

# **Needs Assessment Report on Regulation Victim Offender Mediation in Georgia**

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“Promoting Alternative  
Dispute Resolution  
Mechanisms in Georgia”  
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## English Edition

**This Needs Assessment Report identifies gaps in the national legal framework and practices and recommends measures to ensure widespread application of restorative justice programmes and approaches in the Georgian legal system based on desk research and field visit.**

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## Executive Summary

The present report has been prepared within the framework of the Council of Europe Project “Promoting Alternative Dispute Resolution Mechanisms in Georgia”. The objective of this project is to improve the effectiveness of the Georgian justice system and access to justice by providing a well-functioning and trusted alternative dispute resolution mechanisms for Georgian citizens. This implies improving and widening the scope of the restorative justice legislation in line with international principles and standards and to increase awareness among stakeholders of the potential of restorative justice.

In 2012 the Crime Prevention Centre (subsequently in 2020 merged with the National Agency for, Execution of Non-custodial Sentences and Probation) of the Ministry of Justice was created and mandated to implement Victim-Offender Mediation (VOM), as a part of restorative justice programmes in Georgia. However, restorative justice programmes and victim-offender mediation in particular, have been mostly used in respect of juveniles (between 14 and 18 years old) and young adults ( between 18 and 21 years old ) in conflict with the law. Mediation in juvenile and young adult cases has been tied to diversion programme limiting its potential use and impact. The use of Victim-Offender Mediation in respect of adults has been limited to pilot projects at the sentence serving and preparation for release stages with limited results. The National Agency for Crime Prevention, Execution of Non-Custodial Sentences and Probation, hereinafter referred to as the “Agency” has expressed the intention to support the expansion of restorative justice in the criminal system.

In order to support the Georgian Government’s criminal policies in the field of restorative justice and to provide a clear understanding on what needs to be done in order to achieve wide application of restorative justice, a needs assessment was carried out by the CoE international and local consultants, Ms Mjriana Visentin and Ms Maia Chochua, respectively.

This Needs Assessment Report identifies gaps in the national legal framework and practices and recommends measures to ensure widespread application of restorative justice programmes and approaches in the Georgian legal system.

The report is composed of three parts: a) an overview of the Georgian regulation and practice on restorative justice in juvenile/young adult cases in light of international standards and comparative European Practices; b) a comparative overview of European laws and practices on restorative justice in adult cases c) an analysis of the Georgian institutional framework for the implementation of restorative justice in light of international standards and European practices. Each part contains a number of recommendations.

The first two parts analyse key procedural and substantive aspects of restorative justice in juvenile and adult cases respectively: application of VOM with diversion , eligible offenses, eligible persons, stages of proceedings where VOM is used, initial contact with the parties, regulation of the VOM conference, content of the diversion - mediation agreement, supervision over the execution of the diversion - mediation agreement, impact on criminal proceedings of VOM procedures. The third part examines the Georgian institutional framework in light of international standards and comparable European systems.

The two overviews of procedural and substantive aspects of VOM for juveniles and adults are kept separate because the Juvenile Justice Code already foresees restorative justice measures for juveniles and young adults while VOM for adults is virtually absent from the Georgian legal framework.

The key recommendation of this report is to expand the use of restorative justice by amending the Criminal Procedure Code, Juvenile Justice Code and the Code of Imprisonment to explicitly include mediation for juveniles and adults at all stages of the criminal justice procedure in line with Council of Europe Recommendation CM/Rec (2018)8<sup>1</sup>. Such expansion should be accompanied and supported by adequate financial and institutional resources.

In the case of diversion and mediation program for juveniles and young adults, the focus should be made on further enhancing the practice and securing its proper implementation, reviewing policies and practices preventing referral to diversion and mediation in cases where public interest is considered as overriding the best interest of the minor. It is also important to allow mediation to function independently, using it as an early intervention mechanism as well as a complementary mechanism to criminal justice proceedings. Juvenile and young offenders may benefit from introducing other restorative justice programmes such as family and community restorative justice conferences.

In the case of adults, the entire new legal framework has to be defined. As it is planned to adopt a number of legal amendments and introduce VOM for adults, the second part (on adults) aims at providing an exhaustive list of regulatory options for this purpose. It represents an information platform for further discussions among policymakers, legislators and other key stakeholders for the introduction of VOM in adult cases. Accordingly, it lists the procedural and substantive aspects of VOM that should be regulated although options may vary as to how.

The new legal framework, both for juveniles and adults, should envisage provisions stipulating selection criteria, referral procedures, reporting back and follow-up procedures by restorative justice services. It should allow various actors, including the police, prosecutors, judges, probation and penitentiary officers, or victim assistance coordinators to refer cases for mediation. These individuals should have a duty to inform the victim, offender, and other affected persons about the offer of restorative justice at any stage of proceedings. The outcome of the restorative justice process could be taken into account in decision-making about the case, including sentencing and early release decisions.

While VOM and other restorative justice practices are the focus of this needs assessment, the report also provides information on other alternatives to prosecution<sup>2</sup> (which can be used besides VOM) such as diversion programs, referral to the welfare system, decriminalisation policies. These measures have been introduced in most Council of Europe member states and have expanded options available to judges and prosecutors for handling criminal cases.

These reforms should be supported by a strengthened institutional framework. The third part includes recommendations to strengthen and develop existing institutions responsible for VOM delivery. Particular attention is given to the institutionalisation and sustainability of restorative justice through inter-agency coordination, the creation of a victim support unit/specialist within the Agency for Crime Prevention and the active engagement of CSOs.

With regards to professionals participating in restorative justice programmes, continuous training and specialisation should be secured. Mediators and social workers should be provided with adequate support, human and financial resources. In particular mediators should be compensated regardless of whether a case has been concluded with a diversion and mediation agreement. External monitoring mechanisms as well as a comprehensive methodology to measure the effectiveness of diversion

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<sup>1</sup> Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States concerning restorative justice in criminal matters, Available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3)

<sup>2</sup> CoE Rec 2018 - recognises that restorative justice can complement traditional criminal proceedings, or be used as an alternative to them;



programmes should be developed. Finally, awareness raising measures targeting key stakeholders and society at large should be undertaken.

Georgia has made significant progress in implementing diversion and mediation program as an effective alternative for juveniles and young adults within the criminal justice system. The introduction of restorative justice mechanisms has provided a solid framework for facilitating meaningful dialogue between victims and offenders and promoting accountability. Integrating restorative justice in a complex framework of diversion programs has led to reduced juvenile reoffending rates among diverted ones. This achievement should be maintained, and further steps should be encouraged to further enhance this program, expand its reach and increase effectiveness. The government of Georgia should prioritize evidence-based decision making to guide further actions towards the advancement of restorative justice programs and principles to gradually ensure widespread application of restorative justice at all stages of the criminal justice process both for juveniles, youth and adults to foster a more just and inclusive system that prioritizes the well-being of victims, the accountability of offenders, and the restoration of trust within the community.

## Methodology

This report is based on the information gathered through 1) a desk review, 2) consultations with key stakeholders, 3) the analysis of international standards and 4) the Council of Europe member states' legislation and practices in the field of restorative justice.

Following a desk research of national legislation, guidelines, reports produced by state and non-state actors, between 18 and 21 of April 2023 the project's consultants, carried out consultations with key representatives of the Agency, including its Deputy Head, Head of Research and the Head of the Department on Diversion and Mediation, managers, social workers and mediators. The consultants also carried out interviews with judges and prosecutors, representatives of the Georgian Bar Association, the Legal Aid Service and several CSOs active in the field of victim and women protection and support (the Georgian Young Lawyer's Association, the Women Information Centre, the Anti-Violence Network of Georgia, Partnership for Human Rights, Prevention for Progress), representatives from academia specialising in the field of restorative justice (from the Ivane Javakishvili Tbilisi State University, Sulkhani-Saba Orbeliani University, and Free University) as well as representatives from the Public Defender's (Ombudsman) Office and from UNICEF. Care was taken to secure geographical representation by inviting stakeholders such as judges, prosecutors, Legal Aid Service lawyers and mediators working in the various regions of Georgia and to include judges and prosecutors who did not have substantial experience in restorative justice.

The comparative overview includes examples of laws and practices from various Council of Europe member states. The examples have been selected on the basis of their relevance to address issues raised during the consultations with the stakeholders and also to provide an overview of the various options available in the regulation and practice of restorative justice in Europe. The countries covered include Austria, Belgium, Spain, Portugal, Italy, Switzerland, France, Germany, Finland, Ireland, Norway, Czech Republic, Slovenia, North Macedonia, Poland and the Netherlands. Rather than a country-by-country overview, the needs assessment follows a systematic, topic by topic structure.

## Introduction

“Restorative justice” refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offense, through the help of a trained and impartial third party (hereinafter the “facilitator”).<sup>3</sup> Restorative justice is an alternative approach to traditional criminal justice systems, which places an emphasis on the rehabilitation of offenders and restoration of harm done to victims and communities. Restorative justice is a framework that should be based and guided by clear standards, values and principles. Restorative justice serves the interests of victims, offenders and the communities and society at large, and also helps the criminal justice system to increase credibility, become more participatory and responsive to the needs of individuals and communities. The Venice Declaration on the Role of Restorative Justice in Criminal Matters recommends each Member State “to stimulate a wide implementation of restorative justice, its principles and methods as a complement or, where suitable, as an alternative to or within the framework of criminal proceedings aiming at desistance from crime, offenders’ reintegration and victims’ recovery.”<sup>4</sup>

In the past decade, Georgia has seen numerous joint efforts made by state institutions, and international and local organizations, to introduce and properly implement restorative justice programmes for juveniles. The efforts have been supported by legislative amendments, pilot projects, and training programmes for justice professionals. Between 2010-2021, the total number of diverted juveniles and young adults aged 14 to 21 years was 5595. (3571 juveniles and 2024 young adults). In 2021, 51% of all juvenile offenses were dealt through diversion as opposed to criminal prosecution.<sup>5</sup> Out of all diverted cases in 2021, 65% of cases ended with successful mediation. Based on the most recent survey conducted by Prosecutor’s Office of Georgia (POG) reoffence rate of all juveniles between 2010 – 2018, was 9%.<sup>6</sup>

The figures provide evidence that Georgia has made significant progress in implementing restorative justice – diversion and mediation programme over the past decade. The total number of diverted juveniles and young adults is considerable, and the fact that a majority of diversion cases now end with mediation is encouraging. The ratio between diversion, through mediation and prosecution of juvenile offenses suggests that the criminal justice system is becoming more responsive to the needs of children and young individuals. The low re-offense rate among juveniles who have gone through the diversion and mediation programme is also a positive sign of the effectiveness of restorative justice approaches.

The below needs assessment report is prepared to ensure the effective functioning of restorative justice programmes in Georgia in line with the Council of Europe Recommendations and other international standards. In particular, the Venice Declaration called state members to develop national action plans or policies, where necessary, for the implementation of Recommendation CM/Rec (2018)8 on restorative justice in criminal matters, by ensuring inter-agency co-operation nationwide, adequate national legislation and funding, while reflecting on the idea that a right to access to appropriate restorative justice services for all the interested parties, if they freely consent, should be a goal of the national authorities<sup>7</sup>.

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<sup>3</sup> Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3)

<sup>4</sup> Venice Declaration on the Role of Restorative Justice in Criminal Matters, available at: <https://rm.coe.int/0900001680a4df79>

<sup>5</sup> Report of the Prosecutor’s Office of Georgia on Juvenile Justice, available at: <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf>

<sup>6</sup> Report of the Prosecutor’s Office of Georgia on Juvenile Crime and Re-offence rates, available at: <https://pog.gov.ge/page/default/ganmeorebiTi-danashauli-arasrulwlovanTa-wesiT-ganridebul-pirebshi>; The calculation is made based on three years’ interval upon completion of the diversion and mediation agreement terms

<sup>7</sup> Recommendation CM/Rec (2018)8 on restorative justice in criminal matters <https://rm.coe.int/0900001680a4df79>

This assessment identifies the strengths and weaknesses of an existing programme, as well as opportunities for its improvement and further expansion of its application in legislation, practices and approaches. Identified gaps, challenges, and opportunities in the implementation of restorative justice in Georgia should help involved institutions to strengthen the current restorative justice programmes, promote the use of restorative justice at all stages of the criminal proceedings, provide adequate training and support for justice professionals, and raise awareness among the public about the benefits of restorative justice. These coordinated actions will lead to promoting a culture of restorative justice in Georgia that emphasizes the restoration of harm done to victims and communities, the rehabilitation of offenders, and the empowerment of all stakeholders in the criminal justice system.

## PART ONE: VICTIM OFFENDER MEDIATION FOR JUVENILES

### 1. Overview of restorative justice for juveniles in Georgia and eligibility criteria

#### 1.1. Comparative good European practices on eligible offenses for VOM in juvenile cases

CoE Recommendation CM/Rec (2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters recognises that restorative justice can complement traditional criminal proceedings or be used as an alternative to them.

The Recommendation states that the *type, seriousness or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders.*

Rule 6 of the Recommendation states: “Restorative justice may be used at any stage of the criminal justice process. For example, it may be associated with a diversion from arrest, charge, or prosecution, used in conjunction with a police or judicial disposal, occur before or parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after a sentence has been passed or completed. Referrals to restorative justice may be made by criminal justice agencies and judicial authorities or may be requested by the parties themselves.”

According to the UNODC Handbook on Restorative Justice Programmes<sup>17</sup> “Among the findings that have emerged from programme implementation so far is that restorative justice programmes can be particularly effective when they target **higher risk and more serious offenders**. Successful resolutions and restorative outcomes in victim-offender mediation and conferencing are possible for both property-related and violent offences, adult and youth offenders, and for offenders and victims who are related as well as those who are strangers to one another”.

In number of the Council of Europe member states, while the scope of eligible offenses for VOM in adult cases tends to be limited to offenses punished with up to four- or five-years deprivation of liberty, in juvenile cases there is a trend towards allowing VOM for all offenses. **In Austria and Belgium for example there is no limit on the type of eligible offenses based on their gravity and possible penalty applicable, which means that very serious offenses can also be referred to mediation.** In Belgium recidivism is one among many factors taken in consideration for referring case to mediation but does not appear to be preclusive. Among the factors taken in consideration are 1) the interest of the minor, 2) his/her personality and degree of maturity, 3) his/her environment, 4) the gravity of the facts, whether they have been repeated, how long ago they have been committed, what were the damages

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<sup>17</sup> UNODC Handbook on Restorative Justice Programmes; available at: [https://www.unodc.org/documents/justice-and-prison-reform/20-01146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf)

and consequences for the victim, 5) previous measures adopted in respect of the minor and the minor's conduct while undertaking them, 6) public security considerations. Also, the availability of educational and treatment means as well as any other resource foreseen by regulations are also taken in consideration.<sup>18</sup> The Italian Juvenile justice code also foresees that a judge can suspend the trial for up to three years (in case of offenses entailing up to twelve years deprivation of liberty) or one year (for less serious offenses) and refer the minor to juvenile services for the adoption of rehabilitation measures and participation in VOM. The referral does not foresee preconditions such as the juvenile being a first-time offender. The assessment is made on a case-by-case basis and based on a psycho-social assessment.<sup>19</sup>

### Recommendation

It is recommended to develop and use restorative justice with respect to wide range of offenses and procedures through the development of innovative restorative approaches and with due procedural safeguards. It is recommended to establish a clear legal basis and criteria "where restorative justice is referred to by the judicial authorities, or where it is otherwise used in a way which impacts, or which may impact, upon prosecution or court proceedings..." Aims, impact and outcomes of restorative justice may differ depending on the individual case circumstances and the stage of the process at which it takes place<sup>20</sup>.

For example, while successful VOM may, as already regulated under existing laws, lead to discontinuation of criminal proceedings, a successful VOM in respect of very serious offenses may lead to a reduction in the applicable sentence (for more details, see chapter 9.5 below). Access to VOM and / or other restorative justice programmes should not be limited to those juveniles and young adults who are being diverted. Additionally, access to diversion and mediation program could be expanded to juveniles who are not first-time offenders on a case-by-case basis.

## 2. Applying restorative practices in respect of children below the age of criminal responsibility

In Georgia, until 2020, there was no state institution in the country, to respond to the offenses committed by children below the age of criminal liability, through child-centred services and programmes. In 2020, as a result of a long and multi-stakeholder consultation process, the **Juvenile Referral Centre** was created in the Agency. The Juvenile Referral Centre is **responsible to ensure the socialization, resocialization and rehabilitation of minors (between 10 to 18 years old) with delinquent behaviour and minors below the age of criminal liability (between 7 and 14 years old) who have allegedly committed a crime envisaged in the Criminal Code of Georgia based on the standard of reasonable doubt established by competent authority**. Currently, the Centre has offices in Tbilisi and Kutaisi. As shared by the representatives of the Juvenile Referral Centre during interviews, according to the plan, offices will be opened in Batumi and Telavi. The Centre works based on multi-agency approach and majority of Centre's beneficiaries currently are children living in the street and below the age of criminal liability. Agencies contributing to the work of the Referral Centre are the Ministry of Interior,

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<sup>18</sup> Article 98 of Decree on prevention, aid to youth and youth protection, available at: [https://etaamb.openjustice.be/fr/decret-du-18-janvier-2018\\_n2018011568.html](https://etaamb.openjustice.be/fr/decret-du-18-janvier-2018_n2018011568.html)

<sup>19</sup> Article 28 of the Italian Juvenile Justice Code, available at: <https://www.altalex.com/documents/news/2014/06/18/codice-processo-penale-minorile-d-p-r-448-1988>

<sup>20</sup> See chapters below on the impact of the mediation agreement on criminal proceedings.

Ministry of Health, Social Protections and IDPs, Ministry of Education, Sports and Science, and general educational institutions / schools, Special Penitentiary Department, and Prosecutor’s Office of Georgia.

During the consultations in Tbilisi participants expressed an interest in existing approaches regarding the possibility of offering restorative justice programs and restorative practices to Juvenile Referral Centre beneficiaries.

## 2.1 International standards on children below the minimum age of criminal responsibility

The Convention on the Rights of the Child (CRC) requires States Parties to establish “a minimum age below which children shall be presumed to not have infringed the penal law”.<sup>21</sup> The Standard Minimum Rules for the Administration of Juvenile Justice (1985), also called the ‘Beijing Rules’, the European Rules for Juvenile Offenders Subject to Sanctions or Measures (2008) as well as the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (2010) state that the minimum age of criminal responsibility should not be too low and should be determined by law”. While the Committee on the Rights of the Child<sup>21</sup> recommended that the minimum age for criminal responsibility is at least 14 years, the needs of children under the minimum age of criminal responsibility who have (allegedly) been involved in offending behaviour remains a challenge. Finding ways to deal with children under the minimum age in conflict with the law requires an approach that preserves the spirit of ending detention for all children but recognises at the same time that there are children coming from very difficult backgrounds and marginalised families who do “offend” and require attention<sup>22</sup>. UNICEF’s guidance notes on children under the minimum age of criminal responsibility<sup>23</sup> stressed that the involvement of these group of children in offending behaviour is an indicator of potential vulnerability that should be dealt with by the social welfare system as part of its secondary prevention strategy and not by the child justice system. Children under the minimum age should not be considered child offenders. Special protection measures should instead address the root causes of their offending behaviours, support their parents/ caregivers and should never be punitive or disciplinary in nature, nor entail restriction or deprivation of liberty. They should be tailored and based on a comprehensive and interdisciplinary assessment on the child’s familial, educational and social circumstances, social support system, motivation for the problematic behaviour and particular characteristics and special needs. Participation in restorative programmes (es verbal apology, apology letter, peer mediation, victim empathy courses) are among the community based programmes for minors which have been considered as suitable also for children under the minimum age of criminal responsibility alongside counselling, mentoring by peers, treatment for behavioural problems or for abuse and addiction problems, structured recreational and leisure activities and programmes (sports, culture, music, arts..)or supplementary educational tutoring. While restorative justice approaches are not primarily designed to deal with cases of children under the minimum age of criminal responsibility, a restorative approach may be appropriate when both the “offender” and the victim are children.

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<sup>21</sup> Committee on the Rights of the Child’s paragraph 22 of General Comment No.24 on Children’s Rights in the Child Justice System, 2019

<sup>22</sup> UNICEF, Systematic responses to children under the minimum age of criminal responsibility who have been (allegedly) involved in offending behavior in Europe and Central Asia, December 2022, available at: [https://www.unicef.org/eca/media/27721/file/Systematic%20Responses%20to%20Children%20under%20the%20Minimum%20Age%20of%20Criminal%20Responsibility%20who%20have%20been%20\(Allegedly\)%20Involved%20in%20Offending%20Behaviour%20in%20Europe%20and%20Central%20Asia.pdf](https://www.unicef.org/eca/media/27721/file/Systematic%20Responses%20to%20Children%20under%20the%20Minimum%20Age%20of%20Criminal%20Responsibility%20who%20have%20been%20(Allegedly)%20Involved%20in%20Offending%20Behaviour%20in%20Europe%20and%20Central%20Asia.pdf)

<sup>23</sup>UNICEF Guidance note of December 2022, available at: [https://www.unicef.org/eca/media/27721/file/Systematic%20Responses%20to%20Children%20under%20the%20Minimum%20Age%20of%20Criminal%20Responsibility%20who%20have%20been%20\(Allegedly\)%20Involved%20in%20Offending%20Behaviour%20in%20Europe%20and%20Central%20Asia.pdf](https://www.unicef.org/eca/media/27721/file/Systematic%20Responses%20to%20Children%20under%20the%20Minimum%20Age%20of%20Criminal%20Responsibility%20who%20have%20been%20(Allegedly)%20Involved%20in%20Offending%20Behaviour%20in%20Europe%20and%20Central%20Asia.pdf)

Appropriate programmes should be organized by social welfare agencies and not by child justice agencies. Suitable programmes also include counselling for parents (for example when they are divorcing or when one parent is in prison or has mental health problems); positive parenting or behavioural parenting programmes (focusing on relationship between parents and their children, non-physical discipline strategies, parental depression, mental well-being and stress) or treatment for substance abuse or addiction in the family.

## 2.2. European comparative good practices

In north Macedonia in cases where a child under the minimum age committed an act envisaged by law as a crime or misdemeanour and acquired material gains or caused harm to another person, the Centre for social work shall mediate between the child at risk and the parents and the victim in order to mutually reconcile and pledge not to repeat the offense and recover the proceeds or compensate the damages caused.

In the Czech Republic the Probation and Mediation Service (PMS), when carrying out its missions, cooperates closely with social welfare bodies which are empowered by the special law to provide socio-legal protection of children. This type of cooperation is particularly important as the PMS competence extends to children below 15 years of age who have committed unlawful acts. “Youth Offending Teams” have been established in a number of judicial districts in the Czech Republic and include representatives from the PMS, law enforcement authorities, and other bodies whose activities focus on high-risk juveniles and their families. Youth offending teams are directed by PMS representatives. Plans are being made to secure coordination and active support of their activities at national level.

In Belgium the Code of prevention, aid and protection of youth<sup>24</sup> has been characterized by a “de-judicialization” of procedures involving children: the judicial system cannot be involved and initiate any procedure unless an advisor from the social welfare system has intervened first and has not been able to reach an agreement with the child’s family. The code has created Prevention Councils, social welfare bodies established over the national territory in charge of administering educational and social preventive measures. Preventive measures are based on principles such as the free consent of the children and their family, the absence of an underlying judicial or administrative procedure and the protection of the family’s anonymity. Preventive measures include assistance and protective measures: **assistance measures** can be offered to “children in difficulty” and to individuals experiencing difficulties in the exercise of their parental rights and obligations as well as any child whose health and security are endangered or whose educational conditions are compromised by their own behaviour or by the behaviour of a family member. The social welfare service’s advisor agrees with the child and his/her family a development plan which can last for up to one year. Children whose health, security or educational conditions are considered “in danger” due to their own behaviour or a family member’s behaviour are subject to **protective measures**. As for minors below the age of 12 who have committed offenses, they can only receive a reprimand. In the absence of measures appropriate to the children below 12 years, the juvenile judge can refer the case to the prosecutor so that the welfare services are contacted.<sup>25</sup>

In France, children below 13 years cannot be usually held criminally liable<sup>26</sup>. There is a presumption that children below 13 years are unable to understand with discernment (presumption de non-discernment) while children above the age of 13 are presumed to be able to understand the implications of their

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<sup>24</sup> The Code was adopted in 2018 and amended in 2022 to strengthen its preventive function

<sup>25</sup> [https://etaamb.openjustice.be/fr/decret-du-18-janvier-2018\\_n2018011568.html](https://etaamb.openjustice.be/fr/decret-du-18-janvier-2018_n2018011568.html)

<sup>26</sup> <https://www.service-public.fr/particuliers/vosdroits/F1837?lang=&quest0=0&quest=>

actions. The capacity for discernment of a minor under the age of thirteen and the lack of capacity for discernment of a minor aged at least thirteen can be established in particular by their declarations, those of their family and school environment, the elements of the investigation, the circumstances in which the facts were clerk, expertise or psychiatric or psychological examination<sup>27</sup>

No punishment is applicable under the judiciary code for minors to children below 13 years old<sup>28</sup>.

If the minor was not able to understand his/her situation, diversion measures cannot be adopted, and the minor will be referred to social welfare authorities.

Alternatives to prosecution available to minors above 13 years old will also be available to children below 13 years old only if it was established they were capable of discernment. Such alternatives include attending a course in civic education, consultation with a psychologist or psychiatrist. The former can include a module on sensibilisation to the consequences of school bullying if the offense was committed in such framework. Other alternatives may include the proposal of reparation to the favour of the victim or community. Such measures require the agreement of the minor and his legal guardians and cannot put in place without their agreement. Other alternatives to prosecution foreseen in the code of criminal procedure usually require the consent of the minor's legal guardians. The latter are summoned by the prosecutor to discuss the possible measures and can be subject to sanctions if they fail to appear following the summons<sup>29</sup>. Restorative justice can be proposed to the minor and the victim at any stage of the procedure provided that the facts have been acknowledged. Restorative justice can only be implemented if the degree of maturity and the capacity for discernment of the minor allow it, and after obtaining the consent of the legal representatives<sup>30</sup>.

In Ireland, according to 2001 Children Act, children below 12 years old are considered as not capable to commit an offense. There is a rebuttable presumption that children between 12 and 14 years old are incapable of committing an offence because the child did not have the capacity to know that the act or omission concerned was wrong.

If the member of the Garda Síochána (Police) has reasonable grounds for believing that a child under the age of 12 years is responsible for an act which would constitute an offence (if committed by a minor above that age), the member shall endeavour to take the child to the child's parent or guardian. Where the child is taken to his or her parent or guardian and the member of the Garda Síochána so taking the child has reasonable grounds for believing that the child is not receiving adequate care or protection, the member shall inform the health board for the area in which the child normally resides of the name, address and age of the child and the circumstances in which he or she came to the notice of the Garda Síochána. Where it is not practicable for the child to be taken to his or her parent or guardian, the member of the Garda Síochána concerned may give the child, or arrange for the child to be given, into the custody of the health board for the area in which the child normally resides. Subsequently a procedure for care or supervision of the child will be triggered. The child may be removed to safety of there is an immediate and serious risk to his health or welfare. Where a child under the age of 14 years

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<sup>27</sup> Article R11-1 of the Juvenile Justice Code, available at:

<https://www.legifrance.gouv.fr/download/pdf/legiOrKali?id=LEGITEXT000039086952.pdf&size=275%20Ko&pathToFile=/LEGITEXT/00/00/39/08/69/52/LEGITEXT000039086952/LEGITEXT000039086952.pdf&title=Code%20de%20la%20justice%20p%20C3%A9nale%20des%20mineurs>

<sup>28</sup>

[https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000039086952/LEGISCTA000039087861/#LEGISCTA000039087861](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000039086952/LEGISCTA000039087861/#LEGISCTA000039087861)

<sup>29</sup> Article L422-1 and L422-2 and D422-1 of the French Code of Juvenile Justice, available at:

<https://www.legifrance.gouv.fr/download/pdf/legiOrKali?id=LEGITEXT000039086952.pdf&size=275%20Ko&pathToFile=/LEGITEXT/00/00/39/08/69/52/LEGITEXT000039086952/LEGITEXT000039086952.pdf&title=Code%20de%20la%20justice%20p%20C3%A9nale%20des%20mineurs>

<sup>30</sup> Article L13-4 of the French Code of Juvenile Justice

is responsible for an act or omission which, would otherwise constitute an offence, any person who aids, abets, counsels, or procures the child in or in relation to that act or omission shall be guilty of that offence and be liable to be indicted, tried and punished as a principal offender<sup>31</sup>.

## Recommendations

It is recommended that restorative programmes are envisaged among the interventions of the **Juvenile Referral Centre** while ensuring that children are not treated as offenders but as individuals with specific needs. Working with the families of these children is of utmost importance to address the underlying factors that contribute to child delinquent behaviour.

The Juvenile Referral Centre, as a young institution, should focus on engaging child protection agencies, and social services, to ensure that each child's needs are addressed in a timely and effective manner targeting children and their families, without judicial interventions. It would be advisable to support the Centre in developing programmes that include restorative practices. This can include participation in restorative programmes (es verbal apology, apology letter, peer mediation, victim empathy courses) as part of the community based programmes for minors which have been considered as suitable also for children under the minimum age of criminal responsibility alongside counselling, mentoring by peers, treatment for behavioural problems or for abuse and addiction problems, structured recreational and leisure activities and programmes (sports, culture, music, arts..)or supplementary educational tutoring.

Furthermore, it is advisable that Child Referral Centre closely coordinates with the Ministry of Education and Science pilot project on school mediation to ensure cooperation and utilization of existing resources created under the auspices of school mediation program.

It is recommended to adopt judicial policies and legislation foreseeing that the judicial system engagement in juvenile cases is a measure of last resort, and that priority is given to protective and assistance measures carried out by social welfare operators and targeting both the minor and his/ her family. The Belgian revised Code on prevention, assistance and protection of youth adopted in 2018 could be considered as a positive model for future development of juvenile criminal policies.

### 3. Early stages of proceedings, restorative justice and decriminalization policies

During the Consultations in Tbilisi, participants expressed an interest in decriminalization policies which would enable the dropping of charges in consideration of the negligible amount of the harm caused. As highlighted by a Prosecutor participating in the consultations, the Prosecutor's Office of Georgia uses discretionary authority in case of damage of minor importance. However, it is clear in practice that there will be cases when even minor facts must be criminally prosecuted, because in addition to the result of the crime, the form of the crime, the juvenile's attitude to the committed act, past crimes, etc., must be taken into account. Thus, in addition to the small value of damages, the prosecutor's discretionary decision is based on other important circumstances highlighted in the criminal case. According to some other participants to the consultations the diversion and mediation programme has been triggered even in case of small thefts of candies or a package of cigarette. The predominance of

<sup>31</sup> <https://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/print#sec52>



minor offences being handled through diversion and mediation programme, raises concerns about compliance with the principle of proportionality and poses the risk of attracting more social problems to the criminal justice system than necessary. Such practice is inconsistent with Article 7.2 of the Criminal Code which states that “An act that, although formally containing the signs of an act provided for by this Code, has not caused, due to its insignificance, such harm or has not created the risk of such harm that would require criminal prosecution of its perpetrator shall not be deemed a crime”. Furthermore, the Juvenile Justice Code of Georgia stipulates the principle of proportionality in Article 7. According to this provision, measures applied to minors in conflict with the law must be proportional to the acts they have committed and appropriate for their individual needs, age, educational background, social circumstances, and other relevant factors. Article 8 emphasizes that, in juvenile justice procedures, priority should be given to the most lenient treatment that effectively serves the objectives outlined in the Criminal Code of Georgia, the Criminal Procedure Code of Georgia, the Code of Administrative Offenses of Georgia, the Imprisonment Code of Georgia, and the Juvenile Justice Code itself. Allowing restorative justice to function as a standalone mechanism will provide possibility to refer such minor offenses for mediation, without exploiting diversion program. Guidelines could be considered to assist prosecutors in applying the principle of proportionality in the prosecution of offenses that caused minor damage.

The POG Report (2021) provides that during this year, 25 juvenile proceedings were dropped without applying diversion due to the small amount of harm caused by the offense and the absence of public interest in prosecution. The majority of these cases were related to theft under Article 177 of the Criminal Code. Such cases are supposed to be referred to the newly established (2019) Juvenile Referral Centre,<sup>32</sup> which operates under the Agency, which is mandated to socialize, re-socialize, and rehabilitate minors, offer services based on the individual needs, with difficult behaviour and to carry out crime prevention through an institutional and complex approach.

There are conflicts that can be resolved at the school, in the families and through social services, or community level without involving the criminal justice system, whereas it is crucial for citizens and communities to develop skills to handle conflicts through restorative practices.

**Schools are required to notify police when there is a conflict**, violence, etc. and school resource officers tend to excessively involve police officers even in small conflicts that could be handled internally. Besides this, police do not use informal restorative justice methods to resolve low-level crime and anti-social behaviour. Currently a School Mediation programme is being piloted to spread the use of mediation in schools as an early resolution mechanism for conflicts involving minors.

### 3.1 European good practices on early intervention and de-criminalisation in respect of minor offenses

In Switzerland Federal law on juvenile justice states that proceedings can be terminated if a) a sanction may undermine a protective measure applied to the minor, b) the degree or culpability and the consequences of the offense are minor c) the juvenile has compensated the damages within the possibility of his means (for example by personally carrying out some activity) or has made efforts to compensate the damage caused and if the offense entailed only the imposition of a reprimand, the public interest and the interest of the victim are of limited importance and d) the minor has acknowledged the facts. Additionally, a waiver of criminal liability will be applied e) if the minor was so negatively affected by the consequences of the offense that a punishment would be inappropriate, f) the minor's parents, guardians or third parties already sufficiently punished the minor, g) considerable

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<sup>32</sup> Charter of the Child Referral Centre of the Ministry of Justice of Georgia; available at: <https://matsne.gov.ge/ka/document/view/3394478?publication=0>

time has passed since the offense and the minor behaved well while the public and victim's interest were of limited importance<sup>33</sup>.

In Spain Organic Law 5/2000, of January 12, 2000, regulating the Criminal Responsibility of Minors designed a model of criminal procedure for minors based on its markedly educational nature and recommended the use of out of court mechanisms through a de-judicialized intervention that avoids the stigmatization of the minor.

Additionally, the technical team in charge of assessing the minor's circumstances can propose in its report the advisability of not continuing the processing of the file in the interest of the minor, because the reproach to the minor has been sufficiently expressed through the procedures already carried out, or because it is considered inappropriate for the interest of the minor, given the time elapsed since the commission of the facts. In this case the Public Prosecutor may refer the file to the Judge with a proposal for dismissal, also sending, where appropriate, information from the proceedings to the public entity for the protection of corresponding minors, for the purpose of acting in protection of the minor.

Examples of early police intervention and their use of restorative justice techniques to defuse conflict situations and prevent conflicts from spiralling are provided in the relevant chapters (part two, chapter 15.1).

With respect to decriminalisation policies, in Italy restorative justice and other diversion measures are part of a broader policies for the decriminalisation of a number of offenses even in adult cases. With specific regards to minors the prosecutor can drop proceedings at the preliminary investigation stage if the offense is minor (*tenuita' del fatto*) and the behaviour was occasional. In this case the prosecutor will seek a nonsuit ruling (*giudizio di non luogo a procedere*) as the continuation of proceedings is at odds with the educational needs of the minor.<sup>34</sup> Also in respect of adults criminal legislation foresees offenses not subject to criminal prosecution due to their extremely mild nature (*esclusione di punibilita per la particolare tenuita del fatto*)<sup>35</sup>. According to this provision judges can decide to terminate a criminal case in respect of offenses which in abstract can be punished with a fine or deprivation of liberty for up to 5 years if the relevant conduct is not serious and the offender is not a career criminal. It is also possible to terminate criminal proceedings in respect of misdemeanours when offenders immediately comply with orders or instructions issued by the competent authority or when the negative effects have been eliminated by compensatory or restitutive measures. Pursuant to legislative decree No. 150 of 2022 restorative justice programmes must be available also when an offense has been declared as "extinguished" and criminal proceedings were discontinued. The Criminal Code also regulates "simple theft", which is theft that was committed without "scheming", for example in respect of a lost item or item such as a wallet or phone, forgotten in a public space and found by the offender. In these cases, the court can pardon the offender if he believes that he will not reoffend.

### Recommendation

It is recommended to secure the effective application of Article 7.2 of the Criminal Code and/or amend it to preclude criminal liability for the commission of small offenses by juveniles when the offense was

<sup>33</sup> Art 21 Bundesgesetz uber das jugendstrafsrecht, available at <https://www.fedlex.admin.ch/eli/cc/2006/551/de>

<sup>34</sup> Article 27 of the Juvenile proceedings code, Codice processo penale minorile - D.P.R. 448/1988, D.P.R., 22/09/1988 n° 448, available at: <https://www.altalex.com/documents/news/2014/06/18/codice-processo-penale-minorile-d-p-r-448-1988>

<sup>35</sup> <https://www.sistemapenale.it/it/scheda/sezioni-unite-2022-18891-tenuita-del-fatto-reato-continuato>

of occasional nature, when reparatory measures have been put in place and/or when a considerable amount of time has passed since the offence and the minor has behaved well ever since. Other considerations such as the risk that the continuation of criminal proceedings may interfere with the need to re-integrating the minor could be taken in consideration. In such instances, the cases could be directly referred to restorative justice and the welfare services.

Based on the potential benefits of restorative justice, it is recommended to consider the application of **mediation as a standalone programme**. "Restorative justice interventions can be practiced not only as an alternative, but also as a complement to the criminal justice process at every stage of the process, including: the pre-trial stage as diversion from prosecution; the trial and sentencing stages; and at the post-sentencing stage as an alternative to imprisonment, as part of or in addition to a non-custodial sentence, during imprisonment, or upon release from prison as part of an offender's reintegration process."<sup>36</sup>

It is recommended to secure that referral for mediation purposes happens immediately in case of any arrest, or other measure adopted in respect of juveniles so that restorative measures could be considered at the earliest stages upon condition that the key facts are established and the minor has acknowledged the facts.

It is advisable to hold consultations with the respective stakeholders to explore potential of adding a restorative justice programme as part of an early intervention mechanism and allow police referrals. Community Police officers could be trained in the application of restorative practices, including community resolutions, especially when they receive complaints when there is an underlying interpersonal conflict that could be addressed at the earliest stages for small offenses to which they provide a response.

Engagement of local communities is essential as it can help citizens to develop skills to handle conflicts through restorative practices. Relevant criteria, rules and procedures for referring such cases for mediation should be developed. It would be equally important in this context to engage and inform local community organizations, civil society organizations as well as local governance bodies in the process.

It is important to allow early restorative intervention mechanisms for dealing with child delinquency and conflicts **at schools**. The existing School Mediation Pilot programme should receive further support and be expanded country wide to deal with school conflicts. It is recommended in parallel, to develop criteria, rules and procedures for schools on referring cases to Diversion and Mediation Department, when the framework allows this department to handle mediation independently. Additional guidelines are needed to help schools define what can be handled internally, through restorative processes, and where there is a need to involve the police. It is recommended that this mechanism is developed through the coordination between the Ministry of Education and Science, Ministry of Justice, Prosecutor General's Office and the Ministry of Interior, to ensure that each institution has clearly defined roles and responsibilities. This will also allow the state to provide a proportional response to child delinquency, not to use diversion and mediation programme as the only alternative to criminal justice.

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<sup>36</sup>UNODC Guidelines on Restorative Justice Programmes; p. 10. Other ways to use restorative justice approaches in the criminal justice system" <https://www.unodc.org/documents/justice-and-prison-reform/20->

#### 4. Relationship of Victim Offender Mediation with diversion

The Council of Europe Appendix to Recommendation CM/Rec (2018)8 *clarifies that restorative justice may be associated with diversion from arrest, charge or prosecution, used in conjunction with a police or judicial disposal, occur before or parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after a sentence has been passed or completed.* The Venice Declaration stressed the importance of using restorative justice mechanisms in the criminal justice system as a response to juvenile offenses.

In Georgia, the only available restorative justice programme is victim-offender mediation programme for juveniles and young adults applied together with diversion. **The legislation does not provide for application of VOM as a standalone programme.** Victim-offender mediation is attached to diversion and is referred to as "Diversion/diversion-mediation program for juveniles in conflict with the law and persons between the ages of 18 and 21."

In line with the key international legal framework,<sup>37</sup> Juvenile Justice Code, provides that in the juvenile justice process, preference shall be given to the most lenient treatment<sup>38</sup>. The **preconditions for applying diversion**<sup>39</sup> are sufficient evidence for a probable cause that the minor has committed a less serious or serious crime; the juvenile has no previous convictions and has not participated in a diversion-mediation programme before; the juvenile confesses to the crime and there is an informed written consent of the juvenile and his/her legal representative to apply diversion. When these formal criteria are in place, when the individual assessment report shows diversion will ensure the juvenile's rehabilitation and prevention of future crimes in his/ her best interest and there is no public interest in initiating criminal prosecution or continuing an already initiated criminal prosecution, prosecutor decides not to pursue criminal charges and instead considers application of diversion and mediation programme.

The prosecutor is the first person who speaks to a juvenile/young adult in conflict with the law and their legal representative as well as victims about diversion and mediation before making decision on diversion. The prosecutor explains the essence of the diversion and mediation programme.

According to the law, and as confirmed by the information presented in POG Report for 2021<sup>40</sup> the prosecutor refers all diversion cases which involve a victim, regardless of the victim's position to the Agency to assign a mediator and a social worker. The mediator starts interaction with the victim to define the essence of a diversion and mediation programme and gets informed consent or refusal on possible participation in the victim-offender mediation.

**The decision on diversion cannot be affected by the position of the victim regarding diversion and / or denial of victim to participate in VOM.** In case victim refuses to participate in the mediation process, the prosecutor and social worker develop diversion programmes/obligations that the juvenile/young adult must undertake. The social worker assesses the individual needs, risks and protective factors and makes an appropriate recommendation, informing and agreeing with the prosecutor. These measures must aim at rehabilitation and reintegration of the individual and respond to their individual needs as assessed by the social worker. The mediator also has the right to refuse to involve the victim in the

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<sup>37</sup> Convention on the Rights of the Child, UN Standard Minimum Rules for Juvenile Justice (Beijing Rules); UNODC Model Law on Juvenile Justice; General Comment No. 10 of CRC: Children's Rights in Juvenile Justice,

<sup>38</sup> Juvenile Justice Code of Georgia. Article 8

<sup>39</sup> Juvenile Justice Code of Georgia. Article 40

<sup>40</sup> POG Report 2021, on Juvenile Justice; available at:<https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf>.

process. This may be due to reasons, such as the aggressiveness of the victim, their attitude towards the process, or other factors.

While before 2016, prosecutors were not obliged to draw up a protocol of refusal on applying diversion for the juvenile who met eligibility criteria, under the Juvenile Justice Code, prosecutors have imperative obligation to consider application of diversion-mediation as the default choice for eligible cases, with any denial requiring justification. The prosecutor's denial can be appealed, first before a superior prosecutor and later before a court. The court, based on its own initiative or on a motion of a party, after receiving individual assessment report of the social worker, can return a case to the prosecutor with the instruction to apply diversion-mediation programme. Judges can return cases for diversion at any stage of criminal proceedings, before sentencing.

### Statistical data

According to the POG Report<sup>41</sup>, in 2021, 363 juveniles were diverted. 343 Cases had victims out of which there were 235 (69%) successful mediations. In case of young adults, 270 were diverted. 253 Cases had victims and 154 (61%) ended with successful mediations. According to the same report, ratio of diverted juveniles on cases that fulfilled the formal criteria of diversion in 2021 was 80% versus 20% prosecutions. In 2019 the percentage of diverted juveniles that fulfilled formal criteria was 75% and in 2020 - 76%. (The same data is not available on young adults). The Report shows that courts returned 18 juvenile cases (5%) for diversion in 2021. In 2020 this figure was 9% and in 2019 - 8%.

Response to juvenile offenses through a diversion and mediation programme can only be effective if it is carried out on time with no unjustified interruptions. The POG Report (2021) shows that the period from the commission of the crime before making a diversion decision was one month in 143 cases, in 220 cases it was between 2 – 12 months. 25 cases took a maximum time of 12 months. According to the same report, out of 363 diverted juveniles, 24 were indicted before diversion was applied. In 7 cases, the prosecutor made a diversion decision before taking the case to court. Court returned 18 cases back to the prosecution at the pretrial stage to apply diversion which was 5% of denied diversions by prosecutors.

This positive dynamic during 2019 – 2021 is to be welcomed. Review of the 2022 Report, once it is published, will allow to assess the scale of the concern expressed by several interviewees about recent declining trends in the application of diversion by both prosecutors and judges.

The Diversion and Mediation programme today is the only effective restorative justice mechanism practiced for juveniles and young adults in Georgia. This highlights the pressing need for state institutions to ensure access to this programme in every eligible case, with the goal of facilitating dialogue between the juvenile/ young adult and the victim and enabling the victim to receive compensation including compensation for the damage caused to the victim... In light of this, it would be helpful to analyse the types of crimes and particular circumstances of cases where diversion and mediation **was not applied** when formal requirements were met. This is noteworthy because the Juvenile Justice Code does not foresee any restrictions of a general character on the use of diversion and mediation. The decision to apply diversion should be based on individual circumstances and reasoning that prioritizes the best interests of the child involved.

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<sup>41</sup> POG Report 2021 on Juvenile Justice; available at: <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf>. p.17.

While analysing these cases, it is important to take into account concerns shared by interviewees during the consultations held in Tbilisi. During the consultations with the criminal justice practitioners, concerns were expressed that there are occasions where eligible cases were not referred to mediation and diversion.

Practitioners mentioned instances where denial was based on **general prevention or public interest as opposed to the best interest of an individual child**, as required by the Juvenile Justice Code. Participants mentioned that refusals were based on a notion of public interest including reliance on public moral outrage and taking into consideration the public attitude to the offense. Public interest was also considered as prevailing over the interest of the child if inclusion in a diversion and mediation program would be considered as encouraging others to offend. Participants also described cases when prosecutors request **prior consent of the victims** that compensation be provided, before launching the official diversion and mediation process. There were also cases shared by practitioners where a victim's negative position affected the decision on diversion. According to one participant, decisions not to refer a case to diversion and mediation was often due to the fact that victims made requests for compensation of damages that could not be met by the juvenile / young adult in conflict with the law. One of the interviewed prosecutors described as substantiated the victims' opposition to diversion in cases of negligent crimes, when the victim was extremely distressed or underwent strong psychological trauma, or when harm was irreparable and when the offender showed no remorse. According to one prosecutor, if in cases of violence the victim and offender cannot agree to VOM, there is no alternative other than referring case to court. It appears that a good part of the issues raised by participants in respect to the consideration given to victims' position is connected to the inextricable link between mediation and diversion. Thus, grounds that may justify refusal to refer a case to mediation are also used to prevent the minor's access to diversion measures at all.

Additionally, a participant prosecutor indicated that especially when crimes are grave, they prefer to indict and refer the case to court. In similar cases the prosecutor would support VOM running in parallel to trial to prevent crimes (for example violence among juvenile groups) from spiralling. Such approach would actually be facilitated by the introduction of mediation for any type of crime and at any stage of the proceedings as implemented in a number of Council of Europe state members.

Concerns were also expressed that some prosecutors used **template reasoning** for the denial and that the internal appeal mechanism with the superior prosecutor has only formalistic character, and judges' referrals back to prosecution to carry out diversion and mediation has declined in recent years. There is no statistics available to review the number of appeals within the superior prosecutor and number of granting such appeals to evaluate effectiveness of this legal remedy. According to the POG Report (2021)<sup>42</sup> ratio of the cases returned from courts in 2019 was 8%, 2020 – 9% and in 2021 – 5%.

#### 4.1 European practices on diversion programmes for juveniles

In Austria, VOM is described as one of four “diversion programmes” whereby the prosecution office can discontinue the prosecution upon certain conditions. Diversion programmes are regulated by the Austrian Code of Criminal Procedure as alternatives to criminal prosecution and include 1) payment of a sum of money to the Government<sup>43</sup> (and other damages caused by the offense), 2) performance of

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<sup>42</sup> <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf> pg.10

<sup>43</sup> In case of minors, the payment of an amount of money (Section 200 StPO) should only be proposed if it can be assumed that the amount of money will be paid from funds that the young accused may independently dispose of.

Community Services for a period of up to six months (and possibly compensation of damages<sup>44</sup>), 3) probation<sup>45</sup> which may include committing to compensate the damages caused) and 4) out of court offence compensation (the equivalent to VOM). State prosecutors usually act as gatekeepers and are competent to choose the appropriate diversion programmes including referring cases to mediation.

In Portugal, in juvenile cases, the prosecutor can suspend the proceedings and can present a “plan of conduct” upon agreement with the minor and promise that s/he will not re-offend. The plan of conduct can include providing an apology to the victim and compensation (symbolic or effective, partial or total, through payment of a sum of money or through the performance of work or activities, achievement of certain targets in education, work or other activities, to carry out works in favour of the community, avoiding frequenting certain places or maintaining distance from certain social circles). The proceedings can be suspended for a maximum of one year. Social and mediation services contribute to the drafting of a plan of conduct due to the likely inability of the minor and his guardians to draft such a plan. If the proposal is not accepted by the minor, the prosecutors seek agreement to other measures (with the exception of the imposition of internment), can seek the involvement of mediation services and suspend the proceedings for a period of up to 30 days. These measures do not exclude the possibility for the parties to seek mediation at any stage of the proceedings upon their own initiative.

In Ireland the Garda Youth Diversion Bureau (GYDB) has responsibility for overseeing and developing the Diversion Programme nationally, which was put on a statutory basis under Part 4 of the Children Act 2001. The aim of the Diversion Programme is to prevent young people between the ages of 12 and 18 years of age from entering the criminal justice system and preventing the commission of further offenses.

## Recommendations

While it is encouraging to see the use of diversion or diversion and mediation for juvenile cases continues to increase, it is recommended to **conduct an analysis of denied cases, including examining the reasoning behind prosecutors' denials and the refusal of courts to return cases** for diversion for both juveniles and young adults. It is recommended to strictly adhere to the UN Standard Minimum

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<sup>44</sup> In case of community service, the Code of Criminal Proceedings also foresees that community services should be provided during the offender's free time and at a suitable institution. The prosecutor or judge can ask a social worker to negotiate/mediate the community services to be provided. The facility where the community services are provided must provide a confirmation that the services have been provided. Community services may not be provided for over 8 hours a day, 40 hours per week and 240 hours in total. The existence of training, educational or work commitments of the accused must be taken in consideration. Equally inadmissible are community services that amount to an interference in the personal rights or lifestyle of an accused. The heads of the public prosecutor's offices must each keep a list of institutions that are suitable for the provision of community services and, if necessary, supplement it. Anyone may request access to this list. If in the performance of community services/work the accused causes damages to the institution, he/she shall be liable for damages in light of existing Labour laws, while if the damages are caused to third parties, the federal government will be jointly liable (while the institution will not be held liable unless it is responsible for negligence or wilful intent. In which case the government can seek redress for the compensation paid). If the accused suffers an accident or illness while rendering community services, provisions on compensation under the Prison Act will apply.

In case of minors, community services can be performed for up to six hours per day, 20 hours a week and in total no more than 120 hours.

<sup>45</sup> Probation can be imposed for a period of one or two years and can also be made dependent on the accused expressly declaring that he is ready to fulfil certain obligations during the probationary period under supervision of a probation officer. These obligations may include the compensation of damages or other remedial measures to address the consequences of the offense under supervision of a probation officer. The public prosecutor's office can also request a person experienced in social work to provide this information and to assist the accused in fulfilling such obligations. Following the successful completion of the probation period the prosecutor can discontinue the criminal proceedings.

Rules for Juvenile Justice on the prioritization of the **most lenient measures toward juveniles. Diversion and restorative justice measures should be considered and effectively applied in practice before the imposition of criminal liability and punishment.**

Internal guidelines could be reviewed to secure an appropriate balance between the public interest and the interest of the child, also in light of a clarification of the notion of public interest. For example, public outrage/outcry should not be equated with public interest and should instead be considered as a form of undue influence on judges and prosecutors' decision-making in line with Opinion 1(2001), para 63,<sup>46</sup> of the Consultative Council of European Judges CCJE and Opinion 8(2013), para 17 of the Consultative Council of European Prosecutors<sup>47</sup>. In its case law the European Court of Human Rights has also considered the possibility that a virulent press campaign may undermine the independence of the judiciary and the right to a fair trial overall.<sup>48</sup> The Commentary to the Bangalore principles of judicial conduct have expressly stated that a judge must act irrespective of popular acclaim or criticism.<sup>49</sup>

Alternatives to prosecution that are tailored to the nature of the offense, such as drug offenses, could be considered in lieu of prosecution to address cases where diversion cannot be applied, as highlighted in the consultations.

Trainings and guidelines should secure that, in line with the Juvenile Justice Code, general prevention or public interest do not prevail over the best interests of the minor offender, in line the Juvenile Justice Code. Proper attention should be given to the training and supervision of prosecutors to ensure that each **decision is individualized**, and that the appeal mechanism within the prosecution does not have a formal character. Mediation and/or diversion should be **selected on the basis of their being appropriate** to the nature of the case.

Furthermore, it should be ensured that **victims** are adequately informed about diversion and restorative justice measures and their respective rights, **but that their position does not unduly influence the decision on diversion.**

It is recommended to give victim offender mediation **autonomous character** and apart from diversion apply it as an early intervention policy, at different stages of criminal justice proceedings, both as an alternative to the criminal justice system and as its complementary measure.

In addition to this, the Juvenile Justice Code of Georgia envisages **a written warning** to a juvenile as one of the diversion programmes, however, statistical reports<sup>50</sup> show that it has not been applied. It is recommended that a prosecutor gives consideration to the possibility to divert a juvenile in conflict with the law based on a written warning that would be equal to no intervention, when appropriate. These actions would allow the state institutions to allocate more resources on more complex cases that require a complex approach. If needed, internal guidelines of the prosecutors should be addressed to highlight the importance of these considerations.

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<sup>46</sup> CCJE Opinion No 1(2001) On standards concerning the independence of the judiciary, available at: <https://rm.coe.int/1680747830>

<sup>47</sup> CCPE, Opinion No8 (2013) on relations between prosecutors and the media, available at: <https://rm.coe.int/1680747848>

<sup>48</sup> *Natsvlshivili and Togonidze v Georgia*, judgment of 29 April 2014, para.105, *Kinsky v Czech Republic*, judgment of 9 February 2012, paras.90-99 and *Rywin v Poland*, judgment of 18 February 2016, para. 232

<sup>49</sup> Paragraph 28 of the Commentary to the Bangalore Principles of judicial conduct, available at: [https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry\\_on\\_the\\_Bangalore\\_principles\\_of\\_Judicial\\_Conduct.pdf](https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf)

<sup>50</sup> POG Report, 2021 available at: <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovan-TamarTlmsajuleba.pdf>



## 5. Stages of criminal proceedings where VOM can be used in Georgia

### Pre-trial and trial stage:

As mentioned above, in the majority of cases VOM for juveniles and young adults is applied upon referral of prosecutors at the pre-trial stage. In a handful of cases, pretrial and trial judges have referred cases back to prosecutors instructing to apply diversion and offer mediation. VOM operates as an alternative to prosecution and does not run in parallel to trial. This restricts access to restorative justice services and benefits in cases, where for various reasons diversion was not applied and yet parties would benefit from engaging in victim – offender mediation alongside or following court proceedings.

### Sentencing stage and Plea bargaining:

Article 67 of the Juvenile Justice Code on primary and additional sentences, stipulates that “One or several measures under Article 42 of this Code may be imposed on a minor together with the sentence(s).” Article 42 provides the list of the diversion programmes as follows “a restorative justice measure, including involvement in a diversion and mediation programme.” Pursuant to Article 8 of the Juvenile Justice Code “Restorative justice measures – a measure that allows minors in conflict with the law to accept their responsibility for an act committed, to remedy the consequences of a crime, and to compensate damage to and/or to reconcile with the victim”.

The provision above should allow judges to use restorative justice programme as an **additional measure alongside custodial or non-custodial sentences**. Interviewed judges shared their positive attitude towards restorative justice, spoke about the need to apply it together with the sentence and expressed the desire to have a good enforcement mechanism for it. However, there have been very few instances of this so far. Professionals explain this with the lack of clarity in the Juvenile Justice Code provision and the absence of mechanisms and/or internal guidelines for implementing mediation during the sentencing stage, especially in custodial settings. In particular, the principle of voluntariness in restorative justice entails that judges must either obtain prior consent from both parties or the judgement can include transfer of the case to offer mediation leaving to the mediators the task of getting informed consent and handling the process accordingly.

Since the objective of a sentence imposed on juveniles is their re-socialization, rehabilitation and the prevention of new crimes and a restorative justice approach is particularly apt to promote these goals, VOM or other forms of restorative justice do complement the criminal justice system. The exact restorative justice programme, the stage at which it should be offered while **servicing the sentence** or as part of the preparation for release, can be decided on an individual basis as part of the individual sentence planning. Interviewed criminal justice practitioners are interested to explore the potential of restorative justice in especially serious crimes.

Possibilities for employing victim-offender mediation in **plea bargaining cases** involving juveniles and young adults should be explored. Article 59 and 71 of the Juvenile Justice Code allow for the application of plea bargaining in juvenile cases. According to available statistics, a large proportion juvenile offenses that are object of prosecution are solved through plea bargaining<sup>51</sup>. Criminal Procedure Code of

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<sup>51</sup> According to the POG Report 84 juveniles were prosecuted in 2021. Out of this, 34 were sentenced based on merit, while 50 - based on a plea agreement. Among those, the plea agreement was approved during the first court appearance in 24 cases, 18 plea agreements were approved during the court hearing on merit, 7 were approved during the pretrial hearing after

Georgia, Article 217 – Rights of a victim in the case of a plea bargain foresees that the prosecutor shall, before entering into a plea bargain, consult the victim and notify him/her of the conclusion of the plea bargain. It is recommended that this practice becomes restorative through offering victim offender mediation, where applicable.. Complementing this process by restorative practice through VOM would better serve the interests of the victim in the process and also provide possibility to the offender to show remorse, raise accountability and resolve conflict.

Early release and parole:

Juvenile Justice Code Article 95, defining rules on release on parole, Article 96, covering the replacement of an unserved portion of a minor's sentence with community service or house arrest, Article 98, addressing the preparation of a minor for release, and Article 99, supporting and supervising a minor after serving a conditional or other sentence, could all be reviewed and amended to include restorative justice processes as an essential aspect of these stages.

## 5.1 Comparative European Practices on use of VOM at different stages of criminal proceedings

In Belgium VOM can operate at pre-trial stage but also run in parallel to court proceedings: the prosecutor can simultaneously refer a case to mediation and to the Youth Court. Even when mediation has been carried out, it is possible to continue prosecution. At the trial stage mediation is given priority over other measures.

In Italy referral to mediation in juvenile cases can take place at all stages of the proceedings. Mediation can operate upon and after sentencing when the judge can include in the sentence, and as alternatives to detention, the performance of reparation or other activities in favour of the victim rather than imposing a penalty.

In Spain while referral to mediation can operate at all stages of the criminal proceedings, cases of mediation at the execution stage are limited mostly due to the use of other diversion programmes focusing on re-education of the offender rather than reparation/compensation in favour of the victim. However, a rich VOM practice has been developed at the parole and sentence execution stage in cases involving adults (more details are available at chapter 34.1 below).

### Recommendations

Legislative amendments should be introduced to expand the possibility of **using VOM or other restorative justice program in parallel with criminal proceedings, including trial.**

**Restorative justice measures could be used independently, as alternatives, and in conjunction with custodial or non-custodial sentences and also in connection with early release and parole decisions.** They are effective when combined with rehabilitation and resocialization programmes.

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imposing preventive measures, and 1 plea agreement was approved at the pretrial stage. POG Report (2021) on Juvenile Justice; available at <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf>.

Article 67 of the Juvenile Justice Code regarding primary and additional sentences should be amended and explicitly refer to restorative justice measures or victim-offender mediation, independently from the diversion programme, and should foresee clear mechanisms, rules, and procedures for its enforcement. The selection criteria for referring an adult case to restorative justice at sentencing stage can include the category of crime – also determined by its maximum penalty, characteristics of the offender, and characteristics of the victim.

Additionally, possibilities for employing victim-offender mediation in **plea bargaining cases involving juveniles** (as well as **adults**) should be explored. This will secure victim empowerment through providing them an opportunity to actively participate in the resolution process, giving them the voice to express their needs, concerns, and a role in determining the outcome, which can lead to a greater sense of justice and satisfaction. Overview of the adult plea-bargaining regulations in regard with VOM can be found in section 17. Information and contact with the parties. Protection of victims' rights and interests

## 6. Who can seek referral to mediation

The Beijing Rules<sup>52</sup>, recommend that consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by *the competent authority, the police, the prosecution or other agencies dealing with juvenile cases*.

In Georgia, since the enforcement of the Juvenile Justice Code in January 2016<sup>53</sup>, a pure **prosecutorial discretion** in deciding over the application of diversion and mediation was expanded by **mandating judges** to return cases for diversion at any stage of criminal proceedings, before sentencing. The Juvenile Justice Code requires prosecutor to consider the application of diversion-mediation as the default choice for eligible cases, with any denial requiring justification.

Judges do not directly refer cases for mediation although such measure would be coherent with an application of VOM at the trial stage. Judges return case to prosecution, with the instruction to carry out diversion and offer mediation. Mediation agreements reached at the trial stage could have an impact on sentencing by reducing the penalty imposed when diversion is not possible such as in the case of especially grave crimes.

Many of the interviewed criminal justice practitioners are in favour of police referral to mediation without the intervention of the prosecutor on certain categories of minor offenses, in particular when the key facts are established and do not require further investigation. Currently, the **police have no discretion** to refer cases to restorative justice or to apply restorative techniques. Understanding the intention of the Ministry of Internal Affairs (MIA) to shift from reactive to proactive policing to ensure the prevention of crime and respond to the needs of communities through introducing community policing, involving police in restorative justice mechanisms could be beneficial. Besides referral, the application of informal restorative justice techniques by police is explored in Chapter 15.1 below.

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<sup>52</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice; Article 14; available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>

<sup>53</sup> Minister of Justice Order #120 on Rules of Procedures and Working Documents for Mediators involved in Diversion and Mediation Programme; available at: <https://matsne.gov.ge/ka/document/view/3176195?publication>.

As mentioned above, in Chapter 3, **schools refer cases** of conflict and violence to the police however it would be opportune to develop systems of referral to restorative justice programmes without necessarily involving the criminal justice system.

### 6.1 European Practices on competent referral authorities and individuals

In Belgium, pursuant to the Code on prevention, aid and protection of youth, while prosecutors can chose between a warning and referral to mediation, youth courts have a wider set of options (including referral to mediation or conferencing) which are selected on the basis of a number of factors such as a) the minor's interest, b)his personality and degree of maturity; c) his environment; d) the gravity of the offense, whether the minor repeatedly committed a violation, how long ago were the offences committed; the damages and consequences for the victim e) public security as well as available educational or treatment programmes.

In Finland with regards to juvenile offenses, mediation can be initiated by the offender, the victim but also the police, public prosecutor, parents or legal guardians as well as schools and social welfare authorities. The police will submit information on all young offenders to a social worker who may also refer them for the mediation process. In case of domestic violence against a child, the police and prosecuting authority retain the exclusive right to initiate the mediation procedure. Under the Child welfare act, the body responsible for social welfare must direct the juvenile offender for mediation in criminal cases. If the minor is a client of child welfare services, the mediation office will consult with the social worker appointed to the child's case if necessary.

In Portugal, any victim can ask the prosecutor the referral to mediation, and concerning VOM for minors, the possibility to seek referral to mediation is extended to the minor-offender, his parents, legal representative or da facto guardian or his defender (art. 42 L 166/99).

#### **Recommendation**

It is recommended to consider allowing police, social welfare authorities and schools to directly refer small offenses committed by juveniles and conflicts between juveniles to mediation and without automatically engaging the criminal justice system. Apart from required legislative amendments, it is important that relevant state institutions develop proper mechanism and procedures for the implementation of above recommendation.

Judges could also be empowered to directly refer to mediation minors who were not subject to diversion regardless the gravity of the offenses. rules could be established on the possible impact of mediation agreements reached at the trial stage on sentencing and clear referral mechanism should be defined.

Child victims should have access to restorative justice programs, subject to assessment of the individual case circumstances, offender characteristics and revictimization risk, based on the free consent and in line with the best interest of a child.

## 7. Description of the victim-offender mediation – preparatory stages and mediation conference

Once the case is referred to the Diversion and Mediation Department, the mediator assigned to the case initiates the **Preparatory Stage**. Preparation implies checking the circumstances of the case, planning each stage of mediation, drafting relevant questions, and other arrangements based on the needs of a specific case to ensure the efficiency of the process. The mediator will also meet the victim and provide information about the programme, its essence, goals, principles and benefits. A major task of the mediator, at this stage, is to obtain voluntary and informed consent or refusal of the victim to participate in the mediation process. The mediator must hold a first meeting with the victim within 10 working days from the moment of assignment of a case by the diversion/diversion and mediation programme manager. However, it is possible to extend this term in special cases on the basis of written consent of the diversion/diversion and mediation programme manager.

Once the victim's consent to participate in the mediation process is received, the mediator starts a pre-conference stage. This is when the social worker of the National Agency for Crime Prevention shares an individual assessment report of the offender with a prosecutor and mediator.

### 7.1 Social worker report

The Agency has to assign a social worker and a mediator to the process within three days, after receiving notification from the case prosecutor. Typically, a social worker has ten working days to prepare an **individual assessment report** on bio-psycho-social factors of a juvenile/ young adult that should include risk factors on reoffence and offer an opinion on applying diversion. The assessment report requires recommendation on application of diversion. In the process of preparing a report, the social worker, based the principle of confidentiality, in order to obtain objective and complete information, conducts additional interviews with persons who have information about the juvenile. It can be a specialist representing a school or other agency,

Most of the interviewed practitioners were satisfied with the reports of the social workers, with few exceptions who spoke about the poor quality of reports in terms of providing reliable sources of information on juvenile/young adult concerned<sup>54</sup>. These participants noted that there were no effective remedies to challenge the findings of the reports. It should be noted that the case law of the European Court of Human Rights on the admissibility of expert evidence foresees that litigants must be afforded the possibility of challenging such expert opinions effectively<sup>55</sup>. Social workers shared the difficulties to follow the timelines, especially in cases involving juveniles / young adults who are difficult to reach, have dysfunctional or no families, and other complicated circumstances. There are occasions when the deadlines are extended. Juvenile Justice Code of Georgia obliges a prosecutor and a judge to take into account the individual assessment report prepared according to Article 27 of this Code when making decision on diversion. Despite this, some participants stated that in certain cases the prosecutor's decision not to refer a case to diversion and mediation takes place before the social worker's report is drafted and submitted.

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<sup>54</sup> Representatives from the Agency have noted that social workers seek information from individuals who interact with program participants. Accordingly, the information received from them is characterized by reliability

<sup>55</sup> See *Letincic. V Croatia*, Application no. 7183/11, judgement of 3 May 2016. the Court stated that a medical expert report pertaining to a technical field that is not within the judges' knowledge is likely to have a preponderant influence on their assessment of the facts; it is an essential piece of evidence and the parties must be able to comment effectively on it (*Mantovanelli v. France*, 1997, § 36; *Storck v. Germany*, 2005, § 135).

### 7.1.1. Comparative European practices on individual assessment reports

In Finland professional staff at the mediation office are required to investigate the situation of the child or young person in relations to the crime, the factors that led to the crime and the **prerequisites for mediation**. This assessment also includes the need to appoint a guardian.

In Spain, in juvenile cases, the **technical team** that assists specialized prosecutors within minors' units, composed by **educators, phycologist and social worker**, studies case by case the circumstances of the offender and the case, within the legal framework, and eventually proposes the prosecutor to refer the case to mediation. The prosecutor usually follows this advice.

In Austria the competent prosecutor or judge can ask the youth judicial assistance bodies (Organe der Jugendgerichtshilfe) to ascertain the living and family circumstances of an underage or young person, including their economic and social background, their development and degree of maturity as well as all other circumstances that can serve to assess the person and his physical, mental and emotional characteristics. The youth judicial assistance bodies can also assist in mediation or other diversion measures such as the selection and performance of community service.

#### Recommendation

While the social worker's report regulation and practice is in line with comparative best practices, enforcement of the rules requiring that the decision on diversion and mediation must be preceded (and based) on the social worker's report should be monitored and ensured. A judicial practice could be developed entailing that decisions (on diversion or prosecution) could be challenged if they have been adopted before the social worker's report is made available to the prosecutor. Mechanisms on challenging of such report as expert evidence should also be available in line with the European Court case law.

The psycho-social assessment reports drafted by specialized psychologists and social workers can be prepared in consultation with education specialists when needed, in order to strengthen their quality.

### 7.2 Preparation of the mediation conference and approaching the parties

Upon receiving information of an offense committed by a juvenile the prosecutor is the first person who speaks to a juvenile/young adult in conflict with the law and his / her legal representative as well as victims about diversion and VOM before making the initial decision to consider a case for diversion. In this meeting, the prosecutor explains the essence of the diversion and mediation program. If she / he agrees to participate, the prosecutor adopts decision to launch the diversion process. The next step is to notify, within three days, the National Agency of Crime Prevention, Enforcement of the Non-Custodial Sentences and Probation to assign a social worker and a mediator to the process. A social worker is assigned from Resocialization of Convicts and Ex-Prisoners-Rehabilitation Department of the Agency and mediator is assigned from the Diversion and Mediation Department.

The mediation conference should take place within ten working days of receiving the report. Before the conference, the mediator organizes preparatory meetings. A prosecutor, a social worker, and a mediator discuss potential terms of the agreement before holding the meetings. If a case requires more

time due to its complexity, a mediator applies to the diversion/diversion and mediation programme manager with a grounded written request to extend the time for the case proceedings. The mediator will also contact the minor offender, his legal representative and the victim separately and provide detailed information to the parties concerning rules and procedures, and proposed terms of the mediation agreement. In the individual meetings, one of the key tasks of the mediator is reaching a consensus on the proposed terms of the mediation agreement. Parties have a right to disagree with the terms and/or present alternative options. If during the pre-conference stage, parties fail to agree on the presented terms, the mediator tries to reach an agreement through repeated communication with each party. Nevertheless, there is risk of **pre-determination** of the victim-offender mediation outcome by a prosecutor, social worker, or mediator, as they may be setting or agreeing on the terms of the agreement beforehand.

Once the terms are agreed upon, the mediator agrees with the parties a tentative date, time, conference format (remote/face-to-face) and a place for the mediation conference. The mediator also informs the prosecutor and social worker, who may attend the conference. Due to low awareness among society on VOM persuading parties can be very challenging.

When financial compensation is not motivating victims, mediators try to convince victims to participate explaining the importance from the point of view of the best interest of a child. While the best interest of the child should be the prior interest of all involved criminal justice practitioners, it is important to ensure the **balance between the interest of a victim and an offender**<sup>56</sup> Thus **mediators should be able to offer victims special support programmes**. Today, mediators try to handle this with difficulties, not always successfully, employing their personal networks. A review of good practices in providing support to victims is provided in chapter 26.3.

#### **Recommendation**

While the preparation is carried out by the mediator, prosecutor and social worker at the preparatory stage of the mediation conference may facilitate and speed up the process. Consideration should be paid to the Council of Europe Recommendation (2018)<sup>8</sup> which states that agreements should be based on the parties' own ideas. Apart from diversionary obligations, that should be predefined by professionals, the intervention of mediators should seek to expand options rather than pre-determine the content of the mediation agreement.

### 7.2.1. Comparative European practices on approaching parties to mediation

In Belgium, in juvenile cases, parties are contacted by the prosecutor who will write a letter to the victim, the child offenders, and his/her parents and inform the mediation services of this initiative. In the letter the parties are invited to contact the mediation service within 8 days. If the parties do not contact the mediation services, the latter will approach both parties usually in writing and subsequently by phone and suggest an appointment.

In Italy, in juvenile cases, usually the mediator will send a letter to the minor, the victim, the legal representatives, the lawyers to inform them of the possibility of mediation and about the nature of mediation and the activities carried out by the mediation centre/office with an invitation for a preliminary session/interview. The parties are subsequently contacted by phone.

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<sup>56</sup> European Forum for Restorative Justice Standards on Good Restorative Justice; available at Practices<https://www.euforumrj.org/en/standards-good-restorative-justice-practice>

In Spain, the prosecutor in juvenile cases requests its technical team to draft a report for every case where the legal framework permits mediation. After deciding the referral, the mediation service team -that in some regions is part of the technical team, in other regions is a specific service- will meet with the minor, the guardian and the lawyer, informing him or her of the possibilities of mediation, and seeking his or her consent, and complementing it with the parents or tutors. The team will then meet with the victim if the minor's consent has been obtained.

### 7.2.2 Approaching legal entities as victims

Obtaining the agreement of the victim in Georgia is especially difficult when the victims are legal entities such as supermarket chains, chains of cloth shops and other retailers when it is difficult to identify the individual victim. In most cases, the management of the shops, if they are willing to cooperate, designate a person from the human resources management to act as a representative a victim on behalf of the organization. During the consultations examples had been drawn on the difficulty of identifying the appropriate person but also on securing the legal entity's consent to the terms preliminarily agreed upon by their representative. Even though there are positive examples, it remains problematic when there are repetitive occasions of theft in one and the same shop to obtain the agreement of such category of victims.

### 7.2.3 Comparative European practices on legal entities' participation in the mediation conference

In Norway, unless otherwise established by law, participants must attend the mediation session personally and cannot be represented by a proxy at the meeting. When an enterprise has suffered an injury, loss or other violation, the Mediation Service may permit a person who has been affected, to attend on behalf of the enterprise.

#### **Recommendation**

When a legal entity has suffered an injury, loss or other violation, participation of a person who has been affected, to attend on behalf of the enterprise should be a preferred option. In order to enable the participant to commit the enterprise it must be secured that an appropriate power of representation is conferred to the participants.

## 8. VOM Conference regulation

"As far as possible, agreements should be based on the parties' own ideas. Facilitators should only intervene in the parties' agreements where they are asked by the parties to do so, or where aspects of their agreements would be clearly disproportionate, unrealistic, or unfair, in which case facilitators should explain and record their reasons for intervening."<sup>57</sup>

**Preparation of the Conference** - a mediator should contact all participants of the conference reasonably in advance before the appointed date and remind them of the date, time, and place of the conference.

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<sup>57</sup> Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters [https://coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3)



A mediator prepares a conference room in advance and determines places for each party so that a juvenile and a victim sit opposite each other. The process participants should have an equal possibility to communicate with one another and none of the members (including the mediator) should be considered predominant. A mediator should be prepared to draft and print the final text of the agreement at the mediation conference.

**Victim Offender Mediation Conference** – the Order<sup>58</sup> defines that the conference is a forum, where people discuss crime and conflicts. All participants may speak, express their feelings, and what is most important – contribute to the outcome. Participants have the possibility to express their opinions about the committed action and its consequences. Further on, they discuss the proposed terms of the agreement in detail. During the Mediation Conference, the parties have the possibility to propose and discuss new terms to be included in the agreement. At this stage, the main role of a mediator is to facilitate the conference and assist the parties in reaching an agreement on the terms. A mediator is obliged to be impartial, objective, and independent during the conference as well as during the whole mediation process. The mediator has to ensure a safe environment for the parties, encourage and assist them to express their own opinions and positions, and facilitate a direct dialogue.

The mediator is entitled to announce a short break based on the request of a participant or at his/her own initiative at any stage of the conference, which can be caused by several reasons: including tension, exhaustion of the participants, and other circumstances. If the situation becomes strained during the mediation conference, a mediator may decide to separate the parties in a different room and have individual meetings with them. The mediator handles copies of the draft agreement to the participants and gives them time to read the text. The participants should be given possibility to ask questions and get explanations. The conference, if successful, is completed upon signature of the agreement by all the participants.

The Diversion and Mediation Department responded promptly to the challenges caused by COVID-19 and revised regulations that allowed online communication and virtual mediation conferences to take place. Practitioners agree that meeting in person with parties and in-person mediation is more effective, though the online option allows for more flexibility for victims to save time, and for mediators, especially in regions where they have to travel long distances to cover the whole area. Currently, the system allows for VOM to be conducted either in person or online.

## 8.1 Comparative European practices on the VOM conference

While some countries encourage joint sessions to ensure the maximum re-education effect of the mediation procedure in others shuttle mediation is more often practiced.

When victims, for various reasons, do not wish, or are unable to, participate directly in a restorative process, a programme may be designed to allow a surrogate victim to participate in the process either on behalf of, or instead of, the victims. In some instances, the victim has an opportunity to choose a representative who acts on his or her behalf to reflect his or her needs, and to bring the victim's perspective into the restorative process. In other instances, offenders meet with victims of similar but unrelated crimes to gain a greater insight into the kind of harm they have caused their victims, and to process their experience together with other offenders. This second type of programme is most often

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<sup>58</sup> Minister of Justice Order on Rules and general conditions of the agreement to be signed as part of the diversion and diversion & mediation program. Available at : <https://matsne.gov.ge/ka/document/view/3176195?publication=0>

used in prisons or as part of a rehabilitation programme.<sup>59</sup> Using surrogate victims, is a practice employed in Belgium's mediation service that involves individuals who stand in for the actual victims during the mediation process. These “surrogates”, are often professionals or volunteers who provide a voice for the absent or unwilling victim, enabling the mediator to ensure that the offender understands the impact of the offense and potential resolutions.

In juvenile cases in Belgium, according to statistics only 25% of mediations take place face to face as the majority of parties prefer indirect mediation.

On the other hand, in Spain, in juvenile cases, practice of VOM for minors always looks for the possibility of the joint session, and practice of the meetings and joint sessions are always produced face to face, to ensure the maximum re-educational effect of the mediation procedure. However, the Rules of Procedure provide the possibility of the conciliation taking place without a joint session at the request of the victim (shuttle mediation).

### Recommendations

It would be advisable to **maintain some of the adjustments and flexibilities** introduced during the COVID-19 period such as online communication and virtual mediation conferences. However, decision to work remotely should be based on the individual assessment of a case.

To avoid **revictimization** or to avoid refusal of mediation on this ground, it is recommended that mediators have the possibility to conduct **shuttle mediation**. Although usually parties are encouraged to meet in person to discuss their case, cases of shuttle mediation (where the parties never meet) should be considered. This form of mediation is usually a standard option when there is a risk of re-victimisation. It is also advisable to consider experience of some countries, like Belgium, that foresee the possibility for other **substitute participants** where there is no clearly identifiable victim or victim is unwilling to participate.

## 8.2 Participants in VOM

The victim-offender mediation format used in Georgia includes elements of the restorative group conferencing model. It starts with the preparation stage of the typical victim-offender mediation process and ends with the mediation conference that allows for the participation of multiple stakeholders who are affected by the offense. These stakeholders necessarily include a mediator, a victim, an offender, a parent, or a legal representative in case of a juvenile. The participation of support persons, the parties' lawyer, the social worker, and the prosecutor is optional. Lawyers usually do not participate in victim-offender mediation conference.

While participation of the prosecutor in victim-offender mediation conference has a historical context<sup>60</sup>, it needs to be acknowledged that this practice is not in line with international standards even though it is not mandatory.

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<sup>59</sup> UNODC Handbook on Restorative Justice Programmes. Pg.46. Available at: [https://www.unodc.org/documents/justice-and-prison-reform/20-01146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf).

<sup>60</sup> Participation of the prosecutor was initially justified by existing mistrust towards mediators and between involved state institutions also played. However, in 2010 and 2015, efforts were made to build trust, establish a multi-disciplinary approach,

Social workers shared difficulties related with the VOM conference, especially on crimes that involve several victims when it is especially difficult to coordinate the time, due to conflicting schedules and short deadlines. This is a challenge for social workers as they feel obliged to participate in the conference when the decision concerns an important aspect of diversion and mediation agreement that can affect execution and monitoring over execution.

Practice shows, confirmed by the practitioners, that every year, fewer prosecutors and social workers attend victim-offender mediation conferences. This shift should pave the way for **eliminating the role of prosecutors and social workers** from the mediation conference in the future to fully comply with the international standards.

### 8.3 Comparative European Practices on participants in VOM

A number of European countries have introduced the possibility of participation of support persons and detailed procedure for seeking and obtaining the juvenile's guardians' consent. These regulations arguably find their rationale in the need to protect and provide adequate support to vulnerable parties such as minors and to produce a wider restorative output. Participation is also possible for affected persons when there is no direct victim.

In Norway if one party is younger than 18, his or her guardians must also consent to the case being handled by the Mediation Service. The guardians must be notified of the mediation meeting and are entitled to attend. If the guardian is unable or unwilling to protect the party's interests in the case, a provisional guardian must be appointed in accordance with the rules of the Guardianship Act. In certain forms of restorative justice for juveniles, legal representatives can participate as supporting persons in the meetings. A criminal **case where no individual has suffered any injury, loss, or other violation, may also be handled by the Mediation Service if someone who has been affected will attend**. No agreement on financial compensation can be entered into in such cases.

In Finland the consent of parents or legal representative is necessary for mediation. The main rule being the need for a joint consensus of the parents unless one of the parents is unable to give consent due to travel or illness and there is a need for approval in short time as a delay would cause harm. However, in cases of great significance, there is always a requirement of joint parental decision unless it is proven that the best interests of the child do not require this. The child's parents must attend the mediation although as long as a parent has consented to the mediation, his/her absence will not prevent the mediation procedure as long as the parent will sign the mediation agreement (which is required to make it legally valid). If continuing the mediation procedure is against the interests of the child, the mediation office is entitled and obligated to terminate the process. **For children in substitute care mediation must be attended not only by the legal guardians but also a social worker**. This is particularly important when the parent is unwilling to be present or cannot be reached with reasonable time and effort.

In Belgium, in juvenile cases, participants include, besides the parties, legal representatives and the parents or legal guardians of the minor/s involved, also support persons. The participation of **the parents or guardians is mandatory** for minor offenders and victims when the meeting has to **deal with financial issues for which the parents are liable**. **In all the other cases there is no formal requirement of parental involvement** and mediators can decide on a case-by-case basis. However, it may still be necessary to seek parental agreement to talk separately with the children. As the offence may have an

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and raise awareness and sensitivity among legal practitioners.

impact on minor-parent relationship, in certain cases **mediators will also additionally mediate between young offenders and their parents** especially when the interests of parents and children in mediation are conflicting.

### Recommendations

The current level of professionalism and trust among practitioners should allow the **full elimination of a prosecutor's role in the mediation conference**, thus ensuring full compliance with international standards. Social workers participation can also be eliminated as they identify and communicate possible diversionary measures prior to the mediation conference. The implementation of this recommendation will not only secure resources but also enable agencies and practitioners to focus on core functions and support the expansion of the restorative justice system in Georgia.

When there is no direct victim who has suffered injury or damage as a result of the offense, it should be possible to carry out **VOM with affected persons**. In this case no agreement on financial compensation for affected persons-parties should be entered. It would be also advisable to consider using **"substitute victims"** or applying other types of indirect **mediation models in case of victimless crimes** or when there are other circumstances when the direct confrontation of a victim and offender is not recommended.<sup>61</sup>

## 8.4 Regulation of restorative justice conferencing (also known as family group or diversion conferences) in selected Council of Europe members' legal systems

Procedures such as conferencing have been considered as particularly suited to juvenile offenders. The 2018 Council of Europe Recommendation established that *when restorative justice involves children (whether as victims or as offenders), their parents, legal guardians, or another appropriate adult, have the right to attend any proceedings in order to ensure that their rights are upheld. Any special regulations and legal safeguards governing their participation in legal proceedings should also be applied to their participation in restorative justice (paragraph 24).*

Participants to the consultations with the CoE consultant expressed an interest in the introduction of restorative justice conferencing. A few examples of existing regulations in Council of Europe state members are provided below.

In Belgium, referral can be made to mediation but also to conferencing<sup>62</sup>. Conferencing can also be part of diversion measures agreed upon by the minor. Conferencing aims at enabling the young offender, the victim, their social environment as well as any person whose participation is considered as useful to find, with the assistance of a mediator, solutions aimed at solving the conflict stemming from the offense taking in consideration both relational and material impact of the offense. Referral can take place at any time during the proceedings upon request of the judge, the victim or offender. For this purpose, the body in charge of organizing the restorative justice procedure will consult all the persons directly affected as well as persons who are part of their social circle and any other useful person. **Conferencing will also include the discussion of an action plan ("declaration d'intention")** by the offender where the minor will explain the concrete steps he will undertake to address the relationship

<sup>61</sup> UNODC Handbook on Restorative Justice Programmes; PG.38. Other applications of restorative justice approaches in the criminal justice system <https://www.unodc.org/documents/justice-and-prison-reform/20->

<sup>62</sup> Article 115-117 of the Code of Criminal Proceedings

or financial damages and damages caused to the community and actions to prevent further violations in the future. The agreement is homologated by the youth court. Refusal to homologate the agreement can only be based on public order considerations.

In Ireland <sup>63</sup>, restorative conferences can be conducted as a component of assessment and/or supervision of young people, initiated by a Probation Officer. These conferences can be utilised as part of court-ordered supervision to support the young person to understand and address the harm caused by their behaviour.

When a child is placed under the supervision of a juvenile liaison officer, that officer may recommend that a restorative conference is held with the agreement of the child's parents or guardian and having ascertained the views of the child. The officer will also ascertain the views of any victim as to the possibility of a conference being held and as to whether the victim is willing to participate. If the victim is a minor, the officer will also consider whether the conference can meet the best interests of the victim and will also ascertain whether the victim's parents agree to the conference and are willing to participate. The decision to refer a case to a conference is made taking in consideration the report of the liaison officer, whether conferencing is suitable to prevent reoffending, the role and responsibilities played by the child's parents, family members or guardians, the view of the victims and the interest of the community. A juvenile liaison officer or another member of the police (an Garda Síochána) will then be appointed as facilitator.

Persons entitled to participate include the child, parents, legal guardians, or other relatives if the facilitator is convinced that their participation may have a positive impact. The facilitator can also invite any other person he considers would make a positive contribution including a representative of the health board from the area in which the child normally resides, the probation and welfare service, the school attended by the child, the Garda Síochána. The facilitator shall also invite any victim and any relative or friend of the victim unless the facilitator considers that their presence would not be in the best interest of the conference. The facilitator may also invite any other person requested by the child or his family if their attendance is in the interest of the conference. The facilitator can also invite, upon approval of the other participants, any person engaged in carrying out research on or evaluation of conferences. The facilitator shall take all reasonable steps to ascertain the views, if any, of any person who has been invited to attend the conference concerned but has notified the facilitator that he or she is, for any reason, unable or unwilling to do so and shall ensure that any views so ascertained are made known at the conference.

If during the conference the facilitator is of the opinion that the continued presence of any person is not in the best interest of the conference, the facilitator may exclude that person from further participation. Failure to notify any person invited to attend or failure of any person so invited to attend shall not in itself affect the validity of the procedure unless the facilitator considers that this failure is likely to affect materially the outcome of the conference. Participants are bound by a duty of confidentiality and violation of this duty is punished with a fine.

The purpose of the conference is to establish why the child became involved in the behaviour, discussing how the family members/parents could help to prevent the child from becoming further involved in such behaviour, mediating between the child and the victim, formulating an action plan, upholding the concerns of the victim and giving due regard to his/her interests.

During the conference the parents or guardians (when present) and the **child may formulate an action plan with the assistance of the other persons present**. The action plan should be agreed unanimously by those present unless the disagreement of any person present is considered unreasonable. The action

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<sup>63</sup> <https://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/print#sec52>

plan may include an apology; participation of the child in appropriate sporting or recreational activity, attendance at school or place of work, participation in appropriate training or educational course, the child being at home at specific times, the child staying away from specific places or/and persons; taking initiatives within the child's family and community that may help preventing the commission of further offences; any other matter that the attending persons may consider to be in the child's best interest or would make the child more aware of the consequences of the offense.

The facilitator will provide a written record of the action plan in a language that is accessible to the child. The action plan will be signed by the child, the chairperson and one of the other persons present.

Those present may appoint one or more of their number to implement the action plan or monitor compliance with it. A date is subsequently agreed upon for reconvening the conference to review compliance with the action plan. The conference should be held not more than 6 months from the date the action plan was signed. A conference can be reconvened earlier if it comes to the chairperson's notice that the child is not complying with any of the terms of the action plan. The purpose is to ascertain the cause of such noncompliance and to encourage the child to comply.

The Children Court may also direct that a **family conference** be convened (Section 78, Children Act 2001) which will lead to engagement with a child and their family by the Probation Service for a period of six months. Referral to family conference takes place at the stage when a young person is charged with an offence and appears in court when a) the child accepts responsibility for his behaviour, having had a reasonable opportunity to consult his parents or guardian and of receiving legal advice, b) it appears desirable that an action plan is designed at a family conference and c) the child's parents or guardian or family members who may make a positive contribution agree to attend. In this case the family conference is convened by a probation or welfare officer. The court will adjourn the proceedings until the conference has been held. Upon submission of the action plan upon completion of the family conference, the court shall approve the action plan and order that the child comply with it under supervision of the probation and welfare officer. In case the action plan is complied with the court will dismiss the charge against the child on its merits.

If an agreement is not reached, the court may still formulate an action plan insofar as it deems it desirable and have a good chance of success. Alternatively, the court can resume the proceedings<sup>64</sup>.

Norwegian law also foresees restorative justice conferences which are organized and chaired by a so-called youth coordinator and may foresee the participation of representatives from the correctional services, school, child welfare authorities, health and care services or others connected with the convicted or accused person, the aggrieved party or with the case.

### Recommendations

Considering their suitability for juvenile and adult cases, it is recommended to implement **family and community restorative justice conferences** as alternatives to VOM and based on a suitability assessment.

It is recommended that the law foresees the development of an **action plan**. The plan may inter alia state that the convicted or defendant person must compensate moral damages to the party who has suffered an injury, loss or other violation; participate in crime prevention programmes or other similar measures; perform community service; comply with rules for where to stay, for work or training; report to the police or correctional services; abstain from the use of alcohol and other intoxicating or narcotic

<sup>64</sup> Statistics are available at: <https://restorativejustice.ie/probation-service-young-persons-probation-2020-data/>

substances and submit to any drug testing; comply with any curfew rules; avoid contact with specified people.

## 9. Content of the mediation agreement, supervision over the execution of the diversion and mediation agreement and impact on criminal proceedings

As victim-offender mediation in Georgia is mostly implemented together with diversion, a **single diversion and mediation agreement** is signed at the end of the mediation conference. Parties (signatories) to the Agreement are diverted, legal representative of the diverted, other close relative, , victim, legal/procedural representative of the victim, mediator who conducted the mediation conference. This agreement **regulates diversion measures** – determined by the social worker, prosecutor and mediator, and restorative obligations – that should be determined as an outcome of the victim–offender dialogue during the mediation conference.

The terms of the agreement should take into consideration the assessment report of a social worker, the interests of a juvenile/young adult, his / her interests, hobbies and skills as important circumstances for the reintegration and rehabilitation of a juvenile and for preventing re-offense. The principles of diversion and mediation, as outlined in the "Rules and General Conditions of the Agreement" are promotion of alternatives, voluntariness, proportionality, confidentiality, avoiding stigmatization, best interests of the juveniles.

According to the POG report 2021<sup>65</sup>, which relies on the information analysed by the National Agency for Crime Prevention, the most frequently used diversionary and restorative measures included in the diversion and mediation agreements in 2021 were the following:

- Educational and crime awareness activities<sup>66</sup>
- Psycho-rehabilitation programmes<sup>67</sup>
- Individual consultations with the psychologists and social workers on a number of topics<sup>68</sup>
- Community-oriented activities<sup>69</sup>
- Obligations for the benefit of victims<sup>70</sup>

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<sup>65</sup> POG Report on Juvenile Justice, 2021; available at: <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf>

<sup>66</sup> These include reading the books, writing essays, reading materials and collecting information about the categories of crime, about addictions and related threats; Improving academic performance at school, showing up to classes on time and limiting nonattendance; driving classes; vocation training courses and respective consultations.

<sup>67</sup> These can include training courses on topics like: "crime and its consequences, conflicts and assertive conduct; positive relationships and values; planning the future; anger management; effective communication; health lifestyle; human rights, rights of the vulnerable groups.

<sup>68</sup> Such as addiction and its negative impact; forms of violence, its consequences and legal mechanisms; self-control skills; importance of vocation education; consultations for the family members of the diverted juvenile / young adult about the potential threats.

<sup>69</sup> These can include contributing to the cleaning of public spaces like churches, museums, libraries, municipal cultural centres and parks; going to day-care centers for socially vulnerable children to help them in various activities including preparation of homework; helping charity organizations to deliver free meals to socially vulnerable elderly people; going to the day-care centre for socially disadvantaged children and helping children.

<sup>70</sup> These can include compensation for material damage caused to the victim; writing a letter to the victim, showing remorse and share what she / he has learnt; helping the victim to repair the damaged items; helping the victim in the respective shop.

-Restrictions on behaviour<sup>71</sup>

The most frequently used rehabilitation measures in 2021 were educational and crime awareness activities, psycho-rehabilitation programmes, individual consultations with psychologists and social workers, obligations for the benefit of victims, and certain restrictions for diverted juveniles and young adults<sup>72</sup>.

Even though the above list includes variety of activities, practitioners spoke about a lack of supportive rehabilitation and resocialization services in the country. Most of the programmes listed above are delivered by the social workers and psychologists, who under their multi-tasking mandate, and limited human resources, have difficulties to fully satisfy the needs of diverted juveniles / young adults. Even more problematic is the absence of services for victims and no institutional framework to address victims' issues.

### 9.1 Comparative European Practices on the content of the mediation agreement

In the countries reviewed, the mediation agreement can include a number of performance obligations beyond the payment of compensation and the commitment to refrain from further offenses. The **payment of compensation** is already subject of diversion programmes and does not necessarily require the agreement of the victim.

In Belgium, parties can include in the agreement non-financial arrangements such as apologies, answers to questions, explanations, promises, volunteer work or engagement to follow and educational training and restoration of material damages. The prosecutor may refuse to accept a mediation agreement if it is contrary to public order.

In Austria the law on proceedings involving minors, states that the determination of the compensation and other undertaking by the accused should be appropriate, taking in consideration what the accused can do well and should not be made unreasonably difficult. Furthermore, the future behaviour of the accused must also be taken in consideration in the determination of the compensation.

In Italy, in juvenile cases, the mediation agreement may include agreement for compensation of damages, performance of community work or of some activity in favour of the victim or formal excuses. The agreement must be reached voluntarily and entail reasonable and proportionate obligations/commitments. Existing statistics showed that probation services tend to favour activities such as volunteer work, paid work, education activities to reintegrate a minor rather than compensation or other performance in favour of the victim.

In Spain, most outcomes in juvenile cases concern educational or community activities. On the other hand, in adult cases, the mediation agreement concerning minor offenses usually includes economic compensation.

## Recommendations

<sup>71</sup> These can include restriction in leaving home in a certain part of the day (mainly at night hours); restriction to change the residence without informing professionals working with her / him; entering gambling clubs and establishing relationships with those persons that may contribute to their anti-social behavior.

<sup>72</sup> POG Report on Juvenile Justice, 2021; available at: <https://pog.gov.ge/uploads/cc0023c6-2021-wlis-angarishi-arasrulwlovanTa-marTlmsajuleba.pdf>



As described above in the report, legislated and most effectively used victim-offender mediation programme is not a stand-alone programme in Georgia. It is implemented together with diversion; thus, a single agreement is signed at the end of the mediation conference that combines diversionary measures and restorative commitments. It is recommended that future steps consider separating diversionary measures from restorative programmes to ensure that parties have sufficient space to discuss and agree on a fair mediation agreement. The latter will also eliminate the need for social workers' and prosecutors' participation in the mediation conference. It is recommended that the **mediation agreement foresees more obligations towards victims.**

## 9.2 Monitoring over the execution of the mediation agreement

The terms of the agreement include the obligation for victim, offender and their legal representatives to maintain confidentiality and treat the other parties with respect.

Upon signature of the diversion and mediation agreement, the prosecutor will issue a decree on not initiating criminal prosecution or on termination of a criminal prosecution against the diverted.

As for the implementation and supervision over the execution of the diversion and mediation agreement, roles are clearly defined: the diverted must inform a social worker/probation specialized officer in writing (it is desirable to do it in advance) or verbally in case of failure to fulfil the terms of the Agreement and explain the reasons of failure. Other obligations include meeting with a social worker/probation specialized officer and/or a prosecutor periodically (at least once a month) as well as upon request and to provide support related to the fulfilment of the Agreement. The legal representative should assist the diverted in the fulfilment of the obligations above.

The social worker is responsible for:

- a) monitoring the implementation of the diversion and mediation agreement,
- b) working with the diverted to provide for his/her rehabilitation and reintegration in the society,
- c) assisting the diverted as much as possible in the fulfilment of the terms of this Agreement in an honest manner,
- d) communicating (personally or by telephone) within the period of validity of the Agreement,
- e) working in coordination with a prosecutor and providing information concerning the fulfilment of the Agreement, including preparation of a monthly report. In case of undue performance of the terms of this Agreement by the diverted, a social worker is obliged to inform a prosecutor.

The prosecutor supervises the process of fulfilment of the Agreement based on the reports of a social worker. In case of need the prosecutor and social worker will communicate with the diverted and his/her parent (legal representative) concerning the progress achieved and problems if any.

In case diverted person does not fulfil the terms of the agreement, the prosecutor is entitled to cancel or keep in force the diversion decision, with extended duration or additional obligations, after having heard a juvenile, his / her legal representative and social worker . In case decision on diversion is cancelled, a prosecutor may initiate or resume a criminal prosecution against the diverted. It is worth mentioning that any measures or obligations that the diverted person has already fulfilled by then will be taken into consideration during the sentencing stage.<sup>73</sup>

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<sup>73</sup> Article 48 of the Juvenile Justice Code

The agreement may be signed from one to twelve months. According to the analysis of the agreements, the most common duration of the agreement signed with a juvenile is 3 to 6 months. In 2021, minimum term (1 month) was not signed. Maximum (12 months) agreement was signed only with one minor. It is interesting to observe, that according to POG Report, as of December 31, 2021, out of 363 diverted juveniles, 8 committed repeated offenses within the timeframe of the agreement. The diversion agreement was terminated for all of them. The terms of the agreement were violated in 11 cases. In all cases, the duration of the agreement was prolonged. No further violation has been recorded.

### 9.3 Comparative European Practices on monitoring the execution of the mediation agreement

In Belgium, in juvenile cases, mediation services are responsible for the supervision of the agreement and inform the judge or prosecutor when the agreement has been fulfilled. The mediator can also **offer an active support to secure the compliance with the agreement such as arranging payments or facilitating a job or voluntary work search**. A **compensation fund** was set up to enable young offender to cover the cost of compensation to victims and is available to young offenders who do not have financial resources. The offender is allowed to undertake voluntary work for a non-profit organisation for a limited number of hours for which he is paid by the fund. These earnings are then passed to the victim. The fund is sponsored both by private donors and by local governments.

In Norway, a follow-up team is responsible for monitoring the implementation of the measures determined in the youth action plan developed in the framework of conferencing for juvenile offenders. The follow-up team is led by the youth coordinator of the Mediation office. Other members are the convicted or accused person, the convicted or accused person's guardians and others who have duties regarding the execution of the youth action plan. The youth coordinator may also ask others with connections to the convicted or accused person or the case to participate.

#### Recommendations

It is recommended that the **state provides sufficient funding to increase the availability of supportive rehabilitation and resocialization services** in the country. Social workers should receive more trainings and support while delivering in-house programmes, including on restorative justice programmes. The state should invest more in outsourcing services for juveniles in conflict with the law by issuing grants to SCOs while developing **quality standards** and monitoring mechanisms for such services.

The absence of services for victims and no institutional framework to address **victims' needs** is critical and requires a solution to ensure that restorative justice programmes equally safeguard the interests of both parties. It is essential to find ways to meet victims' needs in restoring harm and identifying effective rehabilitation programmes targeted to the individual needs of the offenders.

Consideration could be given to the creation of a **compensation fund** modelled on the example of Belgium to facilitate covering the compensation by juvenile offenders without sufficient means. Such fund may prevent situations where victims oppose VOM and diversion due to the impossibility or difficulty of receiving compensation from the juvenile offender.

## 9.4 Impact of VOM on criminal proceedings

As VOM for juveniles in Georgia is usually applied as part of diversion, fulfilment of a mediation agreement will usually lead to the termination of criminal proceedings. As mentioned above, the prosecutor will issue a reasoned resolution on not initiating criminal prosecution or on terminating a criminal prosecution against the diverted after signature of the Agreement.

## 9.5 Comparative European Practices on the Impact of VOM on criminal proceedings

In Belgium, in juvenile cases, the fulfilment of the agreement must be taken into consideration by the prosecutor and judge. For example, the prosecutor can order the discontinuation of proceedings. The judge can adopt a more lenient sentence and in case the sentence has already been adopted, he can reopen proceedings and impose less severe measures. On the other hand, **the fact that mediation did not lead to an agreement should not be considered as a disadvantage for the offender in the course of the proceedings.** If the judge considers that the mediation agreement has not met all the juvenile's needs, additional measures can also be imposed. For example, even if an agreement has been achieved by the parties, judges can still order further measures or impose special conditions (such as a reprimand, supervision by social services, placement in a secure institution, school attendance, training, community services etc.).

In Poland concluding a mediation agreement does not end the juvenile criminal proceedings with the exception of private prosecution. However, the court, when issuing a ruling, should be guided by it, respect its provisions and, if possible, include them in the issued ruling and decide, on its basis if and what educational or corrective measures should be applied. This will for example mean that the judge will opt to refer the minor to educational rather than correctional measures/proceedings, or the conditional suspension of placing the minor in a correctional facility. In instances where mediation was reached at the execution stage, the mediation agreement may lead to modification of the court decision, in particular by relaxing the measures applied to the minor.

In Switzerland, the Federal law on criminal liability of Minors states that the judge for juvenile cases can exclude that the minor is punishable and terminate proceedings if a VOM agreement has been reached<sup>74</sup> In this case the magistrate will terminate the proceedings upon having verified that the mediation agreement has been executed. Interestingly, in order to consider a mediation successfully concluded, it is sufficient that the parties for example agreed to a symbolic or material compensation or conduct, while it is not necessary that they reached a shared view of the episode.

In a judgment of 17 June 2020, the Swiss Federal Tribunal has stated that, in case of multiple co-accused, the refusal or failure of one offender to enter mediation or conclude a mediation agreement should not undermine the possibility for the victim and other co-accused to reach a mediation agreement as the behaviour of one defendant should not negatively affect the restorative and reparation process between the other parties. As such the judge will assess each co-defendant/accused's case individually and based on the circumstances terminate the proceedings in respect of one and issue a sentence in respect of the other.

In Italy, a mediation agreement will lead to discontinuation of the criminal proceedings in case of minor offenses. The juvenile's conduct during mediation may be considered by the judge for granting judicial

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<sup>74</sup> <https://www.fedlex.admin.ch/eli/cc/2010/226/it>

pardon if he believes that the conduct is not going to be repeated again in the future. In case of unsuccessful mediation, the judge may still consider the possibility of probation services in those cases where the failure is due to the conduct of the victim. In case of successful mediation, the judge can also terminate proceedings.

#### **Recommendation**

It is recommended to regulate the impact of VOM agreements on criminal proceedings when discontinuation is not possible (or for example if mediation is applied to other categories of crime, and offenders, that are not subject to diversion): VOM agreements can be considered as mitigating circumstances or could lead to **a waiving or mitigating the sentence, reduction of the penal scale or changing of the sentence type. It can also just seek to heal the harm caused by crime and facilitate conflict resolution. By providing a platform for open communication and understanding between victims and offenders, restorative justice processes can empower individuals to address the underlying causes of the offense and work collaboratively towards finding meaningful solutions.**

## **PART TWO: VICTIM OFFENDER MEDIATION FOR ADULTS**

### **10. Overview of international standards and European good practices on Victim Offender mediation and other restorative justice processes for adults**

The following overview covers the regulation of VOM and other restorative justice programmes for adults in the Council of Europe member states. Due to the current lack of regulation under Georgian law of victim offender mediation and other restorative justice mechanisms, reference to the Georgian legal system in the analysis below is limited.

Each chapter provides a brief summary of key findings followed by detailed description of relevant national regulations. A comprehensive regulation of VOM under Georgian law should ideally cover all the aspects highlighted in the overview below.

#### **Recommendation**

It is recommended to introduce Victim offender Mediation for adults in the Code of Criminal Proceedings and regulate all the relevant aspects including eligibility criteria, individuals and authorities competent to refer / seek a referral of a case to mediation, participants, relationship with other diversion programmes, stages of proceedings where VOM can be used, suspension of criminal proceedings pending VOM, content and supervision over the execution of the mediation agreement, impact of the agreement on criminal proceedings and sentencing and confidentiality rules. Guidelines can be developed in respect of screening of eligible cases and risk assessments at the pre-conference stage.

### **11. Victim Offender Mediation for adults in Georgia: state of play**

In Georgia while some forms of diversion have been introduced in the Code of Criminal Procedure, diversion does not include Victim Offender Mediation. Victim Offender mediation has so far been applied in a small number of cases through pilot programme focused on sentence serving and preparation for release stages and lacks implementation.

In December 2021, the Conference of the Ministers of Justice of the Council of Europe “Crime and Criminal Justice - the role of restorative justice in Europe” unanimously adopted the “Venice Declaration”<sup>75</sup> that calls upon all member states, to **develop National Action Plans and support the widespread application of restorative justice in the respective criminal justice systems by providing access to restorative justice services nationwide**. The Minister of Justice of Georgia, among other minister of justice of CoE member states, voted for the adoption of the Declaration <sup>76</sup> thus committed to support implementation Recommendation (2018) 8 of the Committee of Ministers on the application of restorative justice in criminal matters<sup>77</sup>.

The plan to increase access to Restorative Justice programmes in Georgia is outlined in several important documents / strategies and action plans, including the Strategy of the Prosecutor’s Office (2022 – 2027), the Ministry of Justice's ten-year development plan, and the State Vision for Georgia’s Development 2030. The latter specifically emphasizes the need to maximize access to and widespread use of restorative justice programmes for crime prevention and the resocialization-rehabilitation process. The Vision suggests that this will be accomplished through the expansion of mediation services, the establishment of new mediation spaces, by employing potential mediators registered in the register of mediators and increase in the number of potential mediators in the register.. According to this vision, ultimately, the goal is to have mediators and mediation spaces available in every city and municipality throughout the country. It also acknowledges the lack of legislative provisions and mechanisms needed for the full-scale implementation of the adult penal mediation programme, which currently operates as a pilot programme under the internal order of the MoJ. The lack of implementation also indicates the need to introduce **legislation with clear rules, procedures, and mechanisms** for its implementation. It is advisable that there is a **multi-agency working group created** that will develop a concept and package of amendments allowing adult mediation in the criminal justice system.

## 12. Relationship of VOM with other diversion programmes

The Council of Europe Appendix to Recommendation CM/Rec (2018)8 *clarifies that restorative justice may be associated with diversion from arrest, charge, or prosecution, used in conjunction with a police or judicial disposal, occur before or parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after a sentence has been passed or completed.*

The Criminal Procedure Code of Georgia envisages some forms of diversion for adults. Unlike juveniles, adult diversion does not foresee offering victim-offender mediation thus has no restorative dimension. It only can impose obligation to compensate a victim for the damages. Article 168<sup>1</sup> of the CCP outlines the conditions under which diversion can be applied to a person who has committed a less serious or serious crime. Adult diversion involves making a written offer to the person to be diverted, subject to voluntary consent. The prosecutor consults with the victim (if any) before deciding on diversion. It is applied before a pre-trial hearing. However, it can also be used after the pre-trial hearing if the parties request in court to return the case to the prosecutor for considering diversion. It cannot be applied to individuals who are in pretrial detention.

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<sup>75</sup> Venice Declaration on Restorative Justice on the Role of Restorative Justice in Criminal Matters; available at: <https://rm.coe.int/0900001680a4df79>

<sup>76</sup>Ministry of Justice webpage: <https://justice.gov.ge/?m=articles&id=wV3MfxCtel&lang=2>

<sup>77</sup>Council of Europe and the Ministers of Justice of the COE member states to implement Recommendation (2018) 8 [https://www.coe.int/en/web/prison/home/-/asset\\_publisher/ky2olXXXogcx/content/recommendation-cm-rec-2018-8](https://www.coe.int/en/web/prison/home/-/asset_publisher/ky2olXXXogcx/content/recommendation-cm-rec-2018-8)

The prosecutor makes decision to discontinue criminal proceedings and apply diversion if a person fulfils one or several of the following conditions: transferring illegally obtained property to the state, compensating for damages caused, making cash payments to the state budget, performing community service from 40 to 400 hours, or undergoing mandatory training in cases of family crimes. If the person fails to comply with the diversion conditions, the prosecutor can initiate or resume criminal prosecution.

### 13. Comparative overview of diversion in Council of Europe state members

In the countries reviewed, national laws regulate the relationship between VOM and other diversion programme. A trend can be seen towards an expansion of available diversion programmes which can operate in parallel or as alternatives to VOM.

In the Czech Republic Mediation is administered by the Probation and Mediation Service (PMS) of the Ministry of Justice. In addition to mediation, there are other alternatives to criminal prosecution, such as the conditional suspension of prosecution or the deposit of a sum of money with a charitable fund. The PMS can also assess an offender's attitude and suitability to a proposed community service. These measures do not involve mediation and can be performed in their own right. The Service worker in the preliminary proceedings processes a timely, objective, complete and up-to-date report for the purposes of decisions by law enforcement authorities containing verified information from the Service worker's activities. The report comments on the appropriateness of applying a diversion or imposing an alternative punishment based on an analysis of risks and needs and recommends specific measures aimed at changing the offender's behaviour and treating the identified risks<sup>78</sup>.

In Belgium prosecutors can decide to use VOM in conjunction with other diversion programmes or separately<sup>79</sup>. If for example the victim does not agree to mediate or there is no victim (such as in the case of drug offenses), the prosecutor can propose diversion programmes without referring the case to VOM. Offenders who have committed offenses punishable with up to two years deprivation of liberty can be released from criminal liability following the payment of a sum of money to the State, refund of other expenses (such as expenses for an expert opinion) and other legal costs, return of financial benefits or other proceeds from the offense.

In conjunction with this compensatory measure the prosecutor can also propose to the offender a number of rehabilitative measures such as attending therapy or medical treatment (if it appears that the offense was caused by an addiction or another health issue); carry out community service for up to 120 hours (which cannot be an activity that would be normally remunerated); attending some form of training for up to 120 hours. The prosecutor can also refer victims and offenders to mediation. In case of agreement and the compensation agreed upon is proportionate to the gravity of the offense and the offender's personality, the judge can approve the VOM agreement and other measures agreed upon with the prosecutor.

In case of refusal to mediate or failure of the VOM agreement, or in case of failure to compensate for the damages caused, the prosecutor can decide to pursue other measures and the victim is informed on the continuation of other measures agreed upon with the prosecutor. Criminal action will be terminated only if the offender meets all the measures agreed upon. If damage to third parties was caused by the offender, he is excluded from criminal liability only if he provides evidence that such damage has been compensated or if he acknowledges his liability in written form. In this case the **victim**

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<sup>78</sup> [https://www.pmscr.cz/wp-content/uploads/2021/12/onas\\_zakladdokumenty\\_pravidlaastandardy\\_2021.pdf](https://www.pmscr.cz/wp-content/uploads/2021/12/onas_zakladdokumenty_pravidlaastandardy_2021.pdf)

<sup>79</sup> [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&table\\_name=loi&cn=1808111930](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=1808111930)

**will be allowed to pursue damages in civil proceedings even if criminal proceedings were discontinued.** The acceptance of the **diversion programme and acknowledgment of liability by the offender will operate in civil proceedings for damages as irrefutable proof of his fault.** The provision above, adopted in 2018 put an end to the previous system of diversion whereby VOM was tied up to other diversion programmes.

In France prosecutors can adopt diversion programmes if it appears that they are **suitable** to repair the damage caused to the victim, put an end to the consequences of the offense or contribute to the rehabilitation of the offender. These measures occupy an intermediate space between the decision not to prosecute and the decision to prosecute.

As of January 2023 such measures include 1) issuing a “probation warning”<sup>80</sup>; 2) referring the offender to a health treatment or targeted courses depending on the nature of the offense ( on road safety, on awareness against sexism and gender equality, on the risks associated to drug consumption)<sup>81</sup>; 3) requesting the offender to adopt measures to comply with the law or other regulations (for example on payment of child support); 4) prohibiting the offender to frequent places where the offense was committed or where the victim resides for up to six months 5) in cases of IPV(also affecting any family member) requesting the offender to leave the joint place of residence, to seek psychological counselling or to attend any other programme<sup>82</sup>; 6) prohibition to contact the victim, accomplice or co-offender for a period of up to six months; 7) asking the offender to compensate the damages caused<sup>83</sup>; 8) referring the case to VOM; 9) ordering the offender to pay a sum of up to 3000 euro to a victim support association<sup>84</sup>; 10) signing a plea agreement for misdemeanours or crimes such as drug use of drunk driving<sup>85</sup>.

According to internal guidelines, diversion programmes should not be used as a default option or as mere substitutes for the decision not to open criminal proceedings. Diversion programmes must be

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<sup>80</sup> As of January 2023, the so called “reminder to the law” has been replaced by a “probationary criminal warning”. The warning entails an interview with the prosecutor or his delegate during which the offender is reminded of the legal provision breached and the penalties applicable. The offender, who can be assisted by a lawyer, must have acknowledged the offense and also prove that he has compensated the victim. Following the warning the offender is placed under probation for a period of one (for misdemeanours) or two (for crimes) years. In case the offender commits a new violation during the probationary period, the prosecutor can decide on a plea bargain (which may include a proposal to compensate the victim) or prosecute the perpetrator before a criminal or police court. In case of minors, the warning can be used in respect of juveniles who are first time offender and do not need educational follow up. Warning is not available for repeat offenders, offenders who have committed violent acts or other crimes against a public official and when the victim has not been compensated.

<sup>81</sup> The courses must be paid by the offender (or in case of a minor, by his parents). In case of minors, they can also be asked to seek psychiatric or psychological counselling or to attend educational or professional courses.

<sup>82</sup> This measure is usually requested when acts of violence are likely to be repeated and the victim requests it. The public prosecutor may specify the terms and conditions for covering the costs relating to this accommodation for a period that may not exceed six months

<sup>83</sup> In this case the victim is informed of the proposal and can accept or refuse it. If a misdemeanour was committed against public order or the damage is caused to public property, the prosecutor can require that the offender concludes an agreement with the municipality’s mayor. The agreement can include compensation for damages or non-paid community service to the benefit of the municipality for up to 30 hours. Diversion programmes can also be applied when the municipality’s property was not damaged but a misdemeanour such as violation of public order was committed on its territory.

<sup>84</sup> Prosecutors can sign agreement with victim protection associations so that they can be recipient of direct payments by offenders in lieu of prosecution. For example, the prosecuting office of the city of Dax signed such a cooperation agreement with the victim protection association ADAVEM. The association created a separate budget for receipt and management of these contributions. Within the framework of the cooperation agreement, offenders who agree to alternatives to prosecution are also summoned to receive an information session by ADAVEM on the impact of offense on victims who need to receive legal, psychological and social support. MoJ Report on criminal policy for 2022, available at: [http://www.justice.gouv.fr/art\\_pix/Rapport\\_politique\\_penale-VD.pdf](http://www.justice.gouv.fr/art_pix/Rapport_politique_penale-VD.pdf)

<sup>85</sup> <https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006167418/>; articles 39-44 of the code of criminal proceedings

adopted taking in consideration the nature of the offense, relevant circumstances and the offender's personality including his attitude towards the facts and the victim, professional and family situation, existence of a criminal record and of psychological or psychiatric reports. The use of diversion should be prioritized over prosecution in case of drug offenses (where health and rehabilitation programmes should be made available) or minors who may have committed a large number of offenses within a short period of time and are undergoing/participating in educational programmes.

Victims are taken in consideration in the choice of the appropriate diversion programmes by requiring that, even in cases of minor offense, consideration will be given their impact such as lengthy psychological or material repercussions. Prosecutors are also required to secure the identification and provision of information to the victims so that they can exercise their rights and are put in condition to claim damages. The mediation agreement does not prevent the victim from seeking damages in civil proceedings.

As for the criteria to choose one diversion programme over the others, the requirement to undergo courses on gender equality is for example recommended in respect of sexual offenses of mild severity and when the victim is not anymore in a relationship or has only had an occasional interaction with the offender. As for VOM the typical offender profile is a person who has no (or limited) criminal record for acts of violence, who has committed offenses against property or persons (entailing loss of the ability to work for up to 8 days) or offenses such as non-payment of alimony or violation of parental visitation rights, offenses committed in the framework of neighbours' disputes; offenses against public officials or against the environment.

In Italy besides referring cases to VOM, it is also possible for the justices of peace (which handle misdemeanours and less serious offenses) to terminate proceedings if the offender, before the hearing on the merits, has compensated the damages caused or undertaken reparatory measures and if the justice of peace considers that the sum paid is adequate. If the offender has not compensated the damages yet but expresses an intention in this direction, the justice of peace can also suspend the proceedings for three months.

Other legislative provisions regulate **pre-trial probation** for more serious crimes (punished with up to six years deprivation of liberty). Even before opening criminal proceedings, prosecutors must inform offenders that they can seek pre-trial probation upon which successful completion the proceedings will be discontinued and the offense considered as "extinguished". Offenders and prosecutors can lodge a request to suspend the proceedings by submitting a probation/treatment plan, which has been agreed with the Office for the external execution of penalties (district probation offices). The treatment plan is based on an inquiry on the family and social situation of the offender and must be agreed upon by the institution or person where the activity must be carried out. It also contains information on the offenders' financial situation and ability to compensate the damages caused or to carry out other compensatory activities. Pre-trial probation measures can include, if possible, mediation. However, in case mediation is not possible, for example because the victim did not agree to it, suspension of the proceedings and adoption of probation may be still possible.

Pre-trial probation activities can be carried out at private or public entities in the district. District probation offices monitor the execution of the treatment plan and report about the performance to the judge at least every three months. The probation offices can also propose reductions of the length of the treatment or, in case of serious and repeated violation of the terms, can propose that the judge revoke pre-trial probation. Upon completion of pre-trial probation, a final detailed report is sent to the judge. Parties to proceedings have the right to obtain access to the interim and final reports. If properly completed, pre-trial probation extinguishes the offence from the record and prevents further criminal proceedings.



Further legislative measures have foreseen the possibility of allowing mediation at the **execution** stage where the offender **can seek assignment to social services in lieu of deprivation of liberty**: the approval of these measure (for a period of up to four years) can be made **conditional upon the undertaking of measures in favour of the victim**.

#### Recommendation

It is recommended to introduce amendments to the Criminal Procedure Code, Article 168<sup>1</sup> of Criminal Procedure that foresees adult diversion for less serious and serious crimes. By incorporating a restorative approach in adult diversion, the focus can shift towards increased accountability of offenders and addressing the financial and emotional needs of the victim.

## 14. Stages of proceedings where VOM can be used

The United Nations *Basic Principles on the use of Restorative Justice programmes in criminal matters*<sup>86</sup> and the Council of Europe Appendix to Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters, state that restorative justice may be used at any stage of the criminal proceedings. The European Union Guidance to victims Directive<sup>87</sup> states that Member states are invited to consider *encouraging the use of mediation during criminal proceedings, as well as during the execution phase, at least in cases of less serious or minor crimes*.

### 14. 1. Existing pilot programmes on penal mediation for adult convicts in Georgia

Pilot programme on penal mediation for present and former convicts is regulated by the decree ‘On approval of Piloting Criminal Mediation - Restorative Justice Programme’ issued by the Director of the Agency. By adopting this Order (#428), in 2018, the Ministry of Justice made its first attempt to apply mediation in criminal justice as a stand-alone programme. According to the mentioned order, penal mediation is seen as a service for victims and part of a resocialization/rehabilitation programme for convicts and can be applied in practice for both minors and adults. Referrals can be made by probation and penitentiary practitioners, as well as by judges.

Diversion and Mediation Department professionals are mandated to assess the case circumstances and make the decision to launch victim-offender mediation. Despite the fact that a round of information and training sessions have been offered to the practitioners within probation and penitentiary

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<sup>86</sup> Basic principles on the use of restorative justice programmes in criminal matters, ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35 (2000). Moreover, since then, the General Assembly has included references to restorative justice in other resolutions, such as the 2021 Resolution on Strengthening criminal justice systems during and after the coronavirus disease (COVID-19) pandemic and the 2021 Resolution adopted by the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, which commits state parties to “Facilitate, where appropriate and in accordance with domestic legal frameworks, restorative justice processes at relevant stages in criminal proceedings in order to assist the recovery of victims and the reintegration of offenders, as well as to prevent crime and recidivism, and assess their usefulness in this regard”. In its last Resolution specifically on Restorative Justice, the United Nations Commission on Crime Prevention and Criminal Justice encourages member States to develop Restorative Justice taking into account the Basic Principles.

<sup>87</sup> DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA2013

institutions, the number of referrals is still low. Besides the low-level number of referrals, there is lack of readiness from one of the parties to engage in the process.

Referral to restorative justice programme (victim-offender mediation) is also part of the Minister of Justice of Georgia Order, (2021), on the approval of the programme of preparation for the release of a person sentenced to life imprisonment, in accordance with amendments introduced to the Criminal Code of Georgia on 11 January 2021. Convicts who have served at least 12 years of imprisonment and give their written consent to participate are included in this programme. The programme is implemented based "On the approval of the rules for the assessment of risk and needs, as well as the preparation, implementation, and monitoring of individual plans for the purpose of resocialization and rehabilitation of adult convicts and ex-prisoners". The programme duration is two years, with the possibility of extending it by another two years.

There is a specially approved multi-disciplinary group comprised of representatives of the penitentiary and probation to implement the programme that consists of 8 stages: assessment of a convict, individual programme design, collection of information and preparation of a report about the victim and his / her family; establishment of constructive relations; healthy lifestyle and profession; psycho-social support; civic education, general education, and skills-based adaptation module and finally constructive planning of the future. The third stage supports a convicted person to establish a "constructive relationship" with the family and envisages initiation/offering of engagement in the mediation with the victim or his / her successor. The Agency is engaged in this programme through its mediators, victim communication specialists and social workers. Even though it is mandatory to offer victim-offender mediation, and information has been provided to the practitioners, due to the lack of awareness of the victims and their families on the benefits of restorative justice, the passage of long time and heavy trauma caused by the commission of especially serious crimes, victims' families are usually not ready to confront the convicts. Thus, there has been only one successful mediation case so far. However, according to the practicing mediators, they are currently working hard individually with the parties on two cases and the outcome will be known later.

## 14.2. Comparative European practices

In the Council of Europe member states, approaches tend to vary although there is trend towards using VOM **at all stages of criminal proceedings**. In fact, while Portuguese law only allows VOM at the pre-trial stage, countries such as Poland, Czech Republic, Switzerland, Belgium, Italy, Spain, the Netherlands, Norway and Austria foresee the possibility to refer cases to VOM at all stages of criminal proceedings including the execution stage.

In certain cases, national laws foresee that VOM can be proposed if a previous attempt has failed, for example once at the trial stage the parties gain a different or clearer view of their respective position and have new incentives to settle. In principle referral to mediation should be made at the earliest stage although depending on the type of case and other circumstances the most suitable timing for referral may vary.

In the Czech Republic VOM was initially foreseen only at the pre-trial stage and in connection with diversion programmes, however starting in 2008 and based on the experience of parole boards in Canada and Great Britain, VOM has been integrated at the parole stage and is implemented by the country's Prison Service' Commissions for conditional release.

In Italy, legislative decree No. 150 of 2022 has established that restorative justice procedures can be adopted at all stages of criminal proceedings and in respect of all crimes insofar as the procedure is

considered as useful to achieve the goals of restorative justice. In case of offenses subject to private prosecution, restorative justice programmes can take place even before a criminal complaint has been lodged.

In Belgium VOM can be offered by the prosecutor at any stage of the proceedings until sentencing.

The Dutch prison sector has invested in encouraging restorative practices within prisons known as restorative detention. Within Dutch detention centres, restorative consultants play a fundamental role in implementing restorative practices. Their activities include working with inmates on awareness and being the first to address issues concerning restoration, feelings of guilt and shame and referral to mediation between victims and offenders.

Spain has a well-developed restorative justice programme within the penitentiary system. The programme was initially introduced in 2011 to enable victims of terrorism to meet ETA terrorists who had been convicted but had shown regret and followed a path involving distancing themselves from ETA<sup>88</sup>. The programme was put on stall for ETA members but resumed in 2016 and was eventually applied to individuals convicted and subject to deprivation of liberty following the commission of other offenses (with the exclusion of gender and sexual violence). In 2021 the programme was resumed also in respect of ETA members in prison. These restorative justice encounters do not lead to any automatic reduction of the penalties applied, nor to other benefits within the penitentiary system although they may be taken in consideration for decisions such as temporary permissions to leave<sup>89</sup>. In 2020 the Penitentiary Organisation, the Judicial Council and the Prosecutorial Council developed protocols for data exchange in order to be able to contact direct victims and offer the possibility of restorative justice meetings with convicted offenders in prison or on work leave. The Ministry of Interior published a 140 pages methodology<sup>90</sup> and a 240 pages guideline<sup>91</sup> to guide any restorative justice provider engaged in such programmes within the penitentiary system.

Similarly, Finland has developed an important mediation practice in prisons between the offender and the victim or relatives of the victim in case of homicide, but also between the offender and his or her family members and between offenders. Other offenses that are object of mediation procedure in prison include aggravated assaults, attempted manslaughter and sexual offenses. This mediation

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<sup>88</sup> 2 May 2011; El País, El perdón cara a cara entre víctima y Verdugo (forgiveness face to face between victims and executioners); available at: [https://elpais.com/politica/2011/05/01/actualidad/1525195409\\_343496.html](https://elpais.com/politica/2011/05/01/actualidad/1525195409_343496.html)

<sup>89</sup> In recent cases Spanish courts revoked a terrorism convict' work release on the grounds that they had not shown regret convincingly or had not asked for forgiveness from the victims explicitly. In one case the work release had been accorded by the authorities on the basis of a low risk of reoffending, good conduct, commitment to refrain from further offenses and to compensate the victims. However, the judge revoked the work release on the grounds that so far only 200 euro (out of 400.000 adjudicated) had been paid to the victims in compensation. As for written statements of regrets the judge noted that while the convict had submitted two "letters of regret" that did not contain stereotypical and ambiguous statements, he had not referred to ETA as a terrorist organisation, had defined the terrorist attacks as "armed fights". The court noted that the convict had not participated in restorative justice meetings with victims which may prove the genuine nature of his regret and distancing from terrorism. The court concluded recommending that the convict participate in restorative justice programmes as a precondition for being granted work leave again. 28 February 2023, El País; Una jueza propone a un preso de ETA reunirse con víctimas para acceder a la semilibertad (A judge proposed to a prisoner from ETA to meet victims as condition to have access to work leave); available at: <https://elpais.com/espana/2023-02-28/una-jueza-propone-a-un-pres-de-eta-reunirse-con-victimas-para-acceder-a-la-semilibertad.html?outputType=amp>

<sup>90</sup> Ministerio del Interior de España, Intervención en justicia restaurativa- encuentros restaurativos penitenciarios (Ministry of Interior of Spain: restorative justice meetings in the penitentiary system), available at: <https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/instituciones-penitenciarias/intervencion-en-justicia-restaurativa-DP-24-web-126200539.pdf>

<sup>91</sup> Ministerio del Interior de España; Taller de diálogos restaurativos: responsabilización y reparación del daño (Ministry of Interior of Spain, Guidelines for Restorative justice dialogue: responsabilisation and compensation of damages);

practice does not lead to a shortening of the sentence or have any similar impact. All participants however defined the experience as useful.<sup>92</sup>

#### Recommendation

It would be advisable to share the experience of Austria, where VOM can be applied at any stage of criminal proceedings, although the offer of VOM is usually made in the early stages. The public prosecutor has the discretion to refer a case to VOM and may carry out an investigation to ascertain whether a case meets the criteria. Judges should also have the right to directly make referrals.

In order to ensure the widespread application of restorative justice, it is advisable to add a restorative dimension to rehabilitation and resocialization programmes under custodial and noncustodial sentences as part of individual sentence planning. Consideration could be given to post-verdict mediation when conditional early release of the convicted person is considered following VOM. Post sentencing mediation could also be regulated as a ground for a revision of the sentence or can be done based on the request of a victim or a convicted person without expecting any legal consequences.

The low number of referrals on adult mediation cases, while there is pilot programme going on since 2018, and lack of readiness from one of the parties to engage in the process, suggests that **further training is needed for criminal justice practitioners on restorative justice in general and also how to identify suitable cases for mediation, as well as how to communicate the benefits of mediation to victims and offenders.**

## 15. Who can seek referral to mediation

International instruments do not determine the professional role of the person in charge of referring specific cases to restorative justice and affirm the capacity of the state to regulate and facilitate the referral. The COE 2018 Recommendation specifies that *Referrals to restorative justice may be made by criminal justice agencies and judicial authorities or may be requested by the parties themselves.*

Usually, prosecutor and police refer cases to VOM at the investigation stage while judges are responsible for referral at the trial stage. VOM can also be requested by social services and by the parties themselves. In Spain administrative penitentiary institutions, or penitentiary control magistrate are also competent to manage some mediation programmes at the execution stage.

Certain countries foresee limitations to the possibility of the parties to seek referral to mediation for example if the offense affected family members. For example, in Finland while mediation can be proposed by the victim, the offender, the police or prosecutors, in cases the crime involved the suspect's spouse, child, parent or other close relative, only the police and prosecutor can propose mediation.

In Belgium, anyone who is directly affected by a criminal case may request mediation, so, not only victim and offender, but other persons who have a direct interest as well: for example, a family member, a partner or a relative can request restorative mediation (médiation réparatrice), at any stage of

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<sup>92</sup> An overview of mediation in Finnish prisons was provided by Dr. Arja Konttila- senior specialist of the prison and probation service of Finland, care operations department- in the framework of the 28th Council of Europe Conference of Directors of Prison and Probation Services (CDPPS), available at: <https://www.coe.int/en/web/prison/berlin-6-7-june-2023>; ppt presentation available at: <https://rm.coe.int/konttila-arja-presentation-berlin-6-6-2023/1680ab94d3>

proceedings and in respect of any offense. In sentencing the judge can take in consideration that a mediation has taken place among the parties<sup>93</sup>. On the other hand, referral to penal mediation (médiation pénale), can only be made by the prosecutor in cases punishable by up to two years deprivation of liberty and before the decision to prosecute is adopted. It leads to the discontinuation of the criminal proceedings.

In the Czech Republic the Probation and mediation service (PMS), the body in charge of carrying out VOM<sup>94</sup>, usually works upon referral of the public prosecutor, judges, social workers for youth and adults, parents of juvenile offenders, advocates, police etc. Usually, the police and state prosecutor will notify the PMS office of matters suitable for mediation, mainly in juveniles' cases. PMS officials actively participate in identifying cases suitable for probation or mediation procedure. The PMS must be also immediately notified of any arrest or pre-trial detention. The PMS can also be contacted by victims, offenders, their relative and anybody who was somehow offended by a criminal offense. If the PMS offices are contacted by the victim or offender who want to engage in penal mediation, they immediately notify the competent judge or prosecutor, who can still decide that the matter should not be mediated, and mediation will further not be pursued.

## 15.1 The role of police in referral to VOM and implementation of restorative justice activities

While prosecutors tend to be the key gatekeepers on VOM and are the legal professionals in charge of referring cases to VOM, in a number of countries police have been progressively involved in these mechanisms. The involvement of police has enabled an early intervention of restorative justice programmes and also the use of informal restorative justice practices to prevent the spiralling of interpersonal disputes into criminally relevant offenses.

In France prosecutor can delegate referral to VOM and diversion to delegated officials including police officers.

In Finland police play an important role in referring or initiating the majority of cases. In Denmark, following the adoption of a law on victim offender mediation in 2010, VOM can be used at any stage of the proceedings. Cases are referred by the police. A coordinator is appointed in each police district to handle the VOM service.

As for the direct involvement of police in restorative justice practices, the United Kingdom National Police Chiefs' Council has foreseen that police officers can use informal restorative justice methods to resolve low-level crime and anti-social behaviour as it happens for example by facilitation of street negotiations to diffuse a situation immediately after a crime has occurred. The offender can apologize, and no further action is taken.

Community resolutions can include elements of restorative justice and are used by police for dealing with an adult or juvenile offender in a low-level crime (low-level criminal damage, low-value theft, minor assaults without injury and anti-social behaviour) in a way which is proportionate. Resolutions can include the offender being given advice about their behaviour, apologizing, or sending a letter of

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<sup>93</sup> [https://etaamb.openjustice.be/fr/loi-du-22-juin-2005\\_n2005009529.html](https://etaamb.openjustice.be/fr/loi-du-22-juin-2005_n2005009529.html)

<sup>94</sup> Probation and mediation service act, No 257/2000, available in English at: [https://www.pmscr.cz/wp-content/uploads/2021/09/en\\_about\\_probation\\_and\\_mediation\\_act\\_aktual\\_2014.pdf](https://www.pmscr.cz/wp-content/uploads/2021/09/en_about_probation_and_mediation_act_aktual_2014.pdf)

apology to the victim, or making some form of reparation such as repairing or paying for any damage done<sup>95</sup>. Preconditions for issuing such community resolutions include clarity that a crime or incident has occurred and that the offender is responsible, admission of guilt, absence of relevant offending history, consultation with the victim (resolution can be adopted without victims' consent but in this case the police supervisor must agree and the rationale must be recorded). Intimate partner violence cases and indictable only offenses are excluded while hate crime offenses can be subject to community resolutions only in exceptional cases<sup>96</sup>.

Police officers receive different levels of training in order to be able to apply restorative justice mechanisms. Street level restorative justice usually required between 5 and 8 hours of training on using informal restorative justice mechanisms to resolve minor conflicts. A second level of training of up to 20 hours can be obtained to use restorative justice when larger numbers of victims or offenders are involved<sup>97</sup>.

In Italy, pilot projects have been put in place to introduce restorative justice techniques by police officers<sup>98</sup>.

## 16. Eligible offenses for VOM

Council of Europe (2018)<sup>8</sup> Recommendation states that the *type, seriousness, or geographical location of the offence should not, in themselves, and in the absence of other considerations, preclude restorative justice from being offered to victims and offenders.*

According to the UNODC Handbook on Restorative Justice Programmes “While restorative justice programmes have largely been reserved for first time offenders or relatively minor offences, its healing qualities may be even more powerful in situations involving serious offences. It has been observed that the victim empowerment experience associated with restorative justice, even in cases of serious violence, may counter the humiliation, disempowerment, lack of information and loss of control that tends to result from mainstream criminal justice processes. Restorative justice can also be quite effective for offenders who have well entrenched patterns of committing serious crimes. Applying restorative justice to cases involving serious crime must obviously be done with great caution and there must be effective safeguards in place to protect the victims and their rights.”<sup>99</sup>

Across the countries reviewed, there are variations as to the type of offenses that can be referred to mediation although in general one can note an expansion of eligible offenses. Most countries have started implementing VOM in respect of small offenses and subsequently adopted (or plan to adopt) reforms to further expand VOM to all stages of the most serious offenses as capacities and experience

<sup>95</sup> Community resolution guidance, available at: <https://library.college.police.uk/docs/NPCC/Community-resolution-guidance-2022.pdf>

<sup>96</sup> Community resolution guidance; available at: <https://library.college.police.uk/docs/NPCC/Community-resolution-guidance-2022.pdf>

<sup>97</sup> <https://restorativejustice.org.uk/sites/default/files/resources/files/rjc-policeandjrj-5digi.pdf>

<sup>98</sup>

[https://www.giustizia.it/giustizia/it/mg\\_1\\_12\\_1.wp?facetNode\\_1=4\\_55&facetNode\\_2=0\\_2&previousPage=mg\\_1\\_12&contentId=SPS31410#](https://www.giustizia.it/giustizia/it/mg_1_12_1.wp?facetNode_1=4_55&facetNode_2=0_2&previousPage=mg_1_12&contentId=SPS31410#)

<sup>99</sup> Handbook on restorative justice programmes, UNODC 2020, page 75 Available at: [https://www.unodc.org/documents/justice-and-prison-reform/20-01146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf)

in the field of restorative justice increased. Some countries have also foreseen the possibility of referring to VOM cases of murder and manslaughter although such cases tend to be rare in practice. Laws vary as to the possibility of using VOM in respect of violent crimes and IPV (intimate partner violence) with countries that completely exclude these types of offenses from mediation to others that have instead developed a rich practice in addressing IPV and violent offenses.

In Belgium eligible offenses for automatic referral are offenses punished with up to two years deprivation of liberty. This referral is automatic and prosecutors are required to justify a decision not to refer eligible offenses. Most common cases referred to VOM include failure to pay court mandated child support, drug offenses, damages caused by traffic offenses and violence between neighbours while IPV cases tend to be excluded as they are characterised by power imbalances, which make the dispute unsuitable for mediation. In the eligible cases, successful VOM will lead to the discontinuation of criminal proceedings.

Another law adopted on 22 June 2005 allows parties to request (and judges and prosecutors to propose) VOM at any stage of criminal proceedings and for any type of crime, regardless of its gravity<sup>100</sup>. This type of mediation is not subject to automatic referral. As of 2009, mediation can also be offered upon lodging of a criminal complaint with the police.<sup>101</sup>

Specific mediation methodologies and expertise have been developed in Belgium but also in Hungary and Ireland to handle road traffic offenses.<sup>102</sup>

In France referral to VOM is limited to minor offenses and is conditional upon compensation of damages caused by the offender. VOM is selected insofar as it allows to put an end to the violation and contribute to the social reintegration of the offender. The offense must not be complex in nature, must be clearly established and acknowledged by the offender. Usually VOM is applied when there are ongoing relationships between victim and offender (family members, colleagues, neighbours). In case of IPV among partners or former partners VOM is not possible. However, a new decree has introduced the right of parties to ask for VOM at all stages of proceedings.

In Portugal referral to mediation can be made only in respect of offenses that are subject to private prosecution and concern only crimes against persons and against property. Mediation cannot take place in cases of crimes against sexual freedom or against self-determination, in cases of embezzlement, corruption or influence peddling, in case the victim is below 16 years<sup>103</sup>. Offenses are eligible if evidence has been collected that a crime has been committed and that the defendant was its agent, and if it is understood that this way it is possible to respond adequately to the demands of

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<sup>100</sup> Loi introduisant des dispositions relatives à la médiation dans le Titre préliminaire du Code de procédure pénale et dans le Code d'instruction criminelle  
[https://etaamb.openjustice.be/fr/loi-du-22-juin-2005\\_n2005009529.html](https://etaamb.openjustice.be/fr/loi-du-22-juin-2005_n2005009529.html)

<sup>101</sup> [https://nicc.fgov.be/upload/publicaties/justice\\_017\\_fr.pdf](https://nicc.fgov.be/upload/publicaties/justice_017_fr.pdf),

<sup>102</sup> In Hungary, victim-offender mediation is embedded in the criminal justice system. Around 35% of all cases with adult offenders are road traffic offenses, mainly road crashes with bodily injury. Victims can request mediation via their lawyer, but the prosecutor or judge has to authorize the referral. Post-sentence mediation is not possible. In Ireland, a local NGO, "Restorative Justice Services (RJS)" since 2016 runs Road Safety Panels, a mainly offender-orientated program, based on a panel methodology. Currently, most of the cases are without a direct victim, referred by the courts. The panel-methodology focuses on a future positive attitude in traffic situations. The voice of the harmed community is expressed by volunteer community member. See Ingrid Marit, Restorative justice in road traffic offenses: a manual for professionals and victim-volunteers.2018, Available at <https://staging.rondpunt.nineoclocksomewhe.re/admin/storage/main/manual-restorative-justice-in-road-traffic-offences.pdf>

<sup>103</sup> Art. 2 Lei n.º 21/2007

prevention in the case. As of January 2023, the Parliament has recommended that the government carry out an assessment of the implementation of the existing legislation on penal mediation, examine the possibility of expanding mediation to other offenses, provide sufficient technical, financial and human resources to the judiciary to support the implementation of penal mediation and engages in awareness raising measures.<sup>104</sup>

In the Czech Republic referral to mediation as a general rule can be made in respect of offenses subject to public prosecution which are punished with up to five years deprivation of liberty.

In Austria the applicability of diversion programmes, including VOM, is subject to a number of conditions: 1) the facts must be sufficiently clarified, 2) discontinuation of criminal proceedings is not due on other grounds, 3) the offence should not be punishable with more than five years deprivation of liberty 4) the degree of culpability of the offender is not serious, 5) the offense did not result in the death of a person (unless the offence caused- due to negligence- the death of relative of the accused and the application of a criminal punishment would inflict further serious psychological damage on the offender). Cases of misuse of public authority can be subject to VOM and other diversion programmes only if they have caused insignificant or no harm to individuals' rights.

Additionally, referral to mediation is only possible if the accused is ready to take responsibility for the offense in a way that is appropriate to the circumstance of the case (by compensating the damage caused or otherwise contributing to address the consequence of the offense) and if necessary, commits to refrain from further offenses in the future. If the accused is innocent and therefore does not want to or cannot confess, VOM cannot take place. Cases of IPV are regularly subjected to VOM.

In Poland there is no limit to the type of criminal offences that can be referred for mediation. Scholarly research has provided some possible exclusion criteria such as excluding referral for crimes in which the victim's harm is so extensive that he/she is unable to confront the offender, for example in cases of violent crime, robbery, rape. According to part of the doctrine mediation may be excluded also depending on a) the nature of the crime, e.g., sexual, or fatal; b) the awareness of the offender during performing the act, i.e., intentionally/ unintentionally, deliberately; c) reversibility of the effects of the crime, e.g., irreversible effect; d) the degree of cruelty of the offender<sup>105</sup>. Other scholars however held that mediation should be possible also for serious crimes and that shuttle mediation (which is, mediation carried out separately, as regulated by the Ordinances of the Ministry of Justice) should be a suitable form to prevent re-victimisation and address the possible issues that would otherwise prevent mediation.

According to Finnish law, in principle any type of crime can be referred to mediation, but de facto mediation has rarely been used in cases of serious crimes such as manslaughter. However, some mediation offices have organized trainings on mediation in serious crimes such as murder. Finnish law allows VOM in cases of IPV (intimate partner violence). Cases involving child victims must not be referred to mediation if the victim needs special protection because of the nature of the crime or because of the child's age. Sexual offences against children are not referred to mediation either. In general, about half of mediated cases involve violent crimes while other cases mediated include property crimes, threats, negligent bodily injury, resistance to a person maintaining public order, dissemination of information violating private life.

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<sup>104</sup> Resolução da Assembleia da República 1/2023, de 6 de Janeiro, available at: <https://dre.tretas.org/dre/5190631/resolucao-da-assembleia-da-republica-1-2023-de-6-de-janeiro#anexos>

<sup>105</sup> <http://resocializacjapolska.pl/index.php/rp/article/view/275/358>



## Recommendation

It is recommended to introduce the possibility of referring cases to mediation in respect of all offenses, in line with the Council of Europe Recommendation (2018)<sup>8</sup> concerning restorative justice in criminal matters. Consideration should however be given on available financial and human resources and the possibility of adopting a gradual approach in the implementation of restorative justice measures for adults.

### 16.1. Suitability screening

In the countries examined, the suitability of cases for mediation is usually assessed by judges and prosecutors in consultation with experts or mediation providers while in other cases such screening is carried out by the mediation provider itself.

In Norway, with exception of cases where referral to mediation is made by the prosecutor, assessment of suitability of cases for mediation can be made by the mediation offices. This is for example the case when referral is requested by the parties or other public authorities.

In the Netherlands after a referral, the coordinator of the mediation bureau of the court contacts the parties and a registered mediator. The coordinator checks whether the case is indeed suitable for mediation and whether the mediators are able to bring the parties together.

In Austria, before referring the case to mediation or other diversion programmes, the prosecutor can consult the mediation institution (Neustart), the institution where the community services are to be performed, the accused and the victim to comment on whether the diversion programmes would be suitable and appropriate.

### 16.2. Risk assessment

The Council of Europe 2018 Recommendation states that facilitators must be afforded sufficient time and resources to undertake adequate levels of risk assessment (Paragraph 29). The United Nations principles state that *the safety of the parties shall be considered in referring any case to, and in conducting, a restorative process.*

In certain countries the screening of cases selected for referral to mediation also entails an examination of the specific features of a case to secure that either a case is not referred to mediation if this creates risks for re-victimisation or an unfair result or to secure that the mediation session is organized in such a way to prevent re-victimisation.

In Spain, the 2015 victim statute law states that the restorative procedure is only possible when the mediation procedure does not entail a risk to the safety of the victim, nor is there a danger that its conduct may cause further material or non-material harm to the victim.

In Italy mediation between the parties must be organized in such a way to prevent further re-victimisation. Upon initial intake of a case mediators will assess a number of circumstances such as the existence of a minimum degree of trust between the parties, trauma, emotional dysregulation, an assessment of the balance of power between the parties, psychological condition (disagio psicologico) and situations of dependency.

### 16.2.1. IPV (intimate partner violence) cases eligibility and screening

#### International standards

While article 48 of the Istanbul Convention<sup>106</sup> required parties to **prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of the Convention, voluntary referral to VOM is not in principle excluded.** However, even voluntary referral to VOM of cases of Intimate partner violence is still object of controversy and of differing approaches in the Council of Europe state members and internationally.

The UNODC Handbook on Restorative justice programmes noted that “it has been observed that the victim empowerment experience associated with restorative justice, even in cases of serious violence, may counter the humiliation, disempowerment, lack of information and loss of control that tends to result from mainstream criminal justice processes”<sup>107</sup>. In its Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women, UNODC encourages Member States to develop guidelines on the use of restorative justice processes in the context of violence against women as well. High-risk cases should be excluded, and victims need to be fully informed and freely consent to the process. Furthermore, referrals to restorative justice should only occur after charges have been filed and the prosecutor or investigative judge has given approval.<sup>108</sup> Applying restorative justice to cases involving serious crime must obviously be done with great caution and there must be effective safeguards in place to protect the victims and their rights. While the potential benefits of restorative justice processes in cases of intimate relationship violence, child abuse and gender-based crimes can be considerable, one should perhaps not be overly optimistic in applying that approach and should remain conscious of the sometimes deep traumatic impact that the crime has had on the victims.

#### State of play in Georgia

The consultations carried out by the Council of Europe consultants in Tbilisi with leading representatives of civil society active in the field of women support and protection have highlighted the need to approach the matter carefully in consideration of the absence of sufficient safeguards and supporting infrastructure for women who are victim of intimate partner violence. In consideration of the above, participants stated the opportunity of excluding from VOM IPV and similar offenses.

Notably, in its report on Georgia, *GREVIO strongly encouraged the Georgian authorities to “take measures to ensure that in cases of offences of violence against a woman, plea agreements do not apply where the victim has not or is not able to freely consent to the procedure, having regard to the imbalance in power relations between the victim and the perpetrator, and to ensure that all women victims of violence covered by the scope of the Istanbul Convention are informed about the non-mandatory nature of alternative dispute resolution in criminal proceedings.”*<sup>109</sup>

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<sup>106</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence, available at: <https://rm.coe.int/168008482e>

<sup>107</sup> Page 76 of the UNODC Handbook on restorative justice programmes, available at: [https://www.unodc.org/documents/justice-and-prison-reform/2001146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/2001146_Handbook_on_Restorative_Justice_Programmes.pdf)

<sup>108</sup> UNODC (2017), Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women, New York: United Nations, p. 77.

<sup>109</sup> GREVIO Baseline Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in Georgia, November 2022, available at: <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa>

## **Comparative European Practices on the use of restorative justice in Intimate partner violence (IPV) cases**

In Austria, in IPV cases, a first assessment of a case is done on the basis of the report of the public prosecutor. If risk factors appear, a separate personal meeting with each party and a risk -assessment tool help the practitioner to estimate if a case is appropriate for VOM or not. Cases of IPV that are referred to mediation usually include instances of minor assault, threat or when there have been mutual accusations of violence or when the violence has taken place for the first time. Cases that cannot be referred include all cases of chronic, systematic, or instrumental partner violence. The risk assessment also includes whether the offender possesses a firearm or there are other indicators of risk of another violent incident. Cases of IPV will not be referred to mediation also if the offender blames the victim, downplays, or denies his own wrongdoing, and/or if there is a serious power imbalance, a history of violence, or a lack of emotional stability of the victim. The clear assumption of responsibility by the offender is the prerequisite for a mediation. In general, there is a strong focus on the preparation phase to protect the victim's safety, for example by having a thorough intake procedure and preparatory meetings. Mediation of IPV cases can also be accompanied/combined by a number of powers by the police such as ordering the partner who inflicted the violence to temporarily leave the premises of the couple or family residence.

In Finland, only the police and prosecutor have the right to refer a case of IPV to mediation and mediation offices carefully assess cases. The assessment must consider the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime. The Legal Affairs Committee has stated that cases of IPV should not be referred to VOM if the violence in the relationship is recurring, if the parties have already been through mediation dealing with domestic violence, or if the offender's attitude to the offence or the relationship between the offender and the victim indicates that the offender regards use of violence as an acceptable way of dealing with conflict in the relationship.

In Spain differently from Austria and Finland where IPV cases can be referred to mediation, domestic legislation expressly excludes that domestic violence can be referred to mediation.

Similarly, in France Law 2020-936 of 30 July 2020 has amended the code of criminal proceedings to exclude IPV cases from mediation<sup>110</sup>. In fact, while before it was possible to carry out VOM upon request or with the consent of the victim, such possibility has been excluded due to the circumstance that criminal proceedings for IPV are often characterised by underlying situation of chronic abuse and violence which are not suitable for mediation.

### **Recommendation**

To secure the implementation of GREVIO recommendations that plea agreements do not apply where the victim has not or is not able to freely consent to the procedure, having regard to the imbalance in power relations between the victim and the perpetrator, and to ensure that all women victims of violence covered by the scope of the Istanbul Convention are informed about the non-mandatory nature of alternative dispute resolution in criminal proceedings.

Consideration should also be given to the circumstance that other offenses that do not fall under the immediate scope and narrow definition of IPV may require risk assessment in order to screen out

<sup>110</sup> <http://www.justice.gouv.fr/bo/2020/20200831/JUSD2020619C.pdf>; see also an overview of measures introduced to prevent and address IPV: <http://www.justice.gouv.fr/bo/2020/20200831/JUSD2020619C.pdf>

cases involving a victim and offender who are or were in an intimate partnership: for example, damage to property may have been intentionally caused in retaliation against a woman who decided to terminate a relationship. If there are indicators that the offense is part of a broader IPV situation, screening protocols should be put in place to prevent referral to mediation in cases that may put the victim at risk of revictimization and when there are situations of imbalance of power due to psychological, financial dependency or similar situations.

## 17. Information and contact with the parties. Protection of victims' rights and interests

Article 4 of the EU Directive 2012/29 on establishing minimum standards on the rights, support and protection of victims of crime states that Member States shall ensure that victims are offered information on available restorative justice services, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive.

The EU Victims' Rights Strategy (2020 – 2025) stresses the importance of restorative justice for victims of crime and recognizes it as an important option that can help meet the needs and rights of victims. The strategy encourages member states to ensure that victims are aware of their rights and the restorative justice options are available to them.

In the countries examined, the initial contact with the parties to inform them of the referral to mediation and to explain the nature and legal implication of mediation can be made either by the referring authority or by mediators themselves. Rules as to how to contact the parties tend to vary.

In Italy, legislative decree 150 of 2022 introduced a requirement that parties to restorative justice procedures are informed in a timely, effective and complete manner. Such information must be provided at all stages of proceedings by judicial authorities but also by social services, victims assistance bodies, police officers and any authority that is in contact with victims and offenders.

In the United Kingdom, the Code of practice for victims of crimes expressly state that if the offender is an adult, victims have the Right to receive information about Restorative Justice from the police and how to access Restorative Justice services in their local area<sup>111</sup>. In case of juvenile offenders this information is provided by Youth Offending teams operating at local level<sup>112</sup>.

According to the UK Code of practice for victims of crime, although the police are responsible for providing victims with information on Restorative Justice measures initially, all service providers must consider whether victims would benefit from receiving this information at any stage of the criminal

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<sup>111</sup> Code of practice for victims of crime; <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code>

<sup>112</sup> Youth offending teams are part of the local councils and are separate from police or courts although they work with the police; probation officers; health, housing and children's services; schools and education authorities and charities and the local community. They work with young people that get in trouble with the law and perform a plurality of functions such as running local crime prevention programmes, helping young people at the police station if they're arrested; helping young people and their families at court; supervising young people serving a community sentence and staying in touch with a young person if they're sentenced to custody. See: restorative justice in youth offending teams, available at: [https://restorativejustice.org.uk/sites/default/files/resources/files/kn1b\\_info\\_packs%20%28%29%20yot.pdf](https://restorativejustice.org.uk/sites/default/files/resources/files/kn1b_info_packs%20%28%29%20yot.pdf)

justice process<sup>113</sup>. Such information must be provided within 5 days from reporting a crime. Victims who are considered vulnerable or intimidated, are a victim of the most serious crime (including a bereaved close relative) or have been persistently targeted, have enhanced rights such as receiving information on restorative justice within one day from reporting a crime.<sup>114</sup>

In the Czech Republic the PMS (Probation and mediation service) has established screening procedures for initiating activity in a case, including determining the titles from which cooperation can be initiated, the procedure for approaching the perpetrator or victim, conducting the first consultation and setting the rules for further cooperation. The service has established rules for terminating cooperation with both the perpetrator and the victim for individual types of cases<sup>115</sup>.

### 17.1. Victims' rights protection in the framework of VOM

The EU Victims' Rights Directive requires that such services have as a primary consideration the interests and needs of the victim. On 15 March 2023, the Committee of Ministers of the Council of Europe adopted a Recommendation on Rights, Services and Support for Victims of Crime. It introduces the principle that victims of crimes should have the right to be heard concerning any decision having a considerable impact on their interests and a right to remedy that aims to support their rights in cases where they are not respected.

While the protection of victims' rights and interests in certain countries has led to a reduction in referrals to VOM, in other state members mechanisms have been introduced to secure the maximum possible use of VOM and other diversion measures for offenders while enabling victims to secure their rights, in particular the right to compensation.

In Belgium usually, judicial assistants contact the victim first and discuss with the victim the various possible ways to compensate the damage but also other reparative measures such as the return of a stolen item, written apologies, a new modus vivendi in case of neighbours' disputes or refusal to grant child visitation rights. The offender can also commit not to offend. The victim can also give its opinion on other diversion programmes that can be offered to the offender. The judicial assistant subsequently meets the offender to discuss possible specific reparatory and rehabilitative measures taking into consideration the offenders' physical and intellectual capacities and the prosecutor's proposal. The parties are then consulted individually and separately and if they agree they can meet at the office of the "house of justice" and the judicial assistant will act as mediator.

In France the code of criminal proceedings (Article 10-2) acknowledges victims' right to receive assistance/support by the competent state authorities or by a victim assistance association which has a partnership agreement with the state. Article 41 of the Code also regulates the possibility for the prosecutor, in the framework of diversion programmes, to seek the cooperation of victims' assistance association for example by obtaining a personalized evaluation. Personalized evaluations aim at determining whether the victim needs specific protection measures in the framework of criminal proceedings. The assessment can be carried out upon receiving a criminal complaint or follow up interviews. Victim protection associations can be joined to this procedure and their assessment

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<sup>113</sup> Code of practice for victims of crime; <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code>

<sup>114</sup> Enhanced rights for victims of crimes; <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code#enhanced-rights>

<sup>115</sup> [https://www.pmscr.cz/wp-content/uploads/2021/12/onas\\_zakladdokumenty\\_pravidlaastandardy\\_2021.pdf](https://www.pmscr.cz/wp-content/uploads/2021/12/onas_zakladdokumenty_pravidlaastandardy_2021.pdf)

included in the prosecutor's file. Victims' assistance associations are also consulted when the diversion programmes foresee compensation for damages or indemnisation to victims.

The prosecutor must also ensure that the victim is placed in condition to seek compensation for damages in the framework /within specific diversion programmes including by according an extension of deadlines to submit evidence.<sup>116</sup> In case a VOM is not agreed upon, the prosecutor can still opt to pursue other diversion programmes and the victim retains the right to seek compensation for damages.

In case a plea bargain is concluded, victims have the right to be heard by the court's president in charge of homologating the plea agreement (composition penale). Even if a plea bargain is concluded by the prosecutor and approved by the court, thus terminating the proceedings, the victim retains the right to seek compensation for damages and interests before the court and can also obtain a court injunction against the offender to secure the payment of the compensation agreed upon plea bargain.

## 18. Suspension of proceedings and length of VOM procedure

International standards usually are flexible regarding restorative justice procedures and require as a general rule that mediation is carried out within a reasonable time frame. The 2018 COE Recommendation states that *a decision to refer a criminal case to restorative justice, where this is taken with a view to discontinuing legal proceedings in the event that an agreement is reached, should be accompanied by a reasonable time frame within which the judicial authorities should be informed of the state of the restorative justice process.*

Accordingly, in the countries examined, rules as to the length of mediation vary and occasionally mechanisms have been introduced to secure a degree of flexibility in the length of mediation so that the specific features of the case and the will of the parties are taken in consideration.

In Portugal mediation must be carried out within a period of three months however the mediator may request the Public Prosecutor's office for an extension, up to a maximum of two months, provided that there is a strong probability of reaching an agreement.

In Poland, as a rule, mediation should not last longer than a month and in the case of minors, six weeks with a possible extension of another two weeks. The mediator can seek an extension of the deadline set by the referral authority for the completion of the mediation procedure upon request of the parties who wish to continue mediation despite the expiry of the deadline. In this case the request of the mediator must specify the reasons for the delay.

In Switzerland the referral authority suspends the proceedings for the duration of the mediation and fixes a maximum length for the duration of the mediation procedure taking in consideration the characteristics of the case such as the type of offence and the personal condition of the parties.

In Spain, the duration of the procedures is not regulated, and its flexibility is ensured depending on circumstances and the supervision of the authority.

### **Recommendation:**

In the countries examined, rules as to the length of mediation vary and occasionally mechanisms have been introduced to **secure a degree of flexibility** in the length of mediation so that the specific features

<sup>116</sup> [http://www.textes.justice.gouv.fr/art\\_pix/JUSD1714357C.pdf](http://www.textes.justice.gouv.fr/art_pix/JUSD1714357C.pdf)

of the case and the will of the parties are taken in consideration. It is recommended that similar flexibility is provided to the social workers and mediators in Georgia.

## 19. VOM Conference regulation

International standards usually address practical details of restorative justice from a flexible perspective. CoE 2018 Recommendation refers to the form of a dialogue, direct or indirect, between the victim and the offender (par. 4).

Rules and methodologies have been introduced to defuse the risks attached to a joint session and or to interrupt mediation sessions in certain circumstances. Although usually parties are encouraged to meet in person to discuss their case, cases of shuttle mediation where the parties never meet are not uncommon<sup>117</sup>. Indirect mediation can be a safer, less confrontational or an easier way to arrange mediation in some cases. In a number of countries shuttle mediation is the standard option when there is a risk of re-victimisation. Such are often the cases of IPV.

In Italy, mediators are required to secure that VOM does not lead to re-victimisation and to consider power imbalances between the parties and their psychological situation. If a joint session may carry the risk of re-victimisation, separate sessions and shuttle mediation should be considered. This is often the case of IPV mediation involving family members.

In Austria, at the victim's request, indirect mediation without direct personal contact is possible. IPV cases are mediated by teams comprising both men and women. In any case at least one of the mediator team must be a woman. Very often though not always, a procedure called 'mixed double' (borrowed from the language of tennis) is applied. Mediators work in couple, a male and a female mediator. There the male mediator talks with the man alone; a female mediator takes care of the woman. In these 'single talks' they ask the parties about their concrete experience of the incident that was reported - or led to the police being called. In Vienna, separate talks with the parties usually take place in parallel, in different rooms by two mediators (usually a man and a woman). When both partners have finished, the four of them (the partners and two mediators) get together for a joint mediation session, the 'talk of the four' (Vierergespräch). In Salzburg on the other hand, sometime might elapse between these first 'single' sessions and the following mediation sessions to give the partners the opportunity to think, to ponder, and to enlist legal or psychological counsel. They also have the individual talks performed by both a male and a female mediator and they use the 'talk of the four' more sparingly. In most of the other places the session with four participants is the core element of the whole procedure.

In Poland standards on the mediation session by the Social Council on ADR require the mediator to interrupt the mediation a) if he considers that at least one party to the proceedings is incapable or unable to participate effectively in mediation due to his or her physical or mental condition (for example is under the influence of alcohol or drugs); b) when the parties want to conclude an agreement the effects of which they are not aware of; c) when the parties use mediation to obtain unfair advantage; d) when the mediator becomes convinced that he is losing impartiality. Other grounds for termination include the consideration that the parties are unwilling to engage in a genuine, committed way in the mediation process. Mediation can also be interrupted if the mediator is convinced that it is not possible to reach an agreement or that the participants of mediation will reach an insurmountable impasse.

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<sup>117</sup> Shuttle mediation is the process of mediators assisting the parties involved in a conflict to reach agreement without them being present in the same room at a mediation meeting. A description of the process and its advantages can be found at the following link: <https://www.mediateuk.co.uk/a-mediators-guide-to-shuttle-mediation/>

## 19.1 Participants in VOM

The 2018 Council of Europe Recommendation affirms the need of personal participation in restorative justice, and excludes participation by proxy: *the core principles of restorative justice are that the parties should be enabled to participate actively in the resolution of crime (the principle of stakeholder participation), and that these responses should be primarily oriented towards addressing and repairing the harm which crime causes to individuals, relationships and wider society (the principle of repairing harm)*(Paragraph 13).

The rule in restorative justice is thus of personal participation, active, and not by representatives, with the exception of the supplemental participation of lawyers or advisers if needed.

While the participation of parties and their legal representatives in criminal procedures are standard practice, this is not the case for restorative justice, for this reason some countries have specifically required parties to restorative justice to participate in person and exclude the participation by proxy of legal representatives.

Some countries also foresee the possibility for other substitute participants where there is no clearly identifiable victim.

In Austria, mediation can be carried out between the suspect and the victim but also between two or more suspects (if for example both / several people are injured in a scuffle and there are mutual reports of wilful bodily harm). A large number of mediation concern situational conflicts (involving individuals who did not know each other before the event and are unlikely to meet again the future) but also offences involving parties in existing relationships (couples, neighbours, co-workers)<sup>118</sup>.

In Norway, the Mediation Service may permit the parties to have one or more persons supporting them in the meeting. A party's lawyer or legal practitioner will not be permitted to participate as a supporting person.

According to Finnish law, legally incompetent adults may participate in mediation if they understand the meaning of the case and give their personal agreement to mediation. If the crime involved violence that has been directed at the child or young person by the parents or guardians, another legal guardian will be sought to act in the child's best interests.

In Italy, the law foresees a broad spectrum of possible participants to restorative justice programmes: besides victim and offender, family members, support/trust persons chosen by the victim and offender, organisations and associations which protect/represent interests that have been breached by the offense and representatives of public authorities.

### 19.1.1. Participants in intimate partner violence (IPV) cases

Some countries have also introduced specific regulations concerning participants in IPV cases that foresee the participation of a wider scope of actors such as support persons and victim protection organisations. These regulations arguably find their rationale in the need to protect and provide adequate support to vulnerable parties such victims of domestic violence, and to produce a wider restorative output.

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<sup>118</sup> Report of the ministry of justice for 2020



In Austria it is possible both for victims and offenders to bring a support person/person of trust to the mediation meetings. The victim's consent is necessary for this choice while the consent of the offender is not needed. Support persons can be either friends and family members or a lawyer as well as representatives of women's associations or NGOs. IPV mediations involve assistance and involvement of victim support organisations and agencies (for example the Centres for protection against violence). During the victim-offender mediation, each victim is informed about victim assistance organisations and of the possibility of support during the process. The specific support of victims through victim assistance organisations during VOM is actively offered and facilitated. The parties are also informed of the right to withdraw from mediation at any time and its voluntary nature. The support from lawyers is also desired and given in victim-offender mediation. On request, the victim can also be accompanied by a person of trust.

## 20. Other forms of restorative justice processes

While victim offender mediation tends to be the most popular form of restorative justice used in the framework of criminal proceedings, other procedures have been introduced in light of their suitability for certain features of the relevant criminal case. Among the most popular forms of restorative justice are community and/or family conferencing and circles. Conferencing and other forms of restorative justice can be found in Italy France, Ireland, Czech Republic, Spain and United Kingdom just to name a few.

In the Czech Republic the Probation and mediation service (PMS) can assess the most suitable form of restorative justice procedure considering the situation and attitudes of both the offender and the victim. The suitability assessment will include a choice between victim-offender mediation, family group conference, other forms of restorative justice but also diversion. The PMS officer can involve other persons affected by criminal activity, including community representatives, in solving the case.

In Italy legislative decree 150 of 2022 states that restorative justice programmes must be suited to the interests of the victim, the offender and the community.

### 20.1. Restorative justice conference

A restorative justice conference is a planned face-to-face meeting between a victim and offender who has committed a crime against that person. Other people also affected by the offence (for example, family or community members) may also attend. Restorative justice conferencing programmes are run by a trained facilitator and, like VOM, aim at discussing the consequences of the offence and agreeing how the offenders should repair the harm they have caused. They can replace a custodial sentence or follow a period of imprisonment.

The organisation of conferences is tailored to the higher number of participants. Initially the facilitator meets victims and offenders separately to explain the process, how it works and asks for their consent to participate. The facilitator then schedules a conference at the victims' convenience. Participants sit in a circle in a private space and behind closed doors. Such space can be, depending on the persons involved and the circumstances of the offence, a police station, a prison, a school, or a community centre. Participants are then introduced in terms of how they are connected to the crime. The discussion begins by asking the offender to describe the crime they committed. Victims and other participants are then invited to describe the harm the crime has caused. Once the harm has been described, all participants are invited to suggest how the harm may be repaired. Once consensus is reached, this agreement is written up by the facilitator and signed by the offender. Finally, the

agreement is then filed with a court, police unit or other institutional mechanism for encouraging compliance by the offender with the agreement.

Conferences can last between 30 and 90 minutes, and that the focus of the conference is not to determine guilt or innocence but to consider an appropriate plan of action to move forward. The plan of action, which must be tailored to the age and needs of the person, is similar to the content of a VOM agreement and can include apologies, reparation or restitution to the victim or community, community service, restrictions on behaviour or treatment (for example for an addiction or drug use).

Existing studies suggest that conferencing has reduced crime (at least over a two-year period) although percentage differences in existing studies vary between 7% to 45% fewer repeat convictions or arrests<sup>119</sup>. The impact was significant for violent crimes while for property crimes the impact was not statistically evident. According to one review, restorative justice conferencing worked slightly but not significantly better for adult offenders than juveniles.

Existing research also shows that these programmes were more effective when they were supplementing, rather than replacing, traditional criminal procedures such as imprisonment. Other impact studies showed impact on victims such as their perception that they had received sincere apologies and they were less likely to take revenge upon the offender. They also felt more secure, satisfied with the process and its fairness<sup>120</sup>.

## 20.2. Offender reparation panels

In Ireland, District Courts in the relevant geographical areas refer cases, after conviction (in between conviction and sentencing), for participation in offender reparation panels<sup>121</sup>. The offender must have entered a plea of guilty or accept a finding of guilt and be willing to gain an understanding of the consequences of the offending behaviour through dialogue with a Reparation Panel. The offender must also be open to repairing harm, including possibly meeting with victims.

Offender reparation panels bring together the offender, representatives from the community, the Probation Service and An Garda Síochána (police) in an agreed place to talk about the effects of the harm caused. After this discussion and paying attention to the victim's perspective, a reparation agreement will be implemented.

## 20.3. Circles of Support and accountability for sex offenders

Circles of support are forms of restorative justice that have been used for convicted sex offenders in countries such as the United Kingdom<sup>122</sup> and Ireland<sup>123</sup>. They are small groups of community volunteers who support sex offenders as they reintegrate into society after release from prison. Circles programmes are composed of four to six volunteers from the community, with a range of ages and

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<sup>119</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/restorative-justice-conferencing>

<sup>120</sup> Strang, H., Sherman, L.W., Mayo-Wilson, E., Woods, D. and Ariel, B. (2013) 'Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review', Campbell Systematic Reviews, 2013:12 DOI: 10.4073/csr.2013.12; Livingstone, N., Macdonald, G. and Carr, N. (2013) 'Restorative justice conferencing for reducing recidivism in young offenders (aged 7 to 21)(opens an external website in the same tab)', Cochrane Database of Systematic Reviews, 2013, Issue 2. Art. No.: CD008898. DOI: 10.1002/14651858.CD008898.pub2

<sup>121</sup> <https://restorativejustice.ie/restorative-justice-services-rjs-2020-data/>

<sup>122</sup> <https://circles-uk.org.uk/>

<sup>123</sup> <https://restorativejustice.ie/pace-circles-of-support-and-accountability/>

backgrounds, who meet with the offender on a weekly or sometimes daily basis. The volunteers are supported by a Circle coordinator. In turn, they provide sex offenders with support and help to be accountable for their own reintegration. Volunteers also perform monitoring functions.

The purpose is to promote reintegration in society and prevent reoffending for high-risk sex offenders. The assumption is that reduced reoffending can be achieved by enhancing offenders' capabilities to achieve and maintain prosocial behaviour. Examples of support include mentoring, practical help and monitoring. Volunteers provide offenders with practical help and support (for example, to find work or housing and building appropriate friendships), with both parties maintaining an open and honest relationship at all times.

Limited existing studies on the impact of this Restorative justice method have shown a lower rate of general reoffending while no significant impact of reducing reoffending although this may be due to short follow-up periods and a lack of studies with control groups. The effect on psychosocial outcomes (for example, psychosocial adaptation, housing, relationships and employment) that might lead to a reduction in reoffending is unknown<sup>124</sup>.

## 21. Premises for the VOM conference

There are mediation spaces available in **six cities**: Tbilisi, Khashuri, Kutaisi, Akhalkalaki, Ozurgeti, and Senaki. In locations where there is no mediation space available, mediators may use the Public Service Halls of the Ministry of Justice. If these spaces are not available, mediators must refer to other municipality spaces or find alternative spaces, Agency also provides support in finding spaces, if mediators do not have personal contacts, which can be cumbersome. Mediators working in the regions have difficulties covering their travel costs when they have to travel to other cities / towns, particularly when the distance to the destination is below 30 kilometers as they are entitled to be reimbursed for travel costs if the distance is 30 kilometers or more.

Paragraph 47 of 2018 Council of Europe Recommendation states that *restorative justice services are responsible for providing a safe and comfortable environment for the restorative justice process.*

The choice of the location for VOM responds to a number of sometimes conflicting needs: on the one hand the need to secure the safety of all parties involved, on the other hand the need to secure a place that is comfortable for the parties, and in the case of minors, to keep minors as far as possible away from the court system.

In Poland, mediation proceeding should not be carried out in the buildings of the courts or prosecution office referring the case to mediation, nor at the place of residence of the parties or their families. However, in justified cases and with the consent of all the parties, it is possible to carry out mediation sessions at the place of residence of one of the parties. According to the standards issued by the Social Council on ADR,<sup>125</sup> the mediator should provide the parties with a suitable place to conduct mediation. The place of mediation should be neutral and provide the parties and the mediator with a sense of security. The place where mediation is conducted should have at least two rooms guaranteeing the privacy of the parties and the confidentiality of the mediation procedure. It should also provide basic amenities.

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<sup>124</sup>Clarke, Vrown and Vollm; Circles of Support and Accountability for Sex Offenders: A Systematic Review of Outcomes; <https://journals.sagepub.com/doi/10.1177/1079063215603691>

<sup>125</sup> <https://www.gov.pl/web/sprawiedliwosc/dokumenty-i-deklaracja-o-stosowaniu-mediacji>

In the Czech Republic, probation and mediation activities take place in premises with adequate equipment for conducting consultations (technical equipment, suitable furniture), which ensure privacy, a sense of security and protection from disturbing sensations. Special attention is paid to the arrangement of rooms in which offenders and victims meet face-to-face and provide services to victims<sup>126</sup>.

**Recommendation:**

It is important that mediators are provided with suitable **mediation spaces in all big cities of Georgia.**

## 22. Mediation agreement

The United Nations basic principles refer to restorative outcome which is *an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.*

In the same line, COE 2018 Recommendation states that *agreements do not have to include tangible outcomes. The parties are free to agree that the dialogue sufficiently satisfied their needs and interests. When referring to tangible outcomes, the Recommendation specifies that they should only contain fair, achievable and proportionate actions to which all parties provide free and informed consent.*

In Austria the compensation for the offense foreseen in the mediation agreement must be proportionate to the alleged offense. No completely different compensatory act can be undertaken that is in no way related to the previous conflict. The compensatory act to be undertaken or other conduct should be within the capacities of the offender, so that the offense can also be effectively compensated for. While victims' interests are to be promoted to the greatest possible extent and full compensation for the damage is to be sought, full compensation or restitution is not an absolute prerequisite for the settlement of the offense. However, this is definitely to be aimed for and to be assessed and weighed up depending on the damage and type of conflict.

In Portugal the mediation agreement cannot include sanctions entailing deprivation of liberty or demeaning the dignity of the offender or requiring an implementation that lasts beyond six months. When the Public Prosecutor's Office finds that the agreement does not comply with such requirements, it returns the case to the mediator, so that, within 30 days, together with the victim and the accused, the defects are remedied.

In Poland the mediation agreement can include the undertaking by the offender to compensate the damage caused and may also contain a detailed statement on how reparation will take place. Other undertakings may include a formal apology, compensation of non-material damage, community service, obligations to victim or obligations to society as a whole and so on. In Poland, court must refuse to declare the enforceability of the mediation agreement, in whole or in part, if the settlement is contrary to the law or the principles of social coexistence or aims at circumventing the law.

In Norway action plans developed in youth conferencing cases may inter alia state that the convicted or accused person must compensate non-economic damages to the party who has suffered an injury, loss or other violation; participate in crime prevention programmes or other similar measures; perform

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<sup>126</sup> [https://www.pmscr.cz/wp-content/uploads/2021/12/onas\\_zakladdokumenty\\_pravidlaastandardy\\_2021.pdf](https://www.pmscr.cz/wp-content/uploads/2021/12/onas_zakladdokumenty_pravidlaastandardy_2021.pdf)

community service; comply with rules for where to stay, for work or training; report to the police or correctional services; abstain from the use of alcohol and other intoxicating or narcotic substances and submit to any drug testing; comply with any curfew rules; avoid contact with specified people.

Usually, the mediator will decide whether the agreement reached by the parties can be approved. In criminal cases such approval must be given in writing. In cases with several mediators, all mediators must agree before the agreement can be considered approved. The mediator must not approve an agreement which unreasonably favours one of the parties or is unfortunate for other weighty reasons. An agreement which presupposes a payment to the aggrieved party, must stipulate the amount to be paid and when payment is due. It must also be stated whether the agreement represents the final settlement between the parties. An agreement in the framework of restorative justice programmes does not preclude the aggrieved party's right to apply for compensation pursuant to the Compensation for Victims of Violent Crime Act or the State's right to seek recourse from the perpetrator.

In Italy the mediation agreement can contain statements or formal apologies, commitment concerning certain behaviours, agreements concerning the frequentation of certain persons or places. The financial aspects can include compensation of damages, restitutions, commitments to remove or reduce the negative consequences or risks caused by the offense or preventing further damages.

## 22.1. Monitoring the execution of the mediation agreement

As VOM is based on the principle of free will of the parties, in principle monitoring over the execution of the mediation agreement should not pose issues of implementation. In any case, the parties are usually given the right to ask the court that the mediation agreement is given executive status and is made enforceable. Otherwise, it is usually the mediation organisation or the mediator that oversee monitoring the execution of the terms of the agreement and reporting on it. In certain countries mediators play a proactive role in assisting parties implementing the terms of the agreements. Some countries also foresee the possibility for the judicial authorities to change the terms of the agreement if a change in circumstances make the execution impossible.

In Austria, the conflict regulator must report to the public prosecutor or the court on the agreement and monitor its implementation. Following the agreement an observation period or a follow-up is possible, but not mandatory and depends on the needs of the parties. The mediator will also submit a final report to the prosecutor if, taken in consideration other conduct of the accused, it can be assumed that he will comply with the agreement or if it can no longer be expected that a settlement will be reached. If the accused does not pay the amount of money agreed in full or in time, or if he cannot fulfil the obligations assumed in full or in time, because this is unreasonable for him because of a significant change in the circumstances affecting the amount of money or the type or scope of the obligations, the public prosecutor's office can change the amount of money or the obligation appropriately.

As for IPV cases, the end of the mediation process, a period of monitoring can be agreed with a follow-up meeting. The risk of repeated violence for the victim is to be monitored on a continuous basis. As victim-offender mediation remains a short-term intervention despite preparation and a period of monitoring, it needs to be transferred to other specialised institutions, if necessary, to safeguard its sustainability.

In the Czech Republic, in case an agreement is reached entailing the payment of compensation or the performance of certain activities, the PMS performs a monitoring function and can approach state bodies but also individuals with a request to share information concerning the execution of the

mediation agreement or probation. The provision of such information is mandatory and should be provided without delay. Officials of the PMS provide regular information to judges or public prosecutors concerning the progress of alternatives to sentences, e.g., interim supervision reports including probation programme (i.e., supervision plan). During supervision, they also consider the victims' individual situation. Probation assistants also supervise the enforcement of court decisions, especially community service orders.

In Belgium the **offender has to provide supporting evidence that he has carried out the measures agreed**. The body/institution where activities/courses are carried out will also draft a written report on the execution of the measures including attendance, difficulties in the execution and other situations causing a risk for third parties. If the offender does not execute entirely or in part the measures agreed upon, he is summoned by the prosecutor or judicial assistant for a warning and only in case of persistent failure to execute the measures criminal proceedings will be resumed.

In France the victim can use the mediation agreement to obtain the payment of damages agreed upon by court injunction in case of non-execution.

## 22.2. Impact of VOM on criminal proceedings

The United Nations principles affirm that the *results of agreements arising out of restorative justice programmes should, where appropriate, be judicially supervised or incorporated into judicial decisions or judgements. Where that occurs, the outcome should have the same status as any other judicial decision or judgement and should preclude prosecution in respect of the same facts.*

In the same line, 2018 Council of Europe Recommendation refers to the similar impact as res judicata of complete fulfilment of the agreement in the restorative justice procedure (par. 34). *Decisions by judicial authorities to discontinue criminal proceedings on the grounds that a restorative justice agreement has been reached and successfully completed, should have the same status as decisions on other grounds, which, according to the national law, have the effect of discontinuing criminal proceedings against the same persons, in respect of the same facts and in the same State.*

The United Nations principles also state that failure to implement an agreement made in the course of a restorative process should be referred back to the restorative programme or, where required by national law, to the established criminal justice process and a decision as to how to proceed should be taken without delay. Failure to implement an agreement, other than a judicial decision or judgement, should not be used as justification for a more severe sentence in subsequent criminal justice proceedings.

While in countries where mediation can take place only in cases of private prosecution, or less important crimes a successful mediation agreement will usually lead to the discontinuation of the proceedings, in cases of public prosecution or more important crimes mediation may alter the content of the court ruling. As for the execution stage, a successful VOM may be the basis for a review of the sentence or for an early conditional release, or not entail any juridical advantage to the convict. In a number of countries VOM has been used as a complementary tool to sentencing rather than an alternative to criminal prosecution and conviction. Courts have referred parties to mediation and adjourned proceedings before deciding on the applicable sentence, for example to nudge the parties to agreeing on future conduct to prevent further escalation of the conflict or revenge. Successful VOM has led to a conversion of a prison sentence into a suspended sentence or to a reduction in prison terms.

In Portugal, where mediation is possible only in cases of private prosecution, the signing of the agreement is equivalent to the waiver of the complaint by the victim and non-opposition by the defendant. If the agreement is not fulfilled within the established period, the victim has the right to renew the complaint within the period one month, thus leading to the reopening of the investigation. In this case the prosecutor can carry out inquiries with the social services, the police, or other administrative bodies.

in Finland mediation functions independently of criminal proceedings and it does not substitute them except in private prosecution cases. In case of private prosecution, a successful mediation will lead to the discontinuation of criminal proceedings as the offended person will contextually withdraw the complaint. After the withdrawal, the complainant may no longer request the bringing of new charges for the offence. If several persons are suspected of having taken part in the offence and the complainant wishes for the public prosecutor not to bring charges against any of them after the mediation process, the complainant must cancel his request for a penalty for all the suspects.

For offences subject to public prosecution, the withdrawal of the request for a penalty by the complainant is not relevant for the decision of the prosecutor or investigator to pursue criminal proceedings. However, the head investigator or prosecutor may discontinue the proceedings if the offence is of little significance. The prosecutor can also waive prosecution as, as a consequence of mediation the charges can be considered unreasonable or pointless. If the prosecutor decides to bring charges and refer the case to the court, the existence of the **mediation agreement may have an impact on the determination of the sentence entailing a waiving or mitigating the sentence, reduction of the penal scale or changing of the sentence type**. In general, each authority will decide on a **case-by-case basis** on the impact of existing mediation agreement.

In Poland for crimes that are subject to private prosecution upon complaint of the victim or offended person, the proceedings can be discontinued. As for more serious offenses the court can take in consideration the mediation agreement to mitigate the sentence, refrain from imposing a penalty even in cases of mandatory adjudication, consider the accused's motion for voluntary submission to punishment, treat the **mediation agreement as a mitigating circumstance or as grounds for application of probation** (with conditional discontinuance of the proceedings or suspension of the execution of the imprisonment sentence). Mediation at the execution stage involving persons deprived of liberty is regulated by the Code of Criminal Procedure which foresees the so-called **post-verdict mediation when conditional early release of the convicted person is being considered**.

In the Czech Republic, during the pre-trial stage the following decisions of the public prosecutor and judge can be adopted in connection to mediation: decision on application of diversions such as additional alternative measures or sanctions, conditional cessation of prosecution, settlement, or withdrawal from Prosecution. The first measures can be applied to both adults and juveniles; the last can only be applied to juveniles. In the case proceedings are discontinued and the settlement is approved, the offender will not have any criminal record.

In Austria, the criminal prosecution which would otherwise be discontinued, can be retroactively resumed if before the completion of the probationary period or the submission of the final mediation report, new criminal proceedings are opened against the offender for another crime. This provision appears to be connected to the failure to comply with the commitment by the offender not to commit further offences. Obligations assumed by the accused and payments and other compensatory measures to which the offender has agreed to become irrelevant if the proceedings are subsequently continued. However **partial payments and obligations/commitments that have been undertaken and performed may be taken in consideration to offset the fine or penalty imposed by the court**. In case a

decision to discontinue proceedings is adopted, the judge or prosecutor will inform the police, the victim and the offender.

In Norway, the prosecuting authority may **resume criminal prosecution if the meeting is not held because of the accused or if the accused materially breaches an established agreement**. In cases where victim-offender mediation has been made a condition for a suspended sentence and the meeting does not take place or the offender breaches the terms of the agreement the prosecuting authority will decide whether the case should be brought before the court to determine new conditions or to execute the sentence.

In the Netherlands, Code of Criminal Procedure states that any agreement reached by the offender and the victim should be taken into consideration by the judge when imposing a sanction or measure.

In Italy participation in VOM will operate as a **mitigating circumstance** insofar as some compensation has been agreed upon with the victim or when an agreed course of action has been effectively implemented. The failure to execute the VOM agreement, the interruption of a VOM procedure or failure to reach reparation are not treated as aggravating circumstances.

According to Belgian law, a VOM agreement **does not affect criminal proceedings in respect of other offenders or accomplices nor any claim that the victim may pursue against them**. Besides this following the agreement the **offender will be precluded from denying the commission of the offense before a civil court in proceedings for damages**. As for the criminal proceedings, they will be terminated, and no criminal record will be kept of the relevant facts.

In France, the law states that mediation is not included in a criminal record as the proceedings will be terminated.

In Slovenia successful mediation results in discontinuation of proceedings and the decision is final because there is no appeal possible. However, in the case of successful mediation there **may still be a trial if the prosecutor does not consider the reparation proportional to the seriousness of the crime**. The question still remains whether he can use his/her influence to change the content of the agreement or whether he/she can only reject the agreement when he deems it inappropriate and proceed with prosecution<sup>127</sup>.

### 23. Mediators' right to access information of the case file

The Council of Europe 2018 Recommendation states that before *restorative justice starts, the facilitator should be informed of all relevant facts of the case and provided with the necessary information by the competent judicial authorities or criminal justice agencies (Para.33)*.

Considerable variations exist as to the extent of mediators' access to the case file, sometimes depending on the status of the mediator within the legal system. While some countries foresee the transmission of extremely limited information, others reserve to the referring authority the power to determine the extent of the information from the case file that can be transmitted to the mediator. Other countries such as Poland, in line with data protection, regulate in detail information that cannot be transferred to the mediator such as information on the health or criminal record of the offender or information that constitutes state secret or secret of the investigation. In general limitation of access to information that constitutes secret of the investigation may be particularly important to prevent that

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<sup>127</sup> [https://childhub.org/sites/default/files/library/attachments/juvenile\\_justice\\_in\\_slovenia\\_en.pdf](https://childhub.org/sites/default/files/library/attachments/juvenile_justice_in_slovenia_en.pdf)



the offenders acquire information during mediation that may enable them to interfere with pending investigations.

In Portugal, where the referring authority is the prosecutor, the prosecutor will delegate the case to a mediator<sup>128</sup> and sends him/her the information he considers essential about the accused and the offended party and a summary description of the object of the process.

In Poland the referral decision must include, besides the names of the appointed mediator, the accused and the victim, the act alleged against the accused along with the legal qualification of the act. The criminal case file is made available to the mediator with conditions for its access and use and the deadline for the completion of the mediation procedure. Parts of the criminal case files are not made available to the mediator: these include information that constitutes classified information/state secret or professional secret, information on the suspect's health and his criminal record, information that permits the identification of witnesses or whose identity's disclosure to the suspect/accused could affect the criminal proceedings as well as information on other co-accused or defendants who do not participate in the mediation proceedings. The mediator can either be granted access to the case file by direct consultation or by obtaining copies of the accessible documents therein. Copies must be kept in a secure place in order to secure the confidentiality and secret of the investigation and must be returned upon completion of the mediation session.

In the Czech Republic, officials of the probation and mediation service, have the right within the scope of their mediation activities, to read the criminal case file deposited at the court, prosecution office and the police office, make copies or take notes from the files. A Personal data protection coordinator in cooperation with the protection officer of personal data ensure the proper handling of personal data in the PMS<sup>129</sup>.

In Austria, in exercising his duties, the conflict regulator is authorized, with the consent of the accused or the victim, to inspect judicial and administrative files (including the files of corporations under public law in proceedings that affect them) and obtain copies free of charge.

In Spain, access to the complete file usually is possible when the restorative justice service is embedded in the justice system. When NGOs or other institutions provide the restorative justice service, only specific information as the facts and the criminal code qualification of the facts of the crime are provided, being possible to request specific information form the Court.

#### 24. Rules on confidentiality

The 2018 Recommendation of the Council of Europe, establishes that *restorative justice should be performed in a confidential manner. The discussions in restorative justice should remain confidential and may not be used subsequently, except with the agreement of the parties concerned. ... if restorative justice will have an impact on judicial decisions, the facilitator should report to the relevant judicial authorities or criminal justice agencies on the steps taken and, on the outcome, (s) of restorative justice. Notwithstanding facilitators' obligations their reports should not reveal the contents of discussions between the parties, nor express any judgment on the parties' behaviour during restorative justice.*

<sup>128</sup> Mediators are defined as "delegates de justice" as privileged collaborators of prosecutors for the performance of a number of functions, are appointed upon competitive examination and their selection must meet criteria of independence, impartiality and specialisation, see: <https://lajusticerecrite.fr/metiers/deleguee-du-procureur-de-la-republique>

<sup>129</sup> [https://www.pmscr.cz/wp-content/uploads/2021/10/zakladni-dokumenty\\_organizacni-rad\\_2021.pdf](https://www.pmscr.cz/wp-content/uploads/2021/10/zakladni-dokumenty_organizacni-rad_2021.pdf)

Exception is made in respect of serious or imminent crimes, that the facilitator should report *to the competent authorities if they come to light in the course of restorative justice*".

The European Union 2012 Directive also states that *discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.*

In Switzerland, the mediation file cannot be transferred to the prosecutor or judge and cannot be seized under the provisions on searches and seizures. The mediator is only required to inform the competent magistrate whether an agreement was reached or not. Regardless of the result of the mediation, no one can use oral or written statements made during the mediation session in civil, administrative, or criminal proceedings.

In Poland the information obtained during the mediation procedure may not be used in the pending proceedings or for the purposes of further criminal proceedings. Derogation is possible only with the consent of all participants. The mediator has a duty of confidentiality and the code of criminal proceedings prohibits the questioning of the mediator as a witness in respect of facts which he learned from the accused or the victim while conducting mediation proceedings, the exception being the obligation for the mediator to inform the prosecuting authorities that certain serious crimes are about to be committed or being prepared (these crimes include for example murder, endangering the life or health of individuals and public safety, sedition or espionage). According to the Ordinance of penal mediation involving juveniles<sup>130</sup>, the report drafted by the mediator upon completion of the mediation procedure may not disclose the course of the meetings or contain assessments of the participants' behaviour during the meetings and the content of their statements, unless the participant expressly requests the disclosure of such data regarding him / her.

In the Czech Republic In line with the principle of confidentiality, officers cannot be interrogated with regard to their mediation activities, about factual circumstances which they learned when mediating a case with the exception of cases where they are bound by law to prevent the completion of a criminal offense or to notify of a criminal offense.

In Austria the conflict regulator is obliged to maintain secrecy on what he/she learnt in connection with the performance of his/her activities insofar as secrecy is necessary in the interests of one of the parties involved. The duty of confidentiality is intended to ensure that the offender/accused is not penalised through subsequent criminal proceedings based on the conflict regulator testifying as a witness about a possible confession. In criminal proceedings, the conflict regulator has the right to refuse to give evidence in accordance with the Probation Assistance Act<sup>131</sup>, as he is considered an employee of recognized institutions for psychological counselling and care. Witness privilege however does not cover the content of the mediation agreement and the conflict regulator can be heard as a witness in judicial proceedings about the content of a settlement agreement that has been made.

In Norway, besides general provisions binding mediators to the duty of confidentiality, specific provisions state that a person's name, place of birth, date of birth, national registration number, nationality, marital status, occupation, residence and place of work are also considered personal matters subject to the duty of confidentiality. The duty of confidentiality also applies to any person who participated in the mediation session. Unless both parties' consent, the witness cannot give evidence concerning what the parties have acknowledged or offered during mediation. A court of justice cannot admit evidence which a witness cannot give without breaching his or her duty of confidentiality, unless

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<sup>130</sup> <https://sip.lex.pl/akty-prawne/dzu-dziennik-ustaw/postepowanie-mediacyjne-w-sprawach-nieletnich-16899775>

<sup>131</sup> Section 29a (5) BewHG

the court weighs the importance of observing the duty of confidentiality against the importance of obtaining information in the case and decides by court order that the witness must give evidence. The duty of confidentiality should however not prevent the Mediation Service from collecting data for the performance of its functions such as collecting statistics.

In Spain, 2015 Victim statute law, derived from the EU 2012 Directive, states that *the discussions held within the mediation procedure shall be confidential and may not be divulged without the consent of both parties. The mediators and other professionals participating in the mediation procedure shall be bound by professional secrecy with regard to the facts and statements of which they have become aware in the exercise of their function.*

In Belgium documents and statements made during VOM procedure cannot be used in subsequent civil, criminal, administrative and arbitration proceedings aimed at deciding over disputes. The VOM file is also removed from the criminal case file. Any use of documents or statement developed in the course of the VOM procedure and affecting the right to private life or physical or moral integrity/dignity or property is punishable under the criminal code.

In Italy legislative decree 150 of 2022 stated that statements made in the framework of restorative justice procedures are, as a rule, confidential and cannot be used in criminal proceedings or at the execution stage. Mediators cannot give witness statements on activities, statements and any information obtained in the framework or in connection of VOM. Exceptions to the rule of confidentiality are possible when the parties agree or when disclosure is absolutely necessary to prevent the commission of serious or imminent crimes or when statements are offenses in themselves. Mediators and premises where VOM takes place cannot be subject to searches and seizures of documents connected to the VOM procedure nor can these premises or mediators' communications concerning information acquired in connection to VOM procedures be wiretapped. Evidence collected in violation of these rules is inadmissible unless it concerns events which were already disclosed by mediators otherwise.

In juvenile cases, mediators only inform judges and prosecutors of the outcome of the mediation procedure in brief terms in order to avoid providing information on possible acknowledgement of guilt or other witness statement or evidence that may be relevant for proving a minor's guilt. This approach was considered necessary at the pre-trial investigation stage where a minor may acknowledge his own guilt while investigation is still pending.

**Recommendation:**

As outlined above in the comparative overview, **rules on confidentiality** of mediation and the mediation session exist in all countries reviewed. Exceptions exist if the parties agree to the disclosure of information or in order to prevent the commission of serious crimes. As a rule, to secure confidentiality, very little information is provided by the mediator to the prosecutor or judge on the mediation with the exception of the terms of the mediation agreement. It is recommended that the Georgian legislation provides safeguards for mediators on the confidentiality in line with best international standards.

## PART THREE: INSTITUTIONAL ASPECTS OF THE REGULATION OF VICTIM OFFENDER MEDIATION FOR ADULTS AND JUVENILES

The overview below addresses key aspects of restorative justice such as institutional design, training and specialisation of professionals, monitoring and evaluation of restorative justice services. As in Georgia the National Agency for Crime Prevention is the key institutional provider of restorative justice programmes in juvenile, the assumption is that the introduction of VOM for adults will lead to an expansion of its roles and capacities. Accordingly, the selected comparative practices have been mostly taken from Council of Europe state members with comparable institutions. Particular attention was given to three aspects of the functioning of probation agencies and other institutions engaged in the provision of restorative justice programmes that appear to be lacking in the current institutional framework in Georgia: 1) the institutionalisation of victim protection by creating victim support units; 2) interagency co-operation; 3) co-operation with civil society organisations (CSOs). This part and its recommendations are relevant for both adult and juvenile cases.

### 25. International standards

Article 15 of the Venice Declaration recommended that state members develop national action plans or policies, where necessary, for the implementation of Recommendation CM/Rec (2018)8 on restorative justice in criminal matters, by ensuring **inter-agency co-operation** nationwide, **adequate national legislation and funding**, while reflecting on the idea that a right to access to **appropriate restorative justice services** for all the interested parties, if they freely consent, should be a goal of the national authorities;<sup>132</sup>

The EU Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime regulated restorative justice guarantees for victims. Such standards foresee **victims' rights to have access to safe and competent restorative justice services**. Insofar as restorative justice programmes are implemented by probation bodies **Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules stressed that even when probation agencies do not work directly with victims**, interventions shall respect the rights and needs of victims and shall aim at increasing offenders' awareness of the harm done to victims and their taking responsibility for such harm(para. 95). Where probation agencies are involved in restorative justice processes, the rights and responsibilities of the offenders, the victims and the community shall be clearly defined and acknowledged.

Finally, the Declaration of the Ministers of Justice of the CoE members states on the role of restorative justice in criminal matters from 13-14 December 2021 made an express reference to **the need to pay attention to the participation of civil society and local and regional authorities in the restorative justice processes**.

In the countries reviewed various forms of cooperation with civil society organisations (CSOs) have been put in place both by integrating and coordinating services provided but also by regulating the conditions and forms of funding to CSOs and similar bodies providing assistance to victims or implementing

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<sup>132</sup> <https://rm.coe.int/0900001680a4df79>

programmes that are part of the mediation agreement. Finally, policy decisions are supported by consultative bodies composed by competent public officials, mediators but also representatives of CSOs and academia.

## 26. Institutional framework; Professionals and agencies involved in VOM in Georgia

Interagency cooperation is crucial for the effective implementation and promotion of the widespread application of restorative justice. Diversion and mediation programme for juveniles and young adults in Georgia is the **multi-agency effort** that involves the following agencies: National Agency for Crime Prevention, Prosecutor's Office of Georgia and the Courts.

### 26.1. Interagency cooperation

In Georgia a formal interagency coordination mechanism on juvenile justice was launched with the establishment of the Juvenile Justice Working Group under the CJR Council in 2009. All reform initiatives on juvenile restorative justice were channelled through the working group. Ensuring effective teamwork between criminal justice professionals has been a priority for years and, indeed, demonstrated tangible successes. Unfortunately, since 2020, the Juvenile Justice Working Group that should ensure coordination at the central level has not been fully utilized.

In December 2017, POG established the Local Juvenile Justice Coordination Councils in every region of Georgia.<sup>133</sup> The Council aims to strengthen the multi-disciplinary mechanisms throughout the regions and ensure uniform and proper interpretation and implementation of the special norms of the Juvenile Justice Code. All practitioners engaged in the administration of juvenile justice: prosecutors, judges, investigators, defence lawyers, social workers, mediators, educational specialists, and local municipalities' representatives. Diversion and mediation programme implementation, its challenges, and good practices are among the priorities for discussion.

#### Recommendation

Interagency cooperation is essential for the effective implementation and promotion of the restorative justice. It is critical to **revitalize successful coordination efforts under the juvenile justice working group** and clearly outline the cross-cutting mandates of the Local Coordination Council (led by POG at the local level) and the Juvenile Justice Working Group (led by the Ministry of Justice at the central level). Improving the practices of diversion and mediation programmes, as well as promoting the widespread application of restorative justice, should be included in the respective **action plans** of these coordination mechanisms, building upon the already achieved results. It is advisable that restorative justice is included in the agenda of the multi-agency coordination work through **local councils**. Regular meetings should be ensured, and the outcome of the discussions should be reflected in **policymaking**.

Acknowledging intention of the State, expressed in various strategic documents, listed above, to expand the use of restorative justice measures, it would be wise to establish a dedicated **working group on restorative justice** within the existing Criminal Justice System Reform Interagency Coordination Council

<sup>133</sup> POG webpage on the creation of local coordination councils. Available at: [https://pog.gov.ge/en/news/saqarTvelos-prokuraturis-iniciativiT-arasrulwlovanTa-adgilobrivi-multidisciplinuri-jgufebis-koncefci?fbclid=IwAR1WFvhaKkiYfitySH\\_WWwJ54lgNnkHWQ7cauzo-aTSZM6oexlfsyAQISGU](https://pog.gov.ge/en/news/saqarTvelos-prokuraturis-iniciativiT-arasrulwlovanTa-adgilobrivi-multidisciplinuri-jgufebis-koncefci?fbclid=IwAR1WFvhaKkiYfitySH_WWwJ54lgNnkHWQ7cauzo-aTSZM6oexlfsyAQISGU)

This approach would allow the Ministry of Justice to direct the legislative and practical aspects of the work through a coordination mechanism, while also ensuring the participation of all stakeholders - state agencies and civil society organizations.

Alternatively, a consultative body with awareness raising, regulatory, and advisory functions could be created. Such body would include representatives from the Ministry of Justice, the National Agency for Crime prevention and Enforcement of Non-Custodial Sentences and Probation, Prosecutor General's Office, Judiciary, Ministry of Interior and Ministry of Education and Science. Namely mediators, judges, prosecutors, police, probation and penitentiary representatives, social workers, education specialists, representative from academia and CSOs.

Furthermore, it is advisable that the Ministry of Justice takes the lead to **develop national action plans or policies**, for the implementation of Recommendation CM/Rec (2018)8 on restorative justice in criminal matters – as envisaged in the Venice Declaration.

Sustaining achievements in the field of juvenile justice and moving forward requires continuous policy-level support. To ensure the sustainability of the outcome and facilitate continued progress, it is essential that state institutions take full ownership of the process while still benefiting from the support of partners.

## 26.2. The National Agency for Crime Prevention, Enforcement of Non-custodial Sentences and Probation

The National Agency for Crime Prevention, Enforcement of Non-custodial Sentences and Probation through its **Diversion and Mediation Department in coordination with the Prosecutor's Office of Georgia**, is responsible for overall coordination and management of the programme. **The resocialization and Rehabilitation Department of Convicts and Former Convicts**, through its social workers, conducts a bio-psycho-social assessment of juveniles and young adults and monitor the implementation of the diversion and mediation agreements.

**Diversion & Mediation Department is responsible to:**

- Secure management and coordination of the diversion & mediation programmeme;
- Support continuous education and improved qualification of the engaged professionals;
- Elaborate the recommendations to enhance the legal framework and mechanism regarding diversion & mediation;
- Promote and introduce restorative justice approaches and programmemes;
- Expand the application of areas of restorative justice, and penal mediation; Raise the qualification of the mediations;
- Manage and supervise the mediators' activities;
- Carry out inter-agency coordination of the engaged institutions and practitioners;
- Cooperate with international and local organizations.

**The resocialization and rehabilitation department of convicts and former convicts** has 49social workers and 17 psychologists. The department isresponsible to:

- Supervise individual assessments of convicts, juvenile defendants and diverted juvenile / young adults;

- Develop, adapt and implement the psycho-social, educational and rehabilitation programmes in probation bureaus;
- Cooperate with the service providers of resocialization and rehabilitation programmes;
- Assess and enhance the professional skills of the social workers and psychologists, and ensure continuous education for them;
- Develop professional standards for specialists working on rehabilitation, as well as develop policy recommendations for these professionals; develop instruments and methodologies, ensure their regular update; define data collection methodology; collect and analyse the reports; analyse and develop recommendations on the work of social workers and psychologists of the Agency;
- Introduce a monitoring and evaluation system and ensure its operation;
- Conduct research focusing on the improvement of the resocialization–rehabilitation process;
- Ensure quality monitoring of the risk and needs assessment instruments’ application, provide supervision and support to specialists, and ensure compliance of delivered services with the approved standards;
- Elaborate recommendations for early release mechanisms for convicts with conditional sentence.
- Cooperation with international and local organizations.

Risk and Needs Assessment is the key instrument that social workers use for the preparation of various reports listed above. This instrument is integrated into the case management system of the Agency using the scoring system, based on the algorithm, to determine the low, medium and high-level risk of offenders among adults.

The **lack of victim support services and programmes is a challenge**. Often mediators have to use their own skills or networks to provide psychological support to victims. Due to the unavailability of victim support programmes, overwhelming investigative procedures that victims have to go through, and frequent lack of ability of diverted juveniles / young adults to perform duties in favour of a victim, it is difficult for mediators to convince them to participate in the victim-offender mediation. To comply with the values and standards of restorative justice, it is important to ensure the interests of the victim and offender are equally protected and the needs of the victims are addressed properly in a restorative justice process.

### 26.3. Institutional frameworks for VOM in European countries

The countries examined show wide variations as to the Institutional framework within which mediation is promoted and organised. In general, one can witness both systems where the state plays an eminently organisational and funding function while mediation services are provided by civil society organisations and mediators and systems where state institutions also provide in house restorative justice services such as mediation and conferencing through trained officials. Notably, in the countries reviews victim assistance units have been created within probation agencies in charge of providing restorative justice programmes. Various mechanisms to support, coordinate and finance CSO active in the field of restorative justice, victim protection, welfare assistance to victims and offenders have been put in place through detailed regulations.

In **Austria**, all VOM cases are referred to “NEUSTART – Probation Assistance, Conflict Resolution, Social Work “- a nationwide provider of judicial services (such as probation, assistance upon release from prison, community service, etc.) which has the legal status of an association and is mainly funded by

the Ministry of Justice<sup>134</sup>. Neustart has a central office in Vienna and regional offices in each of the nine regions of Austria. With around 1,700 full-time and voluntary employees, of which 61% are women, NEUSTART is one of the largest non-profit organizations in the social economy in Austria. Besides mediation, Neustart **acts as a provider of assistance and other services to victims of crimes**. As such mediation and victim support are integrated.

Neustart **works in partnership with** the Federal Ministry of Justice, prisons throughout Austria, judges, public prosecutors, municipalities and other organizations (these include over 1,900 partners from the areas of employment advice, administration, women's organizations, men's organizations, youth and children's facilities, church organizations, medicine, psychotherapy, addiction and victim organizations, police, lawyers, legal advice centres, debt counselling, schools and residential facilities).

According to the organizational form as a private association, Neustart is governed by the general assembly of members, which elects the supervisory board for three years. The supervisory board appoints the managing directors for five years. There are also two staff units to support the managing directors. The management appoints the employees of the first level for five years. The internal auditing staff are appointed by the management in agreement with the association's supervisory board and the Federal Ministry of Justice. The **general assembly of members** currently includes university professors, a representative of the Ombudsman, a psychiatrist with specialization in child psychiatry and medicine, criminologists, sociologists and a former MP<sup>135</sup>. The **supervisory board** is currently chaired by the Head of department for civil rights of the Ministry of Justice and composed of representatives of state and non-governmental organisations, experts and employees of Neustart<sup>136</sup>.

In **Poland** the authority responsible for mediation issues, is a unit within the Division for Victims of Crime and the Promotion of Mediation<sup>137</sup> within the Department of International Cooperation and Human Rights of the Ministry of Justice. The Ministry has also appointed **mediation coordinators** who receive specialized training in communication, team management and working with mediators. There are currently 120 coordinators (judges, probation officers and mediators), in eight courts of appeal, all the regional courts and in six areas of district courts.

Referral is made to mediators and mediations institutions registered in a list at the regional courts. Exceptionally referrals can be made to mediators who are not in the list but nevertheless meet the requirements for registration in the list. Mediation institutions that can be included in the list of mediators must meet certain requirements. For example, institutions must 1) have been created to carry out tasks in the field of mediation, rehabilitation, protection of state interests, individual interests, human rights and freedoms; 2) have the appropriate organizational and staffing conditions for mediation.

The Minister for Justice is also **advised by** the Social Council on Alternative Dispute and Conflict Resolution<sup>138</sup> which plays an important role in promoting the idea of mediation and communication between central government, the justice system and the mediation community. Between 2006 and 2008 the Council issued a Code of Ethics for Mediators, Standards for the Training of mediators and Standards for the conduct of mediation and mediation proceedings. The Council performs also other functions such as adapting the ADR system to the requirements of EU law, developing a uniform model of mediation in the Polish legal system, promoting ADR mechanisms as a conflict resolution method

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<sup>134</sup> Neustart drafts a budget on the basis of the services to be provided, which lead to the conclusion of one-year subsidy contracts or longer-term service contracts. Around 90 percent of the funding is provided by the Federal Ministry of Justice. Other clients are other federal ministries, states and municipalities.

<sup>135</sup> [https://www.neustart.at/at/de/ueber\\_uns/kuratorium.php](https://www.neustart.at/at/de/ueber_uns/kuratorium.php)

<sup>136</sup> Supervisory board of Neustrart: [https://www.neustart.at/at/de/ueber\\_uns/aufsichtsrat.php](https://www.neustart.at/at/de/ueber_uns/aufsichtsrat.php)

<sup>137</sup> Wydział ds. Pokrzywdzonych Prześpiństwem i ds. Promocji Mediacji

<sup>138</sup> Społeczną Radą ds. Alternatywnych Metod Rozwiązywania Konfliktów i Sporów



among members of the judiciary and judicial staff, law enforcement services and the public and creating an institutional environment in which particular forms of ADR can develop.

In **Switzerland** mediation is provided by mediation associations which also form the **Swiss Federation of Mediation Associations**<sup>139</sup> which operate as an umbrella organisation for the various associations. It includes a total of 1500 mediators (as individual members of mediation associations are automatically members of the Federation of Mediation associations). (Passive) membership is also open to private and public bodies that are active in the field of mediation and organisations providing mediation training<sup>140</sup>. The Swiss Federation of Mediation associations performs a number of functions such as promoting mediation (alongside its member associations) and raising awareness on it, develops regulations and standards for mediation training and performance, issues certificates upon completion of training in mediation and liaises with foreign mediation associations and organisations<sup>141</sup>. Its funding is secured by membership fees and other contributions (for example upon registration or provision of certificate to mediators) but also on private donations and sponsorships<sup>142</sup>. The Swiss Federation of Mediation Associations adopted a regulation on deontological obligations of Mediators<sup>143</sup>, guidelines on mediation training and qualification required to obtain a mediation certificate by the Federation. The Federation also developed deontological guidelines following consultations with its members during the year 2021.

In the canton of Fribourg, a commission for civil, penal and juvenile mediation attached to the council of state and composed by a representative of the council of state, two magistrates, two mediators and a representative of the bar issues guidelines, decides on the accreditation of mediators and monitors over the observance of the mediators' professional rules and code of conduct and perform disciplinary functions. Mediation for juveniles is carried out by the mediation bureau attached to the justice department (service de la justice). Competent authority can also refer the case to an accredited mediator.

In the **Czech Republic** mediation is provided by officials of the Probation and Mediation service (PMS)<sup>144</sup>, a body attached to the Ministry of Justice. The Probation and Mediation Service offers mediation as a standard part of its probation activities. PMS centres operate in all judicial districts of the Czech Republic. Offices, depending on their size and necessity, can be divided into departments focusing mainly on minor offenders, young offenders, or users of psychoactive substances. The PMS is headed by a director who is appointed and removed by the Minister of Justice. It also includes a directorate which, among the others, manages and organizes its own educational, informational, methodological and analytical activities. The PMS centres, which operated in all judicial districts, comprise Probation and mediation officers and assistants.

Offenders and victims of crimes are provided with information about their rights and obligations, activities implemented by the Service, options for proceeding in their case and possibly about other relevant institutions and organizations that can provide them with assistance.

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<sup>139</sup> [www.mediation.ch.org](http://www.mediation.ch.org)

<sup>140</sup> Organisation of the Federal association of Mediators;  
[https://www.mediation-ch.org/cms3/fileadmin/doc/01/med-verb/fr/FSM\\_f\\_Organisation.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/med-verb/fr/FSM_f_Organisation.pdf)

<sup>141</sup> Statute of the Federal Association of Mediators;  
[https://www.mediation-ch.org/cms3/fileadmin/doc/01/med-verb/it/FSM\\_i\\_Statuti\\_2016.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/med-verb/it/FSM_i_Statuti_2016.pdf)

<sup>142</sup> Regulation on remuneration;  
[https://www.mediation-ch.org/cms3/fileadmin/doc/01/med-verb/fr/FSM\\_Reglement\\_cotisations\\_et\\_emoluments\\_2020.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/med-verb/fr/FSM_Reglement_cotisations_et_emoluments_2020.pdf)

<sup>143</sup> Deontological rules;  
[https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/fr/FSM\\_f\\_Regles\\_deontologiques\\_2008.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/fr/FSM_f_Regles_deontologiques_2008.pdf)

<sup>144</sup> [https://www.pmscr.cz/wp-content/uploads/2021/09/en\\_about\\_probation\\_and\\_mediation\\_act\\_aktual\\_2014.pdf](https://www.pmscr.cz/wp-content/uploads/2021/09/en_about_probation_and_mediation_act_aktual_2014.pdf)

The PMS has also a **victim assistance unit** and is competent over gathering statements by victims which may be relevant for the decisions to be adopted by judges and prosecutors. The PMS Service workers actively offer help to victims as part of case work with the offender. The service provides assistance to victims who contact it. Victim services are provided at all stages of criminal proceedings. The goal of the services provided is to help the victim cope with the consequences of the crime, to understand the context in which the crime occurred and to obtain moral and material satisfaction, if possible, using restorative approaches. The Service worker takes care to prevent secondary victimization of the victim. Victims are provided with information about other available services.

When it comes to mediation the PMS also assess the views of both offenders and victims. Alongside the above, the probation and mediation service assists the victim and other persons affected by an offence in eliminating the consequences of a criminal offence.

The PMS is included in a register maintained by the Ministry of Justice for entities that provide victim assistance services. This register includes accredited entities which provide social support and psychological support to victims. Bodies that provide assistance to victims of crime receive accreditation and access to state funding and can be accredited for either or both provision of legal information and restorative programmes. Psychological and social counselling services are authorized to be provided to victims by entities that have obtained authorization for the provision of social counselling and social prevention services on the basis of a registration decision pursuant to the Act regulating the provision of social services.<sup>145</sup>

The PMS supports and implements multidisciplinary cooperation with courts, public prosecutor's offices, the Police of the Czech Republic, the Prison Service of the Czech Republic, social security authorities, social and legal child protection authorities, schools and educational facilities, non-profit organizations, registered churches and religious societies, municipal authorities and other organizations whose activities are related to the performance of probation and mediation activities.

"Youth Offending Teams" have been established in a number of judicial districts in the Czech Republic and include representatives from the PMS, law enforcement authorities, and other bodies whose activities focus on high-risk juveniles and their families. Youth offending teams are directed by PMS representatives. Plans are being made to secure coordination and active support of their activities at national level.

**A council for probation and mediation acts as an advisory body to the Ministry of Justice** with the purpose of supporting the development of the PMS through regulations and standards. The Council is composed of judges, state prosecutors, officers of the Probation and Mediation Services and other persons with professional capacity and experience from the field of probation and mediation.

In Italy the Ministry of justice performs a coordinating role by planning funding and services needed and by allocating resources. For this purpose, it is advised by a National Conference for reparative justice which is composed by a representative from each region and six experts. The Conference meet online one per year and submit an annual report of the situation of reparative justice in Italy to the Parliament. Expert members are appointed by the Ministry of Justice in consultation with the Ministry of education and are selected from among academicians with expertise in restorative justice and experienced mediators. Legislative decree 150/2022 has also established local centres<sup>146</sup> for restorative

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<sup>145</sup> Art. 39-48 on victims of crimes, available at: <https://www.zakonyprolidi.cz/cs/2013-45>

<sup>146</sup> <https://www.maisonsdejustice.be/index.php?id=aproposdelagmj>

justice and local conferences. Mediators acting at local centres for restorative justice are selected either from existing trained mediators within public bodies or contacted from among private mediators<sup>147</sup>.

In **Belgium** Maisons de justice (houses of justice)<sup>148</sup> are in charge of probation, carrying out VOM, providing assistance to victims as well as managing persons affected by extremism and radicalisation. The Maisons de justice are distributed over the national territory, coordinated by a central authority (General Administration of Houses of Justice- AGMJ) and coordinate with other bodies providing legal aid and psychological support. They are also in charge of carrying out awareness raising measures.

The **victim assistance unit of the Houses of justice**<sup>149</sup> provides information and support to victims throughout all the stages of criminal proceedings. Assistance is provided to victims and their close relatives, relatives of victims in case of suspicious death, death or serious damages caused by traffic accidents or in case of missing persons. The unit also assist victims in identifying and contacting other external services available to the victims such as psychological or social support, legal aid and overall undertake measures to avoid secondary victimisation.

In Belgium, **the coordinating authority of Houses of Justice has a partnership department**<sup>150</sup> in charge of approving and financing/subsidizing institutions and associations that provide various services to victims, offenders and their family members. Houses of justice can stipulate cooperation agreements with various providers (for example in the framework of community service, health treatment, training and other courses which are agreed upon in the framework of mediation or other diversion programmes). The partnership agreement is valid for six years, renewable and regulates the types of services provided and funding. In order to have access to state funding the service providers must have legal personality, work in the not-for-profit sector, must have presented a plan for the implementation of the services for which they seek approval. They must have premises which are suitable for the services offered and must meet existing health and safety standards. They must agree to provide services to parties free of charge, secure data protection compliance and have sound financial management. They must have the necessary staff or have access to external qualified professionals. These service providers must provide reports on their activity upon request of the contracting authority and also submit annual reports on the activities carried out. Funds are distributed on the basis of users' needs and a three-year analysis of the services offered<sup>151</sup>. A partnership commission composed of state representatives, representatives of trade unions and CSOs advise the governments on the regulation of partnerships with the not-for-profit sector.

## Recommendations

Apart for the need to hold policy dialogue, **engage CSOs** and academia in monitoring and evaluation of the restorative justice programmes, awareness raising campaigns, it is recommended to strengthen cooperation with CSOs and entities providing victim assistance and rehabilitation and support programmes for both victims and offenders through systems of accreditation and financing.

<sup>147</sup>Link to the decree available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2022-10-10;150>

<sup>148</sup><http://www.ejustice.just.fgov.be/eli/arrete/1999/06/13/1999009702/justel>;  
<http://www.ejustice.just.fgov.be/eli/arrete/1999/06/23/1999009718/justel>

<sup>149</sup>[https://www.maisonsdejustice.be/index.php?eID=tx\\_nawsecuredl&u=0&g=0&hash=c675d815a0e79434c8d02828aeed86c0acca0beb&file=fileadmin/sites/portail\\_mj/uploads/documents/Menu\\_de\\_gauche/folder\\_missions/Acc\\_Vic\\_17\\_juin\\_2021.pdf](https://www.maisonsdejustice.be/index.php?eID=tx_nawsecuredl&u=0&g=0&hash=c675d815a0e79434c8d02828aeed86c0acca0beb&file=fileadmin/sites/portail_mj/uploads/documents/Menu_de_gauche/folder_missions/Acc_Vic_17_juin_2021.pdf)

<sup>150</sup>Decree of 13 October 2016 Décret relatif à l'agrément et au subventionnement des partenaires apportant de l'aide aux justiciables; [https://etaamb.openjustice.be/fr/decret-du-13-octobre-2016\\_n2016029607.html](https://etaamb.openjustice.be/fr/decret-du-13-octobre-2016_n2016029607.html)

<sup>151</sup> The specific method of calculating the financial support allocated in each district and type of service is described in article 30-39 of the decree. [https://etaamb.openjustice.be/fr/decret-du-13-octobre-2016\\_n2016029607.html](https://etaamb.openjustice.be/fr/decret-du-13-octobre-2016_n2016029607.html)

It is essential for mediators to be able to refer **victims to support** services and programmes instead of using own networks and sometimes skills, to support them. It is advisable that the state works closely with the existing victim support organizations, creates its own services within Victim Coordination Units that exist for example in the Prosecutor's Office and considers creation of the **victim support unit or introduce victim support specialist position** in the National Agency of Crime Prevention, Enforcement of the Non-custodial Sentences and Probation and in Special Penitentiary Service

## 27. Qualification and training of mediators and other restorative justice providers and participants

The Council of Europe "Venice Declaration on the Role of Restorative Justice in Criminal Matters"; encourages to *"Consider restorative justice as an **essential part of the training curricula of legal professionals**, including the judiciary, lawyers, prosecutors, social workers, the police as well as of prison and probation staff and to reflect on how to include the principles, methods, practices and safeguards of restorative justice in university curricula and other tertiary level education programmes for jurists, while paying attention to the participation of civil society and local and regional authorities in the restorative justice processes and addressing the Council of Europe when in need for co-operation programmes and training of its officials implementing restorative justice"*.

Facilitators should receive initial training before delivering restorative justice, as well as ongoing, in-service training. Their training should provide them with a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims, offenders and vulnerable persons, and basic knowledge of the criminal justice system. Criminal justice professionals who refer cases for restorative justice should also be trained accordingly. Facilitators should be experienced and receive advanced training before delivering restorative justice in sensitive, complex, or serious cases. Facilitators' managers should receive case supervision and service management training which is specific to restorative justice. Training providers should ensure that their materials and training approaches correspond with up-to-date evidence on effective training and facilitation practices.

### 27.1. Qualification requirements for mediators in Georgia

The minimum qualification requirement for mediators is higher education and one year of professional experience. Preferred qualifications are professional working experience in social work, psychology, or legal profession; computer literacy; understanding and knowledge of diversion and mediation concept; knowledge of restorative justice essence.

Selected mediators have to undertake the induction-certificate course that ends with a written exam. The certified course for mediators is comprised of 139 lecture hours on the following subjects:

- Restorative Justice – history, models, and practices;
- European and international legal framework;
- Standards and Values of Restorative Justice;
- Research findings;
- Penal Mediation – skills of a mediator, the concept of victim-offender mediation, communication skills, behavioural strategies, and meta-communication,

transformative approach in mediation, impartiality, how to overcome destructive mental stereotypes, role plays;

- Professional role of the mediator – who is a mediator, mediation as part of the whole system approach, systemic approach;
- General overview of the legal system - introduction, criminal code and criminal procedure code, juvenile justice, restorative and conventional justice, restitution of the caused damage;
- Psychological aspects of a victim and offender – interaction between victim and offender and role of a mediator;
- Specialization in juvenile justice – psychological aspects - delinquent behaviour risks and protections, the holistic approach applied before children, the principle of the best interest of a child, key stakeholders in juvenile justice;
- Specialization in juvenile justice – legal aspects – international standards of juvenile justice, Juvenile Justice Code of Georgia, Diversion & Mediation Programme in Georgia, role play.

Upon completion of training, examinations are administered, and successful candidates are required to participate in practical teaching with an experienced mediator, who also serves as a mentor. The mentor must submit a positive evaluation of the new candidate before final approval is given to start practicing. The certified training course is delivered by the Ministry of Justice Training Centre.

## 27.2. Comparative European Practices on qualification requirements for mediators

In the Czech Republic probation and mediation officers and assistants working at the PMS offices receive specialized education and training in order to perform their duties. Their education includes basic qualification education (including graduation from a qualification education programme such as a university degree at master's level in social sciences) and further professional education lasting **12 months**. Upon finishing the qualification course, candidates to the officer's position may apply for professional examination before an examining board appointed by the Ministry of Justice, upon proposal of the Council for Probation and Mediation (an advisory body to the Ministry of Justice). The examination verifies the theoretical and practical expertise in law, social disciplines, social work and communication skills of candidates. In case of failure to pass, the examination may be repeated no earlier than after six months.

Assistants undergo a six-month specialization course and further professional education. The specialization courses include theoretical and practical training in law, social disciplines, social work and communication skills. The PMS officers and assistants are also required to undergo continuous training. Employees are obliged to continuously deepen and develop their knowledge and skills to perform the agreed work, in particular to actively familiarize themselves with new internal and legal regulations and professional knowledge.

In Austria Legal norms and regulations do not contain any concrete information about which qualifications the conflict regulators must have. Reference is only made to the Act on Probation, which states that "... people experienced in social work who are particularly suitable for this activity ... should help to settle the offense". Conflict regulators are usually social workers who have an academic qualification involving a training period of six semesters in a wide variety of areas such as psychology, communication, but also cultural and socio-political aspects of conflict.

The obligatory internal curriculum encompasses **212 units of theoretical instructions and requires the practical experience of 36 VOM sessions**. The trainings also include special methods for mediating cases

of Intimate partner violence (IPV) as well as for understanding its dynamics. On the basis of this broad trainings, conflict regulators can be registered in the list of mediators at the Federal Ministry of Justice. It is unclear whether other professional groups may also work as a Conflict regulator or whether VOM should only be reserved for the social workers of Neustart.

In Poland mediators authorized to mediate in penal matters must have full legal capacity, be over 26 years old, speak and write Polish language, have not been convicted of an intentional crime or tax crime, have skills and knowledge in mediation and dispute resolution, provide guarantees of proper performance of their obligations. The Ordinance on penal mediation for juveniles specifies that mediators must have education in the field of psychology, pedagogy, sociology, social rehabilitation or law, and experience in the field of education or rehabilitation of young offenders. The Ordinance on penal mediation states that active members of the judiciary and prosecution service cannot act as mediators. The ordinance on penal mediation for juveniles added further incompatibilities excluding for example from the exercise of mediation active lawyers, bailiffs, employees of the Prison service, employees of educational and correctional facilities for minors, employees of institutions active in the field of victim protection. The mediator in a given case may also not be a person who acted as a witness in the minor's case, issued an opinion, prepared a community interview, or conducted therapy for a minor, as well as a person whose circumstances could raise reasonable doubts as to his impartiality.

In Italy mediators receive an initial training of 250 hours plus 100 hours of stage at Restorative justice centres. Mediators must also attend 30 hours of continuous education on a yearly basis focuses on both theoretical and practical aspects as well as exchange of good national and international practices. Theoretical courses cover criminal law and proceedings, juvenile justice, criminology and victimology while practical courses develop active listening and conflict management skills. Practical aspects of mediation are taught by accredited mediators who have at least five years' experience and have undergone training of trainers' courses. Candidates must have at least a bachelor's degree and have to take an entry exam focusing on cultural and suitability aspects. Participants must also pass an exam.

In Belgium, justice assistants who are employed by Houses of justice and carry out VOM, receive an initial training during an induction period during which they familiarise themselves with the various services provided by the House of Justice. They subsequently undergo job training under supervision of an experienced colleagues (a coach). This period includes basis training on the methodological and ethical aspects of their functions. Following this basis training they participate in InterVision groups on a regular basis. They also undergo continuous training on a yearly basis. In case they are concerned by temporary problems affecting the performance of their work they can inform the director and ask for an individual supervision. The directors of the Houses of justice also consult the staff regularly in order to understand training needs and convey them to the personnel in charge of developing training programmes. Justice assistants an also seek leave to attend individual courses.

### 27.3. Comparative European Practices on qualification requirements for mediators working in juvenile cases

In Switzerland the Regulation on penal mediation for juveniles states that mediators must have a university degree or equivalent, they must have knowledge of criminal law and criminal proceedings, they must have received specialized training in mediation in line with criteria established at national level by mediation bodies and have further specialized in mediation in penal matters, they should not be in a situation of bankruptcy or have a criminal record. Further requisites can be established in consideration of the specific features of the case and in the interest of the juvenile offender. Mediators are required to undergo continuing education/ training in mediation with the exception of mediators

who have reached 65 years and have been certified as mediators for at least 12 years. Initial training must include training on deontological rules. The rules on qualification to become a mediator identify different requirements depending on the type of qualification: to become a facilitator it is necessary to undergo a course of 120 hours, to become a mediator it is required to undergo an additional course of 80 hours while to specialize in a specific field of mediation further courses with a length established in special guidelines are established. General criteria for specialization have been introduced for all types of mediation specialization such as a certain number of years of experience, having undergone continuing education in a given field and having participated in activities such as undergoing supervision in the chosen specialization or having participated in conferences and similar activities. Specific requirements have been introduced for specialization in family mediation<sup>152</sup>.

Training is provided by certified institutions who can seek certification by a five-member commission for certification and training established within the Swiss Federation of mediation association. Guidelines have also been issued on the format of the mediation examination<sup>153</sup>. Every three years the Commission for certification and training also verifies whether the obligation to undergo continuing education has been complied with<sup>154</sup>. In fact, over a period of three years mediators are required to undergo 60 hours of continuing education both through theoretical and practical training.

#### 27.4. Qualification requirements for social workers in Georgia

Required qualifications for social workers is higher education in social work.. Professional knowledge requirement includes resocialization - rehabilitation programmes, basics of social work and psychology and principles of human resources management. Ministry of Justice Training Centre offers an induction specialized course on juvenile justice in accordance with the requirement of the Juvenile Justice Code and the Decree of the Minister on mandatory specialized training on juvenile justice for criminal justice practitioners. Victim-offender mediation is part of the specialized juvenile justice training course, however, there is no separate restorative justice training course included in the training curriculum of these professionals.

#### 27.5 Prosecutor General's Office; prosecutors' role in implementing restorative justice programmes and juvenile justice specialization requirement

Juvenile Justice Code of Georgia requires mandatory specialization of all professionals involved in the administration of juvenile justice. Specialization training for prosecutors started in 2015, and by January 1, 2016, all structural units of the Prosecution's Office had specialized prosecutors and investigators.<sup>155</sup> In all regional prosecutor's offices of Tbilisi there is **at least one specialized prosecutor who are assigned only to minor cases**. In the other cities/ regions of Georgia specialized prosecutors may also be assigned to adult cases. A list of specialized prosecutors is uploaded on the institution's webpage.<sup>156</sup> The Department of Prosecutorial Activities Supervision and Strategic Development supervises the work of the specialized prosecutors.

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<sup>152</sup>[https://www.mediation-ch.org/cms3/fileadmin/doc/01/ausb-anerker/fr/FSM\\_f\\_Lignes\\_directrices\\_formation\\_2020.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/ausb-anerker/fr/FSM_f_Lignes_directrices_formation_2020.pdf)

<sup>153</sup>[https://www.mediation-ch.org/cms3/fileadmin/doc/01/ausb-anerker/fr/2021\\_Merkblatt\\_fuer\\_Abschlussarbeiten\\_notice\\_travail\\_final.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/ausb-anerker/fr/2021_Merkblatt_fuer_Abschlussarbeiten_notice_travail_final.pdf)

<sup>154</sup> Regulation on training and qualification of the Swiss Federal Mediation Association, available at: [https://www.mediation-ch.org/cms3/fileadmin/doc/01/ausb-anerker/fr/FSM\\_f\\_Reglement\\_formation\\_2020.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/ausb-anerker/fr/FSM_f_Reglement_formation_2020.pdf)

<sup>155</sup> Overview of the work carried by the Prosecutor General's Office on juvenile specialization; available at: <https://pog.gov.ge/en/interesting-info/juvenile-justice>

<sup>156</sup> List of prosecutors specialized on juvenile justice, available at: <https://pog.gov.ge/en/employee/list/juvenilejustice>

Specialization training lasts five full days and ends with the exam. Apart from legal, and psychological issues, national and international standards on juvenile justice, training module includes sessions on diversion – mediation thus providing only a general overview of restorative justice. POG does not have a requirement on continuous education / annual credits for prosecutors, however, the POG Strategy 2022 - 2027<sup>157</sup> identifies this issue as a priority.

#### Recommendation

It is advisable to update the prosecutors' juvenile justice training module, **enhance the restorative justice section** in it and also create a separate training module on restorative justice as part of the induction and continuous education for prosecutors.

### 27.6. Judges' role in implementing restorative justice programmes, juvenile specialization requirement

Judges are essential stakeholders to contribute to the widespread application of restorative justice. Although majority of criminal law judges have received training on Juvenile Justice Code, and thus have knowledge on diversion and mediation programme, there is a need to deepen their knowledge on child friendly justice in general and raise their awareness about restorative justice programmes and its benefits.

Juvenile justice specialization is a requirement of the Juvenile Justice Code of Georgia for judges, similar to all other practitioners involved in the administration of juvenile justice. The aim of the juvenile specialization is to ensure that justice system professionals adopt a mindset that respects the rights and needs of children in legal proceedings. This requires understanding and knowledge of national and international standards and best practices. Openness to the principle of serving the best interest of a child. The selection of specialized practitioners should be based on the values, attitudes, and sensitivity toward child friendly justice.

The Juvenile Justice training course is part of the initial training curriculum for judicial candidates in Georgia. Upon appointment, judges undergo another set of single mandatory training course that allows judges to comply with the specialization requirement. The High School of Justice organized this training for all criminal chamber judges by 2016.

High Council of Justice Decree<sup>158</sup> defines narrow specialization in the criminal chamber among which is the specialization – crimes committed against families and juveniles. Judges are assigned to these specializations that is subject of rotation. This rotation appears to undermine the principle and intention of the specialization due to the frequent changes. From a practical standpoint, this results in wasted capacity development for individual judges who have accumulated knowledge, experience, sensitivity, and an approach to child-friendly justice over the years.

#### Recommendation

<sup>157</sup> POG Strategy 2022 – 2027, available at: <https://pog.gov.ge/uploads/7f5da215-saqarTvelos-prokuraturis-2022-2027-wlebis-strategia.pdf>

<sup>158</sup> High Council of Justice Decree #9 on judges' specialization; available at: [https://www.matsne.gov.ge/ka/document/view/5741944?fbclid=IwAR2cvF4-qxhztYJdMNgnO6aA25FPrnT62fCHzMHYE6RklmrvuBA\\_ZU9lw7k&publication=0](https://www.matsne.gov.ge/ka/document/view/5741944?fbclid=IwAR2cvF4-qxhztYJdMNgnO6aA25FPrnT62fCHzMHYE6RklmrvuBA_ZU9lw7k&publication=0)



It is recommended that the High School of Justice includes **session on restorative justice in the initial and continuous training** of judges and judicial assistants and ensure judges' participation in multidisciplinary workshops.

Due to the considerable time and resources needed to train specialized judges in juvenile (including restorative justice), it is recommended that rules on transfer for judges take in consideration the need to **secure that juvenile cases are handled by specialized judges**. It is recommended to secure the implementation of the Venice Commission Opinion CDL-AD(2023)006 on the amendment of Article 37 of the Law on Courts in Georgia also in light of the need to secure children's right to specialized juvenile justice professionals. In light with this, it is recommended that the High Council of Justice adopts **clear rules on juvenile specialization**.

### 27.6.1. European practices and international standards on performance evaluation of judges and prosecutors specializing in juvenile justice

In Opinion 15(2012) "On the Specialization of Judges", the Consultative Council of European Judges stated that bodies responsible for or evaluating the performance of judges should be very careful in determining whether and to what extent the performance of an individual specialist judge is comparable to that of a generalist judge. Opinion 11(2016) on the quality and efficiency of the work of prosecutors, the Consultative Council of European Prosecutors (CCPE) stated that an evaluation should be conducted on the basis of equal criteria at the same level within the prosecution service.

As judges and prosecutors play a key role in deciding on referral of cases and in balancing the interest of the child and public interest, it is important not only that these legal professionals are trained in juvenile justice matters (including restorative justice processes and principles) but also that mechanisms are available for monitoring that their decisions comply with principles of child friendly justices. Thus, insofar as possible, it may be useful that the specific requirements of juvenile justice are taken into account in the framework of performance evaluation of judges and prosecutors.

For example, in France, if the prosecutor is working within a specialized department, the evaluation will also take in consideration the specific nature of cases handled. In Germany, criteria are distinguished into general (fundamental and required of any prosecutor) and specific. If the evaluation is ad hoc for specific promotion goal to given position, it must also contain assessment of suitability for desired position and the benchmark is profile qualification for the desired position. In Romania, members of the evaluation team include prosecutors who have the same specialization of the prosecutor who is to be evaluated. In Italy performance evaluation involves the hierarchical superior (which in the case of juvenile judges and prosecutors is the head of the juvenile justice department or court) to secure that the evaluation takes into consideration the judges' and prosecutors' specialization.

While public view on a prosecutor should not be a source of information for performance evaluation<sup>159</sup>, the view of parties to proceedings may be a valuable source of information for evaluating judges specialising in juvenile cases. In Portugal the professional ethics criteria used for performance evaluation include relationships with other judicial operators and parties to proceedings, while in France a psychological evaluation looks at personality/psychological traits of the evaluated judge or prosecutor. The Dutch prosecution office has introduced a programme called Rechtspraak which allows the evaluation by parties to proceedings. In Italy sources relied upon for performance evaluation

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<sup>159</sup> This principle aims at avoiding undue external interference (mutatis mutandis Opinion 1 para 48 of the CCJE and CCPE Opinion 8(2013))

include reports of the district bar chambers insofar as they concern information relevant for an assessment of prosecutor's performance of professional duties and are based on objective and reliable information<sup>160</sup>. Clearly evaluation should not concern the merits of decision making.

#### Recommendations

**It is recommended to review existing performance evaluation criteria for both judges and prosecutors working in juvenile cases to secure that they tailored to the specific requirements and principles of juvenile justice (for example to secure that the principle of the best interest of the child is consistently take in consideration in deciding referral to diversion-mediation).** Performance evaluation could also include reports (based on objective and verifiable facts) of bar chambers, parties and the Public Defender Office covering aspects such as the compliance of the judge or prosecutors with child friendly justice principles.

Considered the specific demands of dealing with minors not only in terms of knowledge of procedural rules but also understanding of the specific needs for juveniles, it is recommended to secure that **performance evaluation of judges and prosecutors includes specific benchmarks** in line with juvenile justice legislation and international principles and standards.

#### 27.7. Lawyers – Georgian Bar Association and Legal Aid Service; lawyers' role in restorative justice and juvenile specialization requirement

In 2015, just before the enactment of the Juvenile Justice Code, there was a huge rise in demand from lawyers to attend juvenile justice specialization training. By January 1, 2016, the Georgian Bar Association (GBA), designed and carried out Juvenile Justice specialization courses for at least 200 lawyers. Since then, the GBA regularly organizes Juvenile Justice specialization training for its members. From 2016 until now, within the framework of the Association, 1743 lawyers have completed the course and are specialized in the field. Upon completion of such a course, the GBA issues a document certifying Juvenile Justice specialization of lawyers, which enables them to participate in the criminal proceedings involving juveniles. Issues related to VOM are dealt with within the juvenile justice specialization course. The decision to divert an individual is usually made before the case reaches lawyers. However, they have a crucial role to play if diversion is to be requested at the pre-trial and trial stage. Notably, participants to the consultations stressed that early involvement of lawyers in criminal proceedings at the earliest stages and in line with the European Court of Human Rights' case law would also enable them to effectively advocate the use of diversion and mediation.

Georgia's Legal Aid Service (LAS), which is exercised through its 14 bureaus across the country and 38 consultation centres, is the primary body that deals with juvenile justice cases. The Juvenile Justice Code prescribes a permanent group of lawyers specialized in juvenile justice available in the Legal Aid Service, which provides legal assistance to minors on their first request in the shortest possible time in cases provided for by law. Juvenile Justice cases fall under mandatory defense and, therefore, the primary body to carry out representation of minors is the legal aid service.

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<sup>160</sup> Sistema di valutazione della performance dei magistrati (System for performance evaluation of judges). Available at: [https://www.giustizia.it/giustizia/it/mg\\_1\\_12\\_1.page?facetNode\\_1=0\\_17&facetNode\\_2=3\\_1&facetNode\\_3=0\\_17\\_4&facetNode\\_4=0\\_12&facetNode\\_5=1\\_2\(2018\)&contentId=SPS115461&facetNode\\_6=0\\_12\\_52&facetNode\\_7=1\\_2\(201805\)&previousPage=mg\\_1\\_12](https://www.giustizia.it/giustizia/it/mg_1_12_1.page?facetNode_1=0_17&facetNode_2=3_1&facetNode_3=0_17_4&facetNode_4=0_12&facetNode_5=1_2(2018)&contentId=SPS115461&facetNode_6=0_12_52&facetNode_7=1_2(201805)&previousPage=mg_1_12)

As of now 109 permanent staff lawyers and 49 registry lawyers have specialization in juvenile justice.<sup>161</sup> Only in 2022, beneficiaries defined by the LAS lawyers under Juvenile Justice Code totalled to 1887.<sup>162</sup> Legal Aid lawyers represent all categories of minors (defendants, convicts, witnesses, victims), plus young adults, aged between 18 and 21.

LAS lawyers played a crucial role in multidisciplinary meetings and Juvenile Justice working groups up until 2020. They defined and highlighted legal problems raised during the implementation of Juvenile Justice Code.

Issues related to **diversion and mediation have been part of LAS lawyers' juvenile justice specialization training**. There are several experienced specialized lawyers, who are also trainers on juvenile justice issues, who have good understanding of VOM and restorative Justice in general.

### 27.7.1. European standards on lawyers and restorative justice

With respect to the training and awareness raising **measures for lawyers** the CEPEJ Guide to mediation for lawyers<sup>163</sup> and the [Training programme for lawyers to assist clients in mediation](https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52)<sup>164</sup> include recommendations to educate lawyers not only about the mediation process, but also about topics on efficient use of mediation for the benefit of lawyers' clients, including how to inform clients about mediation, how to prepare for it, how to choose a mediator, how to represent in mediation, mediators' code of ethics and available complaint mechanisms, how to properly formalise mediated settlement and provide efficient legal services ensuring smooth execution of such agreements etc.

The CEPEJ guidelines for a better implementation of the existing recommendation concerning mediation in penal matter expressly recommended that “**codes of conduct for lawyers** should include an obligation or a recommendation for lawyers to take steps to provide relevant information and, where appropriate, suggest the use of victim-offender mediation to parties and plead for referral to mediation by the competent authorities”<sup>165</sup>. Besides this, as a rule lawyers should not advise clients on a course of action that is unnecessarily burdensome for the client and Art 3.7 of the Model Code of Conduct for European Lawyers states that lawyers should strive to achieve the most cost-effective resolution of a client's dispute<sup>166</sup>.

#### Recommendations

Both LAS and GBA lawyers should participate in **trainings, workshops, and multi-disciplinary** discussions on restorative justice to increase their knowledge and understanding of VOM and its benefits. Lawyers should be encouraged to promote its use as an effective alternative to traditional criminal justice proceedings. LAS lawyers should continue to identify and highlight legal problems during the implementation of the Juvenile Justice Code to ensure its effectiveness.

<sup>161</sup> LAS annual report 2022, p16.p.81

<sup>162</sup> LAS annual report 2022, p.89

<sup>163</sup> Available online at <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>, from page 58.

<sup>164</sup> Available online at <https://rm.coe.int/cepej-2019-21-en-training-programme-for-lawyers-to-assist-clients-in-m/1680993304>.

<sup>165</sup>CEPEJ (2007)13; <https://rm.coe.int/1680747759>

<sup>166</sup>[https://www.cbce.eu/fileadmin/speciality\\_distribution/public/documents/DEONTOLOGY/DEON\\_CoC/EN\\_DEONTO\\_2021\\_Model\\_Code.pdf](https://www.cbce.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_CoC/EN_DEONTO_2021_Model_Code.pdf)

**The code of ethics for lawyers** should include an obligation or a recommendation for lawyers to take steps to provide relevant information and, where appropriate, suggest the use of victim-offender mediation to parties and plead for referral to mediation.

## 28. Training requirements and courses available for professionals in Georgia

In 2015, as part of the preparation for the introduction of the new Juvenile Justice Code, the government adopted **Decree (668)**<sup>167</sup> on the approval of the **standard of specialization** of persons participating in the administration of juvenile justice. According to this Decree each state institution is required to provide trainings using the following training module description:

- Juvenile Justice Code;
- International standards of juvenile justice;
- Psychological aspects of antisocial behaviour;
- Violence against children and its impact on child development;
- Psychological characteristics of the victim and witness child.

Although there is a section in it on restorative justice, it only gives a general overview and then concentrates on the procedural aspects of implementing diversion and mediation programme. The specialization standards include only a single round training course in juvenile justice that allows certified professionals to work in juvenile justice system without mandatory retraining requirement.

**The handbook for Teaching Restorative Justice for Professional Training Institutions and Universities** is the first comprehensive textbook developed in the Georgian language through the EU support in 2020.<sup>168</sup>

The Handbook is a ready-made training module that can be either taught as an autonomous subject or integrated into other curriculums. Several participants of the training of trainers' programme on this Handbook, integrated RJ modules into their respective curriculums for law, criminology, and juvenile justice students. One of the participants created a full semester course on RJ for master students. All justice training institutions have received electronic versions and hard copies of the Handbook and have several trainers from among practitioners on restorative justice.

Concluding observations on the fourth periodic report of Georgia<sup>169</sup> in 2017, in paragraph 12. the UN Committee recommends that the State party expand to all professional groups working with and for children the existing systematic introductions and continued in-service professional training and/or awareness-raising programmes on children's rights for judicial actors, delivered by the High School of Justice.

Training initiatives other than mandatory juvenile justice specialization courses, which are also institutionalized in the training institutions of relevant agencies, essentially rely on the financial support of international organizations and TA projects. Practitioners were interested in various training topics and formats. Training on mediation between juvenile offenders and parents – family group conferencing, other programmes of restorative justice, on bias identification, multidisciplinary discussions, skills-based trainings, international exchanges, etc.

<sup>167</sup>Government Decree (668) on the approval of the standard of specialization of persons participating in the administration of juvenile justice defines specialization standards <https://matsne.gov.ge/ka/document/view/3143176?publication=0>

<sup>168</sup> Handbook on Restorative Justice for Professional and University Teaching. Available at: [http://www.library.court.ge/upload/aRdgeniTi\\_marTlmsajulebis\\_saxelmZRvanelo.pdf](http://www.library.court.ge/upload/aRdgeniTi_marTlmsajulebis_saxelmZRvanelo.pdf)

<sup>169</sup>Concluding observations on the CRC fourth periodic report of Georgia <https://www.refworld.org/publisher,CRC,GEO,58e7716b4,0.html>

It is encouraging that the National Agency for Crime Prevention is active member of the **European Policy Network under the European Forum for Restorative Justice** and the representatives are members of EFRJ. It should be noted that the previously organized study visits were useful and paved the way for initiatives like the school mediation pilot project, Ministry of Justice decision to expand restorative justice and prepare legal amendments on the latter.

### Recommendations

It is important to note that any expansion of restorative programme should be carefully planned, implemented, and supported by adequate resources and training for all stakeholders involved.

It is recommended that the **Training Centre of Justice, the High School of Justice and the Professional Development Centre of the POG** institutionalize a training module of restorative justice in their induction and continuous training programmes. When planning the next steps, it is important to build upon the achieved results and created resources.

The next steps should involve **updating the training courses on juvenile justice and restorative justice and developing new training modules** tailored to the particular needs of the institutions, informed by relevant materials and knowledgeable practitioners.

In order to expand the application of restorative justice programmes beyond the diversion and mediation programme, social workers, psychologists and probation officers would benefit from trainings on the impact of restorative justice in general as well as its role in making rehabilitation and resocialization more effective.

It is also recommendable to **expand the mandatory juvenile** justice specialization course to include more comprehensive and in-depth training on restorative justice principles, practices, and standards.

It is recommended to update the Handbook for Teaching Restorative Justice for Professional Training Institutions and Universities to further develop and integrate restorative justice training into **university curricula and other tertiary level education** programmes for lawyers, social workers and other related faculties. Thus, creating a new cadre of potential mediators.

Providing financial support for **training initiatives** and programmes, including training on mediation between juvenile offenders and parents, family group conferencing, bias identification, multidisciplinary discussions, skills-based trainings, and international exchanges is essential.

It is recommended to further enhance **partnerships** with individual member states, international organizations and networks, such as the European Policy Network under the European Forum for Restorative Justice, to exchange knowledge and experiences, organize study visits and invite European practicing mediators, judges, prosecutors, and other professionals to share their expertise and best practices.

## 29. Evaluation of restorative justice programmes and supervision of restorative justice professionals

The UNODC Handbook on Restorative Justice Programmes emphasizes the need for programme oversight, monitoring and evaluation and discusses the importance of evaluating restorative justice programmes, measuring their impact and disseminating information about good practices.

The 2018 CoE Recommendation stressed that “Standards of competence and ethical rules, and procedures for the selection, training, **support and assessment of facilitators**, should be developed (Para 36). Restorative justice services and restorative justice training providers should be **overseen by a competent authority** (Para. 37). Restorative justice services should regularly monitor the work of their facilitators to ensure that standards are being adhered to and that practices are being delivered safely and effectively (para 38)”.

## 30. Mediators’ and social workers’ status and supervision in Georgia

Currently, there are eleven mediators working in the Diversion & Mediation Department throughout the country. In addition, if necessary, the Mediation Institutional Development Manager can combine the functions of the mediator. Eleven mediators are employed by the so-called on a half-time basis and are paid based on the number of successful criminal mediations they conduct.

Along with the monitoring, management provides **counselling and advisory support** to the mediators and social workers on ongoing challenging and complex issues. Mediators and social workers who participated in the consultations stated that they receive good support from the internal management through advisory and professional supervision, multi-disciplinary discussions and interventions. Other aspects however required attention, in particular remuneration criteria, compensation of expenses and provision of psycho-social support.

Successful mediation is defined as victim-offender mediation that concludes with a mediation conference and the signing of a diversion and mediation agreement. According to restorative justice practice<sup>170</sup>, not reaching an agreement does not necessarily mean that the process is a failure, and/or that the mediator should not be compensated for her/his work. Furthermore, the fact that mediators are paid based on completed cases with an agreement, may influence the selection of cases in future: the system may gradually select more cases where reaching an agreement can be expected, neglecting the more complicated cases (where the need for mediation might be the highest). It is advisable to reconsider this system of remuneration, for the above-described reasons.

During the consultations, it also became clear that existing rules on refunding of expenses of mediators could be revised: mediators sometimes had to incur into expenses for stationery items such as cartridges at their own cost. The unavailability of PCs provided by the Agency to support the performance of mediation also entailed that mediators have to use their own PCs which poses risks for confidentiality. Even though mediators work in the electronic document circulation system, where documents are uploaded and prepared electronically, and all of them have a special VPN application for access to this system, an individual user with an individual password, mediators’ work often takes

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<sup>170</sup> “It is possible for a restorative process to be successful without an agreement to pursue further action. A victim, for example, may be satisfied with having had a chance to express to the offender how he or she was affected by the crime and to hear an acknowledgment of responsibility from the offender.” – UNODC Handbook on Restorative Justice Programmes.

them outside the office of the Agency allocated spaces, which makes the use of the Agency's facilities not easily accessible.

It is a positive development that the number of diversion cases is increasing annually. As a result, the workload of the mediators is also increasing. During an interview, one mediator mentioned having thirty ongoing cases. Apart from intensive communication and unlimited working hours to ensure that mediators are always available to speak with the parties and especially with the young ones, mediators must also produce a significant number of administrative documents, such as protocols and reports. To ensure proper working conditions and the high quality of the work it is critical to increase the number of mediators. During the interviews, consultants were informed that 13 potential mediators have been included in the register of mediators. They are currently undergoing the practical trainings. Six new mediators will be gradually selected among these candidates to fill in six vacant contractual positions. As a general observation, several mediators shared their experiences about the complex cases involving beneficiaries who live on the streets or come from dysfunctional families. This makes the work of the mediators, and others involved in the process, even more challenging and requires closer cooperation with social services. Professional categories such as mediators are at risk of burnout and an efficient and fair allocation of work should be developed. Some of the participant mediators stressed that due to the lack of services available, especially for victims, they often had to perform functions which was outside of their mandate.

**Similarly, the tasks of social workers are** quite broad and demanding. They work with diverted juveniles, juveniles and adults on probation and conditional sentences, prepare assessment reports for diversion and mediation process, pretrial reports, presentence reports for juveniles, and assessments for the parole commission, and participate in the process of preparation for the release of life convicts. They also offer in-house rehabilitation programmes. During the past years 24 rehabilitation programmes have been developed by the Department of Rehabilitation and Resocialization through the support of the international and national experts.

**Resocialization and rehabilitation department of convicts and former convicts through its professional supervisors** carries out regular random monitoring / assessment of the activities of the social workers and psychologists and quarterly supervision. The review includes consideration of the number of cases assigned per specialist, timelines, quality of the assessment reports, selection and delivery and quality of rehabilitation programmes, etc. Professional supervisors conduct supervision through advisory and counselling sessions to discuss challenges, good practices. Professional supervisors produce reports. They summarize the existing challenges and the strengths of the specialist, as well as outline recommendations on how to solve this or that difficulty. The specialist concerned receives this report and has the opportunity to assess the situation from different perspective. Identified challenges are either dealt with through individual support or are generalized and reflected in the trainings and workshops organized by the Agency. It has to be welcomed that counselling sessions also include multidisciplinary coaching provided jointly together with the Diversion and Mediation Department.

Nevertheless, participants from among mediators and social workers highlighted that their work was psychologically demanding which raises the issue of welfare measures needed to support their work.

### 30.1 Comparative European Practices

The overview below shows that the countries surveyed have put in place not only supervision and accountability mechanisms for mediators and restorative justice providers but also support programmes such as welfare assistance mechanisms to address burn out and secure the fair and equitable distribution of workload. Certain countries have also regulated in detail mediators'

compensation rules to secure that the profession remains attractive and high-quality services are provided. Such measures are also essential to prevent that victims and offenders are pressured into mediation agreement in light of incentives aimed at unduly rewarding high settlement rates.

In Switzerland mediators are treated as public officials with the corresponding duties. The Swiss Federation of Mediation Associations has also created an Ombudsman within its organisation to secure the prevention and resolution of disputes concerning the provision of mediation. As such the Ombudsman can be seized, for free, by clients who have engaged in mediation and want to lodge complaints against the mediator on various grounds. Mediators must inform the clients of the existence and functions of the Ombudsman and the right of the parties to seize him/her to address complaints<sup>171</sup>. An information leaflet is made available<sup>172</sup>. A complaint formulaire is also available on the website of the Swiss federation of mediation Associations<sup>173</sup>. The formulaire includes questions aimed at identifying the object of the complaint (the mediator, the provision of information on the mediation procedure, the mediation procedure itself, the fees, circumstances, or behaviour after the completion of the mediation procedure or other violations of the code of conduct).<sup>174</sup> The competence of the Ombudsman integrates the functions of competent of judicial authorities in respect of disputes involving mediators.

In the Czech Republic PMS officials handling mediation should avert activities which could result in undermining the purpose of criminal proceedings or raise suspicion about its objectivity and impartiality. In case of violation, the referring judge or prosecutor can remove the case from the officer. PMS officials can be recused on the same grounds as judges and must notify without delay the competent judge or prosecutor of circumstances or facts that may lead to their recusal. Additionally, the professional activities of PMS officials and their quality are being monitored by the PMS directors, methodology coordinators, and the methodology department at the headquarters in Prague. The quality of professional activity is reviewed and developed through methodological standards for services, educational activities, and even special audits of the PMS offices. Employees of the Service are regularly evaluated, and these evaluations are development oriented.

Guidelines on lodging complaints against actions or decisions of the Probation and mediation service are available on the service's website<sup>175</sup>. A person who believes that they have been harmed by the actions of the Service or its employee has the right to file a complaint. Information on the possibility of filing a complaint and the procedure for filing it is publicly available, and the Service employee is obliged to convey this information on the applicant in the event of a request. Complaints are properly investigated, and the complainant is informed about the method of resolving the complaint within the specified period<sup>176</sup>.

The PMS monitors the workload both of its various offices and departments and of individual officials and, within the available resources, aims at achieving an optimal workload enabling a sufficient scope and quality of work in each individual case. PMS employees have the right to be provided with adequate working conditions and equipment (including protective equipment in accordance with the needs of

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<sup>171</sup>Regulation for the Ombudsman office,

[https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/it/FSM\\_i\\_Ombudsman\\_Regolamento\\_2019.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/it/FSM_i_Ombudsman_Regolamento_2019.pdf)

<sup>172</sup>Information note on the Ombudsman office

[https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/it/FSM\\_i\\_Ombudsman\\_Scheda\\_informativa\\_2019.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/it/FSM_i_Ombudsman_Scheda_informativa_2019.pdf)

<sup>173</sup>Formulaire for the Ombudsman office

[https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/fr/FSM\\_f\\_Formulaire\\_Ombudsman.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/fr/FSM_f_Formulaire_Ombudsman.pdf)

<sup>174</sup>Regulation on the Ombudsman office;

[https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/fr/FSM\\_f\\_Ombudsman\\_Reglement\\_2019.pdf](https://www.mediation-ch.org/cms3/fileadmin/doc/01/taetikeit/fr/FSM_f_Ombudsman_Reglement_2019.pdf)

<sup>175</sup>[https://www.pmscr.cz/wp-content/uploads/2021/09/s2\\_2019\\_o\\_stiznostech.pdf](https://www.pmscr.cz/wp-content/uploads/2021/09/s2_2019_o_stiznostech.pdf)

<sup>176</sup>[https://www.pmscr.cz/wp-content/uploads/2021/12/onas\\_zakladdokumenty\\_pravidlastandardy\\_2021.pdf](https://www.pmscr.cz/wp-content/uploads/2021/12/onas_zakladdokumenty_pravidlastandardy_2021.pdf)



the activities performed)<sup>177</sup> and to be protected against risks that may arise during their activities. Procedures for individual crisis and risk situations have been developed through internal guidelines.

The employees of the PMS are provided with case-by-case group supervision, individual and team supervision. The purpose of supervision is to support the professionalism of probation and mediation activities, as well as the prevention of burnout syndrome, the resolution of potential problematic relationships at the workplace or within the work team. Executives are also provided with managerial supervision, focused on leading the centre's team or within the judicial region.

Internal regulations foresee additional support for PMS officials' personal development and self-care and the right to a good atmosphere at the workplace. PMS staff can submit their suggestions to improve the safety, quality and efficiency of work to the management, as well as file complaints if they are convinced of a violation of their employment rights.

Due to the high turnover and wages that were not competitive, the PMS has included in its Development plan for the period until 2025<sup>178</sup> the introduction of mechanisms to motivate and incentivize staff such as securing an individualized evaluation as well as the development of a career plan in order to provide growth opportunities. Salary should be adjusted on the basis of the amount and complexity of work done an additional bonus is provided on a monthly basis in connection with certain professional risks.

In terms of support measures, in Belgium justice assistants working for the House of Justice benefit from various support measures. Due to the heavy psychological and emotional impact of work with victims and offenders, in 2022 the House of Justice launched a programme called "well-being"<sup>179</sup> to support staff, in particular those exposed to emotionally and psychologically burdensome functions. The programme was launched following a needs assessment based on discussions with focus groups and a plan of action was developed to adopt support measures such as reducing the isolation of staff in critical situations, managing the emotional load and providing training on stress management, emotional management, training in meditation techniques and on modulating empathy in order to prevent compassion fatigue. Teleworking and flexibility at work both in terms of time and location has been encouraged alongside a participative approach to management. Online staff communities on social networks have been created around specific themes so that staff can share and receive information they may need for the performance of their work.

In France decree of 29 April 2021 modified the rules on remuneration and refund of expenses for mediators with the purpose of simplifying the rules and making the profession more attractive<sup>180</sup>. Compensation is based on the complexity, duration of the case and the characteristics of the mediator. The fees paid increased in case the mediation concerns juveniles and on the basis of the number of procedures the mediator was involved in (as under French law mediators can be delegated by prosecutors to carry out diversion measures such as issuing warnings or such as verifying the payment of a fine). The decree also established that if the mediator was unable to carry out the mediation for example due to the failure of the parties to appear / show up, they nonetheless have the right to receive a specialised indemnity that compensates them for the time spent. Travel expenses are compensated

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<sup>177</sup>[https://www.pmscr.cz/wp-content/uploads/2021/12/onas\\_zakladdokumenty\\_pravidlastandardy\\_2021.pdf](https://www.pmscr.cz/wp-content/uploads/2021/12/onas_zakladdokumenty_pravidlastandardy_2021.pdf)

<sup>178</sup> [https://www.pmscr.cz/wp-content/uploads/2021/09/2017\\_koncepcie\\_pm\\_do\\_roku\\_20251.pdf](https://www.pmscr.cz/wp-content/uploads/2021/09/2017_koncepcie_pm_do_roku_20251.pdf)

<sup>179</sup>[https://www.maisonsdejustice.be/index.php?eID=tx\\_nawsecuredl&u=0&g=0&hash=03d7c0526b430f63628d7902a006396656771753;](https://www.maisonsdejustice.be/index.php?eID=tx_nawsecuredl&u=0&g=0&hash=03d7c0526b430f63628d7902a006396656771753;)

[https://www.maisonsdejustice.be/index.php?eID=tx\\_nawsecuredl&u=0&g=0&hash=03d7c0526b430f63628d7902a006396656771753&file=fileadmin/sites/portail\\_mj/uploads/documents/Menu\\_de\\_droite/Publications/Rapports\\_annuels/Rapport\\_annuel\\_2022/RA2022\\_Final.pdf](https://www.maisonsdejustice.be/index.php?eID=tx_nawsecuredl&u=0&g=0&hash=03d7c0526b430f63628d7902a006396656771753&file=fileadmin/sites/portail_mj/uploads/documents/Menu_de_droite/Publications/Rapports_annuels/Rapport_annuel_2022/RA2022_Final.pdf)

<sup>180</sup> [http://www.justice.gouv.fr/bo/2021/20210531/Indemnisation\\_delegues\\_mediateurs.pdf](http://www.justice.gouv.fr/bo/2021/20210531/Indemnisation_delegues_mediateurs.pdf)

on the basis of time units and a mission is considered to have started at the time the mediator left his place of residence and concluded when he returned to the place of residence. In case rail service or other public transportation is used the indemnity for travel is calculated on the basis of the public transportation time of departure and return plus one additional hour to reach the departure/return station. Travel expenses such as tickets can also be compensated upon submission of proof that they have been incurred. In case a car is used, the refund will be calculated on the basis of the distance in kilometres. Refund for meals is also foreseen if the mediator mission takes place between 11 and 14 and between 18 and 21.

In Switzerland (canton of Geneva) the expenses for a mediator are covered by the prosecution service for up to 1000 CHF while the parties must cover any additional cost exceeding that sum unless they have the right to legal aid which will cover the cost of mediation. The hourly fee of mediators is 200 CHF.

#### Recommendations

It is recommended to carry out focus groups on well-being of the social workers and mediators on which basis to develop **social support and well-being plans** to prevent burnout and to assist them in handling the emotional and psychological impact of cases they work on.

It is recommended to provide **sufficient human and financial resources** to Resocialization and Rehabilitation Department through increasing number of social workers who have a challenging and important role. The state should address the challenge social workers face on daily basis for ensuring that meaningful rehabilitation programmes are delivered to diverted juveniles and young adults. It's important to support social workers to **prepare assessment reports that are accurate and reliable** to help inform the decisions made by the justice system.

It is recommended to modify **regulations on remuneration** of mediators to secure that they are paid on the basis of the amount of time spent to perform all activities connected to mediation and that regulations on per diems and other expenses refunds are based on the expenses and time effectively spent on assignments outside the area of residence.

This approach will avoid the risk of selecting only cases where reaching an agreement is expected and neglecting more complicated cases where mediation might be necessary while taking in consideration mediators' social and labour rights.

It is recommended that there is **Code of Conduct** developed and adopted for the mediators that will also regulate provisions regarding confidentiality.

### 31. External monitoring of VOM

According to the UNODC Handbook on Restorative Justice Programmes, restorative justice services should be governed by standards that are recognized by the competent authorities and monitored by an independent body.

In Georgia the lack of regular external monitoring is a significant gap in the system. External monitoring is essential to ensure the accountability, transparency, and effectiveness of the programme. The creation of juvenile trial monitoring system as well as monitoring of the Juvenile Justice Code

implementation has been subject of discussions and considerations since the Juvenile Justice Code was enacted. There was more or less consensus between key stakeholders that the **Public Defender of Georgia** would be the most appropriate institution to carry out this monitoring. So far, there is no progress reached to adopt such a **monitoring system** that would also allow such monitoring and thus would also encompass assessment of the victim-offender mediation programme. The only publicly available report produced by the Department of Child Rights of the Public Defender is Special Report “The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children”<sup>181</sup> dates August 2021.

### 31.1. European practices on external monitoring of VOM

In Austria a general contract between the Ministry of Justice and the mediation association Neustart regulates the control rights (Kontrollrechte) of the Federal Ministry of Justice. The Ministry also maintains regular contact with Neustart’s management in order to further develop forms of cooperation. Additionally, compliance guidelines have been adopted by Neustart in cooperation with the Federal Office on corruption prevention and the fight against corruption (BAK). The guidelines apply to employees and volunteers. The guidelines concerns use of funds, compliance with procurement laws, prohibition of conflicts of interests, professionalism, transparency, prohibition of advantages and gift acceptance, authorisation of secondary activities, prohibition to enter any private or contractual relationship with current clients, data protection and use of social media. The guidelines have introduced reporting mechanisms and channels and foresee the handling of complaints both from within and without the organisation (first through reporting to the hierarchical superior and then through the compliance body of Neustart). The rules are further detailed in the organisation’s collective contract. Finally, accountability mechanisms are in principle available through the Ombudsperson. In fact, in the Austrian legal system, an Ombudsperson responsible for complaints about the criminal justice system is operative and can be seized to address complaints on access to VOM and possible violations of rights and malfunctions.

#### **Recommendation:**

It is recommended to consider the introduction of an independent and external monitoring of VOM programmes in cooperation with the **Public Defender (Ombudsperson) of Georgia and CSOs.**

### 32. Evaluation and data collection

*The 2018 CoE Recommendation, states that restorative justice services should develop appropriate data recording systems which enable them to collect information on the cases they deliver. At a minimum, the type of restorative justice which took place or the reasons for cases not progressing should be recorded. Anonymised data should be collated nationally by a competent authority and made available for the purpose of research and evaluation. “(Para.39)*

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<sup>181</sup> Special Report of the Public Defender on “The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children”, 2021: <https://www.ombudsman.ge/eng/190307051819angarishebi/210802044354spetsialuri-angarishi-bavshvze-seksualuri-dzaladobisa-da-seksualuri-ekploatatsiis-danashaulebze-martlmsajulebis-gankhortsieleba>

According to the UN Handbook on Restorative Justice programmes there are a variety of possible measures of programme outcomes, including more subjective indicators such as the levels of satisfaction of victims, of offenders and of third parties, including community residents and more factual measures such as the level and severity of reoffending and the level of fear of crime in the community. An agreed outcome measurement framework for restorative justice programmes can provide a systematic basis for programme evaluation and for comparing evaluation findings. Programme delivering agencies should have in place the necessary information collection and management systems.

In 2020 the Diversion and Mediation Department developed “**pre and post survey**” that aims to measure the effectiveness of VOM in helping individuals in conflict with the law take responsibility for their actions and acknowledge them. This survey is implemented in pilot mode and consists of a pre-test and a post-test, which asks diverted juveniles / young adults to answer a series of questions about their thoughts, feelings, and actions related to their crime, as well as their attitudes towards the mediation process. The stated purpose of the survey is to improve the application of the Restorative Justice programme. It is voluntary and responses are kept confidential.

Before developing above survey, there was one conducted in an **online format** that was addressed to victims who participated mediation conference. The survey contained a set of questions asking about the participant's experience and satisfaction with the mediation process, as well as their opinion on the mediator's impartiality and the consideration of their needs during the process. Whether victim had possibility to ask all the questions and also if she / he thought that diverted person was sincere<sup>182</sup>. The survey ended with an open-ended question asking for any additional comments or recommendations. The purpose of survey was to improve the quality of the mediation process.

A third survey is an “**Online Satisfaction Research of Mediation Parties**”. The questionnaire is filled out by juveniles in conflict with the law and their legal representatives, young adults, as well as victims (adult victims, juvenile victims and their legal representatives, a representative of a legal entity affected by crime). Participants are notified that the results of the research serve as a basis for improving mediation practices. Therefore, their participation is important, though voluntary. This survey has a set of questions on their personal experience in regard with the victim – offender mediation, mediation conference experience, principles, emotional side. Questionnaire includes specific question regarding a mediator and to what extent unbiased she / he was, mediation agreement and its clauses, etc.

The outcome of survey is analysed and reflected in the **annual reports** prepared by the Diversion and Mediation Department. However, due to the currently non-operational webpage, the reports are not available.

The POG Department of Prosecutorial Activities Supervision and Strategic Development conducts studies to better understand juvenile offending and re-offending - **two annual studies and one study every three years**. The first study provides statistics and an analytical overview of the statistics of crimes committed by juveniles. It offers a comparison in figures of applied diversions and prosecutions, and a breakdown of the category of crime, age, sex, applied sentences, diversion programmes, etc. The

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<sup>182</sup> The “Study on Juvenile Diversion and Diversion and Mediation Programme” funded by EU and implemented by several NGOs – “Georgian Center of Psychosocial and Medial Rehabilitation of Torture Victims”, “Rehabilitation Initiative for Vulnerable Groups” and “Civic Development Agency” in 2018 noted that “effectiveness of mediation is measured immediately, which is a correct way of evaluation of efficiency of a successful mediation. It is natural that a goal of the mediation process is that a person in conflict with the law realizes negative sides of his/her action, and he/she feels certain empathy against a victim. However, measuring success of mediation by the way of taking into account certain emotions demonstrated by a minor/young person during this process cannot be considered to be a correct indicator of efficiency of the indicated mechanism.”

second study is a criminological analysis that examines individual factors and reasons that could have caused child offending. The third study, conducted every three years, examines the statistics of re-offense among diverted juveniles and young adults within three-year intervals. Based on the most recent survey conducted by POG in 2019 reoffence rate of all juveniles between 2010 – 2018, was 9%. The calculation is made based on three years' interval upon completion of the diversion and mediation agreement terms.<sup>183</sup> These Studies provide valuable insights into juvenile crime characteristics, (referenced in several sections of the report), individual circumstances causing juvenile delinquency, measures applied, etc. However, there is still a need to develop a comprehensive methodology to measure effectiveness of diversion programmes, rehabilitation programmes, the impact of these measures on victims, communities, sentencing practices, and other aspects of the restorative juvenile justice system.

**There is no regular external evaluation in place to evaluate the impact of restorative justice programme in Georgia.** Several external assessment reports produced by the CSOs were part of the EU and / or UNICEF grant programme. The most recent “Study on Juvenile Diversion and Diversion and Mediation Programme” was funded by EU and implemented by several NGOs – “Georgian Centre of Psychosocial and Medial Rehabilitation of Torture Victims”, “Rehabilitation Initiative for Vulnerable Groups” and “Civic Development Agency” in 2018 through EU funding.<sup>184</sup> This report offers observations based on qualitative study of the mediation process. One of the important findings of this report is: “effectiveness of mediation is measured immediately, which is a correct way of evaluation of efficiency of a successful mediation. It is natural that a goal of the mediation process is that a person in conflict with the law realizes negative sides of his/her action, and he/she feels certain empathy against a victim. However, measuring success of mediation by the way of taking into account certain emotions demonstrated by a minor/young person during this process cannot be considered to be a correct indicator of efficiency of the indicated mechanism.”

**Data collection and analysis** based on comprehensive and uniform methodology by all state institutions is critical. It has to be taken into consideration that a working group composed of all state institutions involved in the administration of juvenile justice and respective statistics units, finalised the work and elaborated the concept, indicators and required draft legal amendments for a unified analytical data collection system for overall juvenile justice system. The listed documents, along with the developed software that should facilitate this process, has been submitted to the Ministry of Justice in 2020 and awaits the adoption of the legal amendments and operationalization of the software.

### 32.1. Comparative European practices

In order to measure progress, evaluation of VOM programmes, both quantitative (numbers of referrals, number of mediations, numbers of cases settled by mediation, timing of cases from referral to settlement, case types etc.), and qualitative (parties' and other stakeholders' satisfaction, using anonymous questionnaires), should be available in order to ensure that certain data is collected. Well-designed impact assessment studies usually integrate various possible other influences on the effect size and include control groups (i.e., persons who have not participated in VOM or have used other diversion programmes).

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<sup>183</sup> POG Report on Juvenile Reoffence <https://pog.gov.ge/page/default/ganmeorebiTi-danashauli-arasrulwlovanTa-wesiT-ganridebul-pirebshi>

<sup>184</sup>“Study on Juvenile Diversion and Diversion and Mediation Programme” 2018 <https://pfp.ge/wp-content/uploads/2022/05/1d0bec3a0ff6d444d0b3f713021a103a.pdf> “

According to a meta-analysis on the impact of VOM<sup>185</sup> existing studies have covered both the assessment by the parties on the procedure upon completion and also the impact of VOM and agreed upon measures over time, in particular reoffending. Longitudinal studies have been carried out on the impact of restorative justice programmes as well as the specific measures adopted as parts of mediation agreements<sup>186</sup>.

The CEPEJ model mediation feedback questionnaire for example focuses on measuring parties' satisfaction including with the information received, helpfulness of the mediator, opportunity to express own views, professionalism of the mediator and facilities<sup>187</sup>. Surveys or feedback forms can also be developed on the basis of the mediators' code of conduct to review whether the professional and ethical dimension of mediation was met. The distinction between satisfaction surveys and other feedback mechanisms measuring compliance with ethics rules should be clear as dissatisfaction, while being a relevant basis for reforms and improvement should not lead to disciplinary or similar measures.

Impact assessments focused on victims usually include perception of fairness, whether they perceived they had received sincere apologies, willingness to take revenge on the offender, feeling of security. Victims who participated in restorative justice processes also reported a reduction in post-traumatic stress.

With regards to offenders, perception of fairness is a factor that may contribute to the execution of the agreement and reoffending (note that the VOM agreement can also include an express commitment not to reoffend). By perceiving their treatment to be fair, the legitimacy of the process may be enhanced for the offender, potentially encouraging voluntary compliance. A study found that if the offender was willing to meet the victim, was aware of the harm caused, was actively involved in the process and thought it was useful, there was a significant and positive effect on reconviction rates<sup>188</sup>.

As impact studies have usually focused on reoffending (general and crime specific), a definition of reoffending should also be clear: reoffending may be based on re-arrest or re-conviction. Using rates of re-arrest clearly shows higher rates of failure than re-conviction. Impact studies also disaggregate data based on type of crime (for example property and violent crimes). Some studies for example have shown that certain variables had statistically significant effects. For example, violent offenders tended to have higher levels of reoffending.

Studies can also review other effects. Measurement of impact have included psychosocial outcome such as psychosocial adaptation, housing, relationships and employment. For example, VOM, alongside other restorative justice processes may help to reduce the negative stigmatization often associated with more traditional sanctions and therefore allows the offender to have better self-perception.

The methodology used affects the assessment of the impact on reoffending. According to a review on existing studies on the impact of VOM on reoffending in the United Kingdom, studies of greater methodological quality had significantly lower effect sizes than lower quality studies (27% reduction

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<sup>185</sup> Bradshaw, W., Roseborough, D. and Umbreit, M. (2006) 'The Effect of Victim Offender Mediation on Juvenile Offender Recidivism: A Meta-Analysis', *Conflict Resolution Quarterly*, 24:1, 87-98

<sup>186</sup> A list of studies on the impact of VOM and other restorative justice programmes can be found in the references of the evidence briefing on restorative justice published by the UK college of policing; available at: <https://assets.college.police.uk/s3fs-public/2022-01/Restorative-justice-evidence-briefing.pdf>

<sup>187</sup> It appears however that this feedback from was tailored to voluntary mediation in civil cases <https://rm.coe.int/mediation-development-toolkit-ensuring-implementation-of-the-cepej-gui/16808c3f52>

<sup>188</sup> Shapland J, Atkinson A, Atkinson H, Dignan J, Edwards L, Hibbert J, Howes M, Johnstone J, Robinson G and Sorsby A. (2008). 'Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes. London: Ministry of Justice.

compared to 52% reduction). Equally, those studies with longer follow-up periods had significantly lower effect sizes than those with shorter follow-up periods. Both findings are typical in criminological research<sup>189</sup>.

As for the timeframe covered by longitudinal studies, some studies have compared reoffending between participants in VOM and control groups after six months and found that the control group were twice as likely to reoffend after six months. This effect decayed gradually over time and after 30 months the differences in likelihood of reoffending had reduced.

Saving in terms of costs for judicial proceedings have been often cited as an advantage of mediation and could justify the allocation or re-allocation of further resources to the responsible agencies, mediators, CSOs and other professionals such as legal aid lawyers involved in VOM. Studies on cost benefit analysis appear to be however limited. A notable exception is Spain where the Judicial Council has commissioned studies on the financial costs of restorative justice programmes for small offenses<sup>190</sup>.

### 33. Existing studies on the impact on crime of various restorative justice and diversion programmes

The impact of VOM and other restorative justice programmes will also depend on the effectiveness of specific courses of action chosen as part of the mediation agreement. Notably, in the framework of VOM agreements the offender can commit to various forms of rehabilitation and educational programmes. Thus, the long-term impact of VOM will be tied to the effectiveness of these specific programmes and courses of action. Reoffending may be an indicator that the devised programmes were not suitable or effective regardless of consideration for the offenders' situation or characteristics.

The UK College of Policing has published, on its website, a crime reduction toolkit<sup>191</sup> where the effectiveness of various measures on crime reduction is assessed (based on available studies). Impact studies have covered the effectiveness of dog training programmes<sup>192</sup>, after school programmes<sup>193</sup>, aggression replacement training<sup>194</sup>, alternative education programmes ex<sup>195</sup>, boot camps<sup>196</sup>, brief

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<sup>189</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/victim-offender-mediation>

<sup>190</sup> Consejo General Del Poder Judicial Espana, Evaluacion del coste de la justicia restaurativa integrando indicadores cuantitativos y cualitativos: el caso de la mediacion penal aplicada a las infracciones de menor gravedad; available at: <https://www.poderjudicial.es/cgpj/es/Temas/Mediacion/Publicaciones/Mediacion-penal/>

<sup>191</sup> <https://www.college.police.uk/research/crime-reduction-toolkit>

<sup>192</sup> Dog training programmes have been introduced in prisons whereby offenders are required to train dogs for service purposes (for example, guide dogs or therapy dogs) or teach basic commands to shelter dogs to increase their chances of being adopted. The review investigates whether these programmes reduce reoffending, offending whilst in prison, anti-social behavior and drug and alcohol use, and increase self-control, self-esteem and overall mental health and wellbeing. <https://www.college.police.uk/research/crime-reduction-toolkit/dog-training-programmes-prison>

<sup>193</sup> After school programmes are organized activities targeted at children and young people who would otherwise be unoccupied or unsupervised. After-school programmes (ASPs) are expected to reduce delinquency by increasing formal supervision, providing academic support and promoting social skills to young people.

<sup>194</sup> Aggression replacement training is a social skills training programme that aims to replace anti-social behaviors with desirable pro-social behaviours. They aim at developing pro social behavior, anger control and moral reasoning: <https://www.college.police.uk/research/crime-reduction-toolkit/aggression-replacement-training>

<sup>195</sup> Alternative education programmes are designed for young people who are unable or unwilling to participate in traditional education, perhaps if they have been excluded or are subject to exclusion; <https://www.college.police.uk/research/crime-reduction-toolkit/alternative-education-programmes>

<sup>196</sup> Boot camps are programmes for juvenile or adult offenders as an alternative to punishments such as prison or probation <https://www.college.police.uk/research/crime-reduction-toolkit/boot-camps>

interventions for individuals with alcohol use disorders<sup>197</sup>, cognitive behavioural therapy<sup>198</sup>, cognitive behavioural therapy for domestic violence<sup>199</sup>, school-based programmes to reduce drinking and driving<sup>200</sup>, music-making interventions for young people at risk of offending ( defined as being known to youth justice professionals)<sup>201</sup>, mentoring<sup>202</sup>.

As for programmes to address intimate partner violence, while several countries have excluded these types of offense from mediation due to features such as underlying chronic situation of abuse and power imbalances between the parties, existing reviews have also shown that criminal justice sanctions for intimate partner violence have no consistent effect on subsequent offending<sup>203</sup>. On the other hand, other tools have proven useful such as the use of screening tools to identify women attending healthcare settings who have experienced domestic abuse. All women over the age of 16 attending primary (for example, GP surgeries) and secondary healthcare settings (for example, antenatal clinics, women's health and maternity services, emergency departments) are subject to screening. Universal screening is intended to increase the identification of violence and abuse and to provide further support and access to services<sup>204</sup>. Other programmes reviewed covered educational interventions to prevent relationship violence in adolescents and young adults (between 11 to 26 years old) aim to promote an awareness of acceptable dating behaviour and an individual's rights within a relationship<sup>205</sup>.

## Recommendations

**Internal Monitoring:** Diversion and Mediation Department's current internal monitoring process through regular quality control and the use of surveys is commendable. Annual reports produced by the Department should also serve as a good basis for analysing the progress and challenges. In light of this, it is recommended that the **webpage** of the diversion and mediation programme soon becomes operational thus providing access to the annual reports and other analytical data. It is recommended that the Diversion and Mediation Department continues good practice of **interview and supervision** workshops with the mediators and involving multi-disciplinary groups. Furthermore, it is advisable that the Diversion and Mediation Department continues close cooperation with the Department of Prosecutorial Activities Supervision and Strategic Development to conduct joint assessments and discuss the findings that should inform further policy making and capacity building activities.

**Data Collection and Analysis:** The development of a comprehensive methodology to measure the effectiveness of diversion programmes, rehabilitation programmes, the impact of these measures on victims, communities, sentencing practices, and other aspects of the restorative juvenile justice system is crucial. It is recommended that a unified analytical data collection system for juveniles and respective

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<sup>197</sup>These programmes consist of one or more (up to four) face-to-face sessions lasting between five and 40 minutes. These sessions typically include personalized feedback on alcohol intake in relation to recommended limits, discussion of health and social risks, and/or forms of psychological and motivational interviewing <https://www.college.police.uk/research/crime-reduction-toolkit/alcohol-use-disorders>

<sup>198</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/cbt>

<sup>199</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/cbt-domestic-violence>

<sup>200</sup> These programmes deliver knowledge about the effects of drink-driving, as well as teaching participants refusal skills; <https://www.college.police.uk/research/crime-reduction-toolkit/drink-driving-school-based-programmes>

<sup>201</sup> These programmes can be delivered in various justice contexts (for example, custodial, residential or community settings). They cover different activities including structured group performance, instrument tuition; <https://www.college.police.uk/research/crime-reduction-toolkit/music-making>

<sup>202</sup> Mentoring involves interactions between two individuals over an extended period of time and an inequality of experience or knowledge. The mentor may provide practical assistance, such as with job applications, teaching or training, as well as emotional support for the mentee to help increase self-esteem and confidence. <https://www.college.police.uk/research/crime-reduction-toolkit/mentoring>

<sup>203</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/criminal-sanctions-prevent-domestic-violence>

<sup>204</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/healthcare-screening>

<sup>205</sup> <https://www.college.police.uk/research/crime-reduction-toolkit/educational-interventions>



software, developed through UNICEF support, becomes soon operational. Evidence based policy making should be ensured based on the analysis of this data.

It is important to support the Prosecutor General’s Office in further enhancing the **application of diversion and mediation programme** for juveniles and adults. Department of Prosecutorial Activities Supervision and Strategic Development should be supported to further develop **research and analytical methodology** to regularly assess the work of prosecutors and the overall effectiveness of current interventions.

It is also advisable that the Ministry of Justice closely **cooperates with the universities and CSOs that could carry out regular monitoring and evaluation** of the programme through qualitative and quantitative methodology.

### 34. Awareness raising measures

The Venice Declaration calls upon Member states to “Raise the awareness of restorative justice processes nationwide and put into practice projects aiming at a widespread communication of the role and benefits of restorative justice in criminal matters, by providing a response beyond penal sanctions;”<sup>206</sup>.

The assessment has revealed that awareness raising on restorative justice is required both for criminal justice practitioners as well as society at large. The lack of familiarity that often exists in society with respect to mediation and other restorative justice practices for dealing with conflict can hinder public acceptance even if such measures are introduced through top-down approach. Awareness and understanding among Georgian criminal justice practitioners and society at large about the connection between the impact of crime on specific individuals and communities affected by this crime and the potential benefits of the restoration process is crucial. Due to the still **low awareness** in Georgian society regarding restorative justice mechanisms and in the particular victim–offender mediation, mediators usually need to put a lot of effort to explain well the principles, meaning, potential outcome, and benefit of this programme and persuading parties on the benefits of mediation can be challenging.

#### 34.1 European Good practices on awareness raising on restorative justice

Among measures that have been implemented across European countries to raise awareness among stakeholders was the introduction of the possibility for judges, prosecutors and lawyers to observe a restorative justice process to dispel misconceptions and demonstrate their value. One of the most powerful ways to get a buy-in from stakeholders is to demonstrate the effect VOM can have on people affected by crime. This would require arrangements such as the agreement of the parties and a non-disclosure agreement to secure that confidentiality is respected.

The best way to see and appreciate the effect of conciliation and restorative justice is by hearing the stories of those who have a lived experience of conciliation. The MOJ could seek “ambassadors” who are willing to share their stories on how conciliation impacted their lives thus centring the voices of people with lived experience to share.

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<sup>206</sup> <https://rm.coe.int/0900001680a4df79>

In Belgium, Ireland and United Kingdom victims and offenders have shared their experience in restorative justice processes providing first-hand accounts of what it means for those directly involved to participate in restorative justice processes and the impact it had on their lives<sup>207</sup>.

Awareness initiatives could also focus on identifying and engaging other individuals who may act as focal point for information exchange and flow on VOM. For example, teachers and social services workers may be a privileged target for awareness raising campaigns and in turn spread information on existing restorative justice mechanisms among students, minors in care facilities and their families. A degree of knowledge about restorative justice received from a trusted source may help overcome the reluctance of victims and offenders to participate in conciliation.

In Spain large attention and impact on social awareness on restorative justice was drawn by the 2021 movie “Maixabel”<sup>208</sup> recounting the experience of a number of victims of the ETA terrorist organisation who, starting in 2012, decided to meet ETA members convicted for the murder of their relatives to hold restorative justice meetings. The title of the movie is based on the name of one of the victims, Maixabel Lasa, the wife of a politician murdered by an ETA terrorist who has also become an advocate of restorative justice programmes in Spain. Other movies and documentaries on restorative justice have been published in Finland<sup>209</sup> and France.

## Recommendations

It is recommended to develop targeted awareness-raising campaigns to improve the understanding and acceptance of restorative justice, for criminal justice practitioners and the wider public. These campaigns should be designed to address the specific needs of different communities and should be tailored to reach **different target audiences**. Efforts have to be made to better understand what public specific communities think about mediation, how they react to the offer of mediation and respective awareness raising awareness activities should be planned accordingly. Involvement of the civil society organizations, victim support groups, and community organizations is essential while raising awareness of restorative justice. They can play a crucial role in promoting the benefits of restorative justice and in helping to **overcome resistance to its implementation**.

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<sup>207</sup> Examples of victims acting as ambassadors for VOM can be found in the following websites and resource pages on restorative justice: <https://why-me.org/ambassadors/> ; <https://www.bbc.co.uk/news/uk-37239787.amp>; <https://www.theforgivenessproject.com/stories-library/paul-kohler/>; <https://restorativejustice.ie/multimedia-resources/>

<sup>208</sup> The official trailer of Maixabel in Spanish (with English Subtitles) is available at: <https://www.youtube.com/watch?v=RJHh5zTaiE> ; the movie was presented at several international film festivals and is available for download on various online platforms including Apple and Amazon. The original interview with victims who participated in the restorative justice meetings with ETA terrorists was published on the Spanish National Newspaper El Pais in 2011 : 27 víctimas trabajan en secreto por la paz (27 Victims work in secret for peace); available at: [https://elpais.com/ccaa/2012/06/16/paisvasco/1339850740\\_524030.html?outputType=amp](https://elpais.com/ccaa/2012/06/16/paisvasco/1339850740_524030.html?outputType=amp); An English version of an interview with Maixabel Lasa on her experience was published on El Pais in 2013 (I am sure my husband would have talked to his own killers)and is available at: [https://english.elpais.com/elpais/2013/05/29/inenglish/1369830404\\_022259.html?outputType=amp](https://english.elpais.com/elpais/2013/05/29/inenglish/1369830404_022259.html?outputType=amp); a 30 minutes radio interview with Maixabel Lasa and other victims is available (in Spanish) at: [https://www.youtube.com/watch?v=Rrtj\\_g62cXs](https://www.youtube.com/watch?v=Rrtj_g62cXs)  
<sup>209</sup> in Finland, Eye to eye, by John Webster, trailer available at: <https://www.youtube.com/watch?v=YecNA3DW334>, press article available at: <https://www.france24.com/fr/culture/20230329-la-justice-restaurative-faire-dialoguer-criminels-et-victimes-pour-sortir-de-lenfermement>

Awareness-raising should use a variety of communication channels to reach a wider audience. These channels can include traditional media such as TV, radio, and newspapers, as well as social media platforms and community events.

It is recommended to adopt awareness-raising methodology using “**ambassadors**” chosen from among victims and offenders willing to share **their stories** and impact of VOM on their life.

Awareness initiatives could also focus on identifying and engaging other individuals who may act as focal points for information exchange and flow on VOM. For example, teachers and social services workers may be a privileged target for awareness-raising campaigns and in turn spread information on existing restorative justice mechanisms among students, minors in care facilities and their families.

## Conclusions

In the past decade Georgia has made significant progress in implementing restorative justice programmes: the total number of diverted juveniles and young adults is considerable, and the fact that a majority of diversion cases now end with mediation is encouraging. The ratio between diversion (through mediation) and prosecution of juvenile offenses suggests that the criminal justice system is becoming more responsive to the needs of individuals and communities. The low re-offense rate among juveniles who have gone through the diversion and mediation programme is also a positive sign of the effectiveness of restorative justice approaches. Pursuant to its Criminal Justice Reform the Ministry of Justice has also planned to work on package of legislative amendments to regulate restorative justice and penal mediation issues for juveniles and adults more broadly in respective laws.

In light of these findings, it is recommended that Georgia continues to support and strengthen the use of restorative justice programmes, especially by extending its scope to adults. This could involve further legislative amendments and pilot projects, continued training and education for justice professionals, improved monitoring and evaluation systems, strengthened multi-agency cooperation, etc. It is important to highlight how essential it is that victims and offenders have access to services and programmes, and that there is a public information campaign to raise awareness of restorative justice approaches.

The above overview, which was based on a desk review and consultations with key stakeholders in the Georgian justice system, provides an information platform for further reforms and development of the juvenile and adult restorative justice system as well as the introduction of alternatives to prosecution. As the Georgian government declared vision to expand application of restorative justice including through legislative reforms, the comparative overview sought to provide the widest possible amount of information on available options based on other Council of Europe member states’ comparable regulations and practices. As a diversion and mediation programme for juveniles is already well developed and application of restorative justice for juveniles together with the sentence is still challenging, this report also includes a number of specific recommendations to address specific gaps and goals identified throughout the needs assessment exercise and consultation with stakeholders on these topics.