENOC this year was the role of Independent Administrative Authorities for children. In this context, the Ombudsperson will consult young people on their opinion of whether these institutions work effectively, and whether they are actually being heard.

The other professionals stated, usually with surprise, that there were no procedures in place that give minors the possibility to evaluate their own intervention and give feedback. As the mediator stated, the children themselves do not get the chance to evaluate the process. It is the teachers who provide feedback and information on how the children react to the practices implemented. The NGO lawyer explained that the teachers were evaluating their co-workers, but that the minors did not participate in the evaluation.

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<sup>103</sup> [ΝΟΜΟΣ 4640/2019 \(Κωδικοποιημένος\) - ΦΕΚ Α 190/30.11.2019 \(kodiko.gr\)](#)

At Terre des Hommes Hellas<sup>1</sup>, we are proud to say that we reached out to some of the minors we met while working at the Child Advisory Boards during the previous phase of the project. They stated the following: *"I believe that restorative justice for children is necessary, as it prevents them from falling down the rabbit hole of extensive criminal activities and impacting their adult lives. It has proven to be a more effective method than prison systems, which focus on punishment rather than rehabilitation. For a restorative justice approach to be effective, the space in which it occurs must be non-judgmental and unbiased, where victims and perpetrators alike are equipped to identify, understand, and express their emotions. Children should be aware of their rights during the whole process. Moderators and other professionals must not only focus on resolving the issues with the victim and perpetrator, but they must also get to the root of the cause of a crime committed by a child, to be able to break a potential cycle of troublesome behaviour. Even after the sessions, professional support must continue to be given to the people involved; it is not just a one-step process, and the situation cannot improve in only one*

## 2.6. Conclusions and recommendations

RJ in Greece is evolving, and its practices are still developing. However, the lack of sensitisation and specialised knowledge of young people among stakeholders remains a matter of concern. This in many cases results in the perpetuation of stereotypes and in young people being blamed for systemic deficiencies. It is important that the professionals working in the field have a deep understanding of the systemic reasons for juvenile delinquency. According to the Juvenile Probation Officer, *"the juvenile perpetrators have always been victimised themselves and, most of the time, the implications of their actions have traumatic effects on them."* Additionally, the mediator noted that in the majority of cases, they have themselves been victims and were deeply traumatised. As the mediator mentioned, a Prosecutor once explained that their role was difficult because there were children that were not willing to cooperate, or who could not easily obey rules, so their adaptation to a therapeutic programme needed to be overseen constantly. This shows that the system was often blaming and making arbitrary distinctions between the children.

It is alarming that the police officer who is working in the Child Protection Department considered the formation and submission of a criminal case against a minor to the Juvenile Prosecutor as RJ, and further stated: *"the criminal procedure for flagrant crimes is not a big deal (sic). The minor will spend a night at the police station."* He also believes that the provision of recommendations and/or apologising to the victim are effective measures for the occasionally delinquent minor, who will recognise their action as wrongful, but not for the habitual offender/career criminal. As he said, if the child has a supportive environment setting boundaries, they will work to restore their image at school, family, and the authorities. In the absence of such an environment to guide them, and with no positive influences, e.g. unaccompanied minors, it is much more difficult for social services to make them accept the situation and apologise for their actions.

Also, the NGO lawyer reproduced stereotypical ideas, saying that *"it is not always easy to support the minors, they come from various backgrounds, they cannot trust easily, they have learned how to manipulate the system, they know they are not going to jail. It is difficult to change the mindset of such a child. Some are registered as minors while they are actually adults, and they take advantage of the treatment of juveniles in order to commit offences."*

Given all the above, it is with certainty that we conclude that the needs/expectations

