

Chapter 19

Luxembourg

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1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM

1.1 The start of probation in Luxembourg

In the 19th century, the Luxembourg authorities sent many offenders who were sentenced to serious prison sentences abroad to serve their sentence, to Belgium or the Netherlands. It is only since the Belgian Revolution of 1830 that all Luxembourg offenders have served their prison sentences in Luxembourg. The first statutory regulation on what was to become known as “probation” is a decree dated 21st February 1855 that set up regional committees for the support of discharged prisoners (comités cantonaux pour le patronage des condamnés libérés). Members of these committees were chosen among the well-to-do and well-intended patrons of the regions (canton). A decree dated 22nd October 1884 changed the composition of the committee and transferred the aftercare of discharged prisoners to the Luxembourg prisons’ administration committee. In 1936 the then administrator of Luxembourg prisons stated that “until the 1930’s the committee’s aid was limited to small financial or material donation from the State” and because of mismanagement and a lack of appropriate organisation no satisfactory result could be obtained.

Members of the Catholic Church acted as probation workers because of their close and strong involvement with the Luxembourg prison system. In 1851, the government put the Franciscan sisters in charge of the women’s prison. A decree of 6th February 1873 clearly defines the chaplain’s mission: he was obliged to live in prison. In addition to his religious duties, he was responsible for the prisoners’ education. Section 93 of the 1873 decree states that “the chaplain must visit the sick and the punished prisoners daily; he should advise them of their duties and should try to persuade them to repent of their sins and to atone for them by good behaviour. He will seek to revive feelings of justice and honour in them.” A 1912 publication mentions the existence of a halfway refuge (Maison de refuge probatoire) for “common” women confined in a sanatorium for sexual disease. During a successful probation period in this halfway refuge, described as a “social purgatory” the inmates had the “opportunity to confirm and consolidate their resolutions for good behaviour in society”.

Probation in prison was created in the early 1950s. A ministerial decree, dated 31st January 1959, refers to the creation of the Social Defence Service (service de défense sociale) in prison and detention centres for juveniles. The creation of this service should be considered as a landmark in the history of Luxembourg’s Probation Service. Nevertheless, the person in charge of it was very fond of using anthropomorphic and bio-deterministic methods in treating both adults and juvenile delinquents.

1.2 Important developments

In 1951, Luxembourg also saw the creation of a National Action Committee against Crime and Delinquency (Comité National d’action contre le crime et la délinquance) that was involved in prisoners’ aftercare. In co-operation with the social defence service’s social worker, the local sections of the National Action

Committee against Crime and Delinquency were able to organise a form of support for discharged prisoners.

A major change occurred with the introduction of an Act on 21st May 1964. The Attorney General (Procureur général d'Etat) became responsible for both the general management and control of Luxembourg's penal establishments. From this moment onwards, the Attorney General or his delegate has been in charge of the enforcement of penalties and the treatment of prisoners¹. The task of the social defence service is to observe prisoners and monitor their social rehabilitation. One of the service's main tasks is to provide reports to prosecution service (service d'exécution des peines) about the prisoners' situation with regard to the enforcement of penalties. A decree from 28th November 1967 sets out a detailed description of the composition and organisation of the social defence service, which includes a social defence committee for penitentiary establishments and for detention centres of juveniles (maisons d'éducation) and the social defence institute (institut de défense sociale). The Act provides a detailed description of the tasks of the probation officers in the treatment of offenders. Magistrates, both from the courts and the prosecution service, officials from the penal establishments, including medical staff, compose the social defence committee and social defence institute officials. The social defence institute is made up of a psychologist or a psychiatrist in charge of the institute, an assistant psychologist, the doctor, visiting nurses and the permanent members of the child protection unit (délégué à la protection de la jeunesse). On 3rd September 1974, a further decree enlarged the membership of the social defence committee. In addition to those mentioned in the 1964 decree, the new membership included a representative of the bar, the penitentiary establishments' chaplain, probation officers and a warden staff member. Further decrees (1975 and 1976) added trade union representatives, a police representative, and a member of the national police force (gendarmerie) to the composition of the social defence committee².