concern mainly the need for training and supervision, as stressed out by this needs assessment. Specifically, the Juvenile Probation Officer stated: *"continuous trainings and supervision are necessary due to the complexity, importance and broad scope of our work."* At this point, it should be noted that in 2017 a cooperation protocol was signed and then implemented between the Education Institute of the National Centre of Public Administration and Self-Government <sup>104</sup>, the RJ and Mediation Laboratory of the Department of Sociology of the School of Social Sciences of Panteion University, under the direction of Professor Vassiliki Artinopoulou, and the Association of Juvenile Probation officers of Greece. This Protocol provides for the training of the country's Juvenile Probation Officers in the implementation of the reformative measure of reconciliation between minor offenders and their victims. In the same context, an innovative theoretical and experiential training workshop was set up with the participation of judges, prosecutors and students of the National School of Judicial Officers. This way, it is possible to provide specialised and focused training to Juvenile Probation Officers in this field, so that officers throughout the state would acquire a common language and methodology in the implementation of the conciliation measure. The NGO lawyer stated that there should be *"the participation of the Juvenile Prosecutor's Office, security forces, campaigns, information brochures, discussions, examples, maybe even the children themselves, to support the training of the police authorities and the dialogue between with the police and minors."* The police officer recognises the need for empowerment, awareness on juvenile issues, specific and constant training, specialised knowledge, the development of skills of child-friendly communication, and empathy, in order to understand why a minor is behaving in a certain way, (for instance, if they are going through a mental health crisis or are under the influence of substances and ask for medical help instead of creating a case against them for disobedience or resistance). The mediator also stressed the need for *"training from experts from other countries and different scientific backgrounds, psychologists, lawyers, and a synthesis of the knowledge in an interdisciplinary approach."* The Ombudswoman stated that *"the exchange of knowledge is very important but should be done in a consistent way. We have to work in an interdisciplinary way, for example, Juvenile Probation Officers should also know and consider the views of the municipal social services where the child and their family is residing."*

In conclusion, it is clear that we should develop a manual/protocol of good practices in relation to RJ, which could be applied by every professional in the field. We should train every stakeholder in contact with children to apply this protocol. We should also record all the bad practices and intervene through the Ministry. Police, lawyers, Public Prosecutors, and Probation Officers across the country should be regularly trained on RJ. Children must know their rights, especially when they encounter the law, so that they can ask even themselves if it is possible to implement RJ practices. Finally, it is important to have an interdisciplinary approach between well-informed professionals and conduct trainings with the support of our European colleagues frequently. We aim to address that need within the i-RESTORE 2.0 project.

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<sup>104</sup> [ΕΚΔΔΑ – Εθνικό Κέντρο Δημόσιας Διοίκησης και Αυτοδιοίκησης \(ekdd.gr\)](http://ekdda.gr)



### III. Recommendations for practice improvement

Legal and practical aspects of RJ for children and young people differ quite a bit in Greece and the Netherlands. At the same time, we see that both countries can learn from each other's experiences. The Dutch restorative experiences with the diversionary method of Halt and mediation in criminal and outside of criminal cases can be relevant for Greek colleagues, as well as how professionals are trained in child-friendly working methods and on RJ interventions, and what they learned during the last 20 years. It would also be interesting to know how to collaborate with professionals at the local level, as in Greece we clearly noticed (from the Juvenile Probation Officer and Prosecutor for Minors) that even though they were willing to approach RJ, they lack the expertise, the experience and the means. Other suggestions included:

- An ideological shift from retribution to reconciliation, promoting a culture that has the concept of restoration at its heart. Other measures could include networking to involve the community in restorative processes, and continued support and specialised training of Juvenile Probation Officers throughout the country as mediators.
- Reinforcing the Public Prosecutor's discretion to refrain from prosecution, by providing the legal means to do so.
- Training the judicial and police authorities and all professionals involved in the child justice system accordingly, as well as developing a regulatory framework to offer

guidelines on the reconciliation process to all professionals.

- Encouraging the participation of professionals in European programmes to exchange experiences and best practices.
- Creating social services in police stations.
- Promoting effective networking especially with schools and empowering them to implement mediation strategies, thus preventing the aggravation of any conflict.
- In addition, we can create communities of practices involving professionals throughout the two countries with various levels of competences to promote peer-learning, as well as specific online platforms/working groups, to facilitate sharing knowledge and experience.
- To sum up, the Dutch can learn from the Greek experience, including practices from ancient Greece, practices in criminal mediation in cases of domestic violence where children were also abused or witnessed abuse, and Greece's experience in the i-RESTORE 1.0 project. The Greek colleagues have extensive experience of working with young people from different backgrounds in the Child Advisory Boards and expertise on child-friendly working methods. Nonetheless, there seems to be less knowledge and expertise on child-friendly approaches among professionals. During the coming period, both partners in the project will share more knowledge to create an effective twinning arrangement. This twinning arrangement will also support the development of trainings.



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