The Luxembourg Probation Service was completely restructured by the act of 25th July 1977, and the creation of a Central Service of Social Assistance, SCAS (Service Central d'Assistance sociale). From 1977 onwards, the Probation was no longer under the authority of the prison administration but under that of the prosecution service. Until today, the probation service is part of the SCAS. The emancipation of the Probation Service was viewed as a radical change and gave rise to many discussions among criminal justice system workers. Until the mid 1980s, the Probation Service's offices were to be found within Luxembourg City prison. In November 1984, the SCAS moved to the city centre. At that time, the main prison was closed down and offenders (both male and female) were resettled into new premises outside the city of Luxembourg where it still can be

¹ In Luxembourg, politics regarding the implementation of sentences depends heavily on the personality of the Attorney General's delegate. In distinction with France and Belgium, there exists no prosecution court in Luxembourg.

² Nowadays, this committee still exists in its composition but has shortened its tasks: it only treats demands of prisoners asking for pardon.

found today³. On 13th June 1984, an Act of Parliament abolished the social defence service including the social defence committee and the social defence institute created in 1964 and precursor of the actual probation service. In practice however, the social committee still meets on a regular basis and the name “social defence institute” is still being used within the criminal justice system and mentioned in official decisions taken by the Attorney General’s delegate. The Luxembourg Probation Service has little experience of bail and halfway hostels. The only hostel for released prisoners ever run by the SCAS (from 1981 onwards) had to be closed down in 1989 due to staff shortages.

1.3 Probation activities in a nutshell

The Luxembourg Probation Service forms part of the prosecution service run by the Attorney General under the authority of the minister of Justice; probation staff are not part of the prison administration. The Attorney General has appointed a member of the prosecution service, the Attorney General’s delegate, to be responsible for the country’s penal establishments and for decisions regarding probation matters (especially in the implementation of prison sentences). Another member of the prosecution service has been appointed by the Attorney General to be responsible for the SCAS, with specific regard for probation staff and internal, organizational matters. Although the law makes provision for volunteers to work as a part of the SCAS this has never been implemented. The only volunteers are prison visitors, whose work is completely unregulated; they have no basic training and no ongoing supervision. Once they have been granted the status of volunteer visitor, they are left completely to their own devices. At their request, they may keep contact with the offender’s probation officer. The work of the Probation Service is determined by its relationship with the prosecution service. Consequently, the parameters of probation work are defined by two paradigms of help and coercion (aide-contrainte).

Probation services are delivered by two parts of the SCAS, the Probation Service, whose members work with offenders whether in prison or on probation, and the community service and suspensions service (see organogram chapter 3). The main activities and core tasks of these two services are to:

- provide counselling, support and assistance to people in detention and their families;
- provide free legal aid to all offenders and non-offenders on request;

³ There are two prisons in Luxembourg: The Centre pénitentiaire de Luxembourg (CPL) in Schrassig, defined as a high-security prisons, functions nevertheless as a medium-secure establishment. Total capacity since 2002 is 597. Its prison population on 1st June 2007 was 674 (640 men & 34 women).

The Centre pénitentiaire de Givenich (CPG) was initially conceived as an agricultural penitentiary. Givenich has developed into an open prison functioning as a low-security establishment. Total capacity is 98. Its prison population on 1st June 2007 was 85 (men only). On 1st June 2007, out of a total prison population of 759, 412 (399 men & 13 women) were convicted and 317 (296 men & 21 women) were on preventive detention, 1 (man) was on voluntary admission, 3 under a disciplinary sanction and 26 in administrative detention.

- provide reports to the different judicial authorities about the accused and convicted person's situation;
- organize prison leave and other aspects of prison sentence implementation
- carry out accompanied prison leave;
- provide social support plans to the Attorney General's delegate and to several committees;
- guide and control people under supervision and monitor conditions;
- establish contact with the agencies accepting offenders on community service;
- make available small grants for offenders on early release and former offenders;
- provide assistance to former prisoners who are at risk of re-offending;
- follow up discharged prisoners who have requested or are willing to accept aftercare, social and psychological assistance;
- liaise with specialized agencies in the field of drug use, alcohol related problems and psychiatry;
- maintain contact with volunteer prison visitors.

Community service has been used in practice in Luxembourg, with no statutory basis, since 1976. In 1986, community service was introduced into the Code of Criminal Instruction (CCI) as an auxiliary penalty, as an attached condition to the suspension of enforcement. The Act of 13 June 1994, on penalty regimes "Régime des peines") introduced community service as a principal sentence under Section 22 of the Penal Code. Community service is used almost systematically in cases where those offenders sentenced to prison request a pardon. The Attorney general's delegate can use community service as an alternative to prison sentences of less than 6 month. Finally, community service can be used as an auxiliary penalty or a principal penalty in a court sentence. Although community service can be applied both as an auxiliary and a principal penalty, it is not widely used by the courts and the Attorney General's delegate.

2 LEGISLATIVE BASIS AND MISSION

2.1 Legislative basis

Given the size of Luxembourg (2586 square km) and its population (459,500 in 2006) one single Probation Service system is sufficient to cover the whole country. Created in 1977 the SCAS is part of the judicial organisational structure, as defined by § 77 of the Act of 7 March 1980. As it belongs to the judiciary, the third power of the State, the SCAS is constitutionally independent of executive and legislative powers. The SCAS is a nominated public service and consequently all probation officers are civil servants. All members of the Probation Service are fully qualified social workers, psychologists or criminologists. The SCAS is made up of different services with responsibility for providing assistance and social enquiry reports for people under judicial supervision; these include the Child Protection unit, the Probation unit and the department in charge of establishing personality files ("dossiers de la personnalité") created in 2002. A psychologist under the supervision of the Attorney General or his delegate runs the SCAS. Probation staff is part of the judicial administration and part of the Prosecution

Service, and therefore ultimately answerable to the Ministry of Justice. Statutes regulating the civil service apply to all members of the Probation Service.

In the main, the Attorney General or his delegate determines penal and probation policy, with the final approval of the Minister of Justice. A number of decision-makers and committees are consulted and involved in the decision-making process. These are the Grand Duke, the Attorney General or his delegate, and a committee currently referred to as the "Penitentiary Committee"⁴, (commission pénitentiaire). The Grand Duke takes into consideration the opinion of the Pardon Committee ("commission des grâces") and decides by the way of decree whether or not pardon will be granted. The Pardon Committee considers reports and enquiries provided by the Police, the Prosecution Service, the Social Defence Committee and the SCAS. The Prosecution Service is responsible for the execution of penal sentences (§ 165 and 197 of the Code of Criminal Procedure, CCP). The Attorney General can delegate the control of penal establishments and correctional centres for minors and the enforcement of penalties and treatment of prisoners to one of his prosecutors or to one of his subordinates (§ 34 of the co-ordinated Act of 12 September 1997 on judicial organisation). For prison sentences of more than 2 years decisions are taken by the committee composed of the Attorney General or his delegate, a magistrate from the Bench and one more from the Prosecution Service (§ 12 of the Act of 26 July. There are four consulting committees, two statutory and two non-statutory, namely the Social Defence Committee and the Pardon Committee, the Advisory Committee for the penological treatment of offenders sentenced to lengthy prison sentences ("Commission consultative pour le traitement pénologique du condamné à une longue peine de prison, CTP") and the more recent Guidance Committee (comité de guidance) created in 2001 as well in CPL as in CPG.

The Social Defence Committee was officially abolished by decree in 1984, but still meets on a regular basis. However it no longer fulfils the role for which it was created and consequently seems to have lost its purpose. For the last 7 years, the Social Defence Committee has almost exclusively dealt only with pardon requests. The Pardon Committee (created by the decree of 11 June 1925 since modified on several occasions) considers the Social Defence Committee's reports and takes a view accordingly. It is usually consulted with regard to the more serious offences. For minor offences, the Committee considers the report submitted by civil servants from the SCAS. The Pardon Committee is made up of seven members: four magistrates, a member of the Bar and two members of the professional's federation ("chambres professionnelles"). In June 1996 the head of the SCAS made a formal proposal to the Attorney General's delegate concerning the setting-up, composition and the running of what he called the Advisory Committee for the penological treatment of offenders sentenced to lengthy prison sentences. In October 1996, the Minister of Justice gave his agreement in principle to set up the above-mentioned committee. At each meeting the Committee only deals with a single offender's case and has the option of hearing from the offender in person. The CTP comprises the public prosecutor's deputies for the district of Luxembourg, the heads of Luxembourg's two prisons, the heads

⁴ This committee created by Act of 26th July 1986 regarding the enforcement of certain penalties.

of SCAS and probation service, the CPG psychologist, the offender's probation officer, the SPSE agent/officer and the secretary. The Committee puts forward its views about the offender's penological treatment to the Penitentiary Committee. One of the aims of the CPT is to give any offender sentenced to life imprisonment, or to a long-term prison sentence, some perspective on his or her future.

The Guidance Committee, whose mission is to present an assessment on penological treatment to the Delegate and the Penitentiary Commission, has only been created recently for mainly two reasons: the implementation of the Act of 27 June 1997 concerning the reorganisation of the penitentiary establishments and creating an internal social service – the Psych-social and Socio-Educational Service [Service Psycho-social et Socio-Educatif (SPSE)⁵] at the CPL and the CPG and the departure of several probation officers to other state administrations.

Several changes took place: the Probation Service is no longer in charge of preventive detainees (the SPSE is nowadays responsible for this task), thereby ending the “permanent treatment” model; the Probation Service takes over at the moment where the judicial decision has become definitive, the SPSE is also assuring a penitentiary monitoring during the whole incarceration time and every detainee has an agent of the SCAS and the SPSE assigned to him. However, the SCAS has given up the monitoring of convicted non-residential detainees. This task has been taken over by the SPSE as in this context no probation related work is to be expected. The Guidance Committee is therefore a platform that regroups representatives of the penitentiary and post-penitentiary domain: the prison's directorate, representatives (social workers) of the SPSE and the SPSE, of the wardens and the clerks, the prison's doctor and a secretary. The Committee, which resumes in a certain sense the former tasks of the Social Defence Committee, gives opinions regarding requests⁶ made by detainees. In order to achieve this, the members of the Committee evaluate the evolution of the detainee before formulating their decision: his behaviour, his deficits, the progress achieved, his collaboration with the SCAS and SPSE and his disciplinary sanctions. This Committee's task is clearly to help decision-making. It proceeds at an exchange of information on the detainee in order to contribute to a global and complete image of his personality. The Guidance Committee in the two penitentiary establishments has weekly meetings.

There is no legislation specifically regulating the probation workers' role and responsibilities. A fairly detailed description of a probation officer's work can be found in the 1964 and 1967 legislation mentioned in chapter 1, which has since

⁵ One of the major difficulties of the statute resides in the fact that it describes on one hand the profile of the personnel of the SPSE, but does not specify on the other hand neither the service's tasks nor its missions and its set goals. From the beginning of its effective existence (in 2000) until recently, both the SCAS and the SPSE were engaged in partly doing the same work twice. Multiple meetings between both services, their respective directorates and the Delegate helped to clarify their respective fields of intervention; the result being that the Probation Service has retired from monitoring preventive detentions and has focused on the penitentiary accompaniment necessary to the preparation of probatory work.

⁶ These requests may concern temporary leave, the transfer to the CPG, the suspension of the sentence and conditional or anticipated release.

been abolished. In the field, however, this legislation still largely determines the work of the probation officer. Probation is available for offenders of all ages, and for all types of offenders and offences. In case of a prison sentence, the offender is allocated a probation officer. The same probation worker will deal with this offender and his situation from the sentence/judgment on until release. Community service for juvenile offenders is provided for in the child protection legislation (§1, 4b, of the 1992 Act) in the form of an educational or philanthropic service "prestation éducative ou philanthropique"). This is one of the measures the Youth Court may impose on a juvenile offender, depending on his or her age and means.

2.2 Mission and mission statement

Probation work, both in a prison setting and in the community, has two inextricably linked core aims. The first is to protect society by working to avoid recidivism, and the second is to undertake initiatives to enable offenders to lead a more decent life. To date, however, neither the Probation nor the Prosecution Service has ever issued a written mission statement.

The Luxembourg Probation Service has not as yet identified priority areas for work. No target groups or problem areas have been identified and consequently no specific programmes have been set up. For instance, there are still no special programmes for high profile offenders or sexual abusers. The Service does not organize group sessions aimed at specific kinds of offences or particular forms of offending. The Probation Service's psychologist set up a one-off initiative for offenders sentenced to long-term prison sentences in 1995. Five offenders sentenced to long prison sentences were transferred from the main prison in Schrassig to an open regime in Givenich. The principal aim of this transfer was to prevent the most damaging effects of long-term imprisonment on individuals. A few years later this experiment proved sufficiently successful to warrant a change in policy. Since 1998, several prisoners sentenced to life imprisonment have been transferred to Givenich. Luxembourg's prison population is unusual in that 75,6% are foreigners (foreign nationals included: they represent 34,8%) and 24,4 % nationals (as of 1st June 2007). The annual budget for basic material aid for 2007 is 120,000 € (2006: 120,000 €). Material support is allocated to discharge prisoners whether they are on probation or not. The priority areas for material help are accommodation deposits, rents, clothes, public transport and food. The strategic objectives of the Luxembourg Probation Service are to:

- submit social enquiry reports to assist the relevant investigative and sentencing authorities, and the Prosecution Service;
- make appropriate decisions and pass appropriate sentences;
- assess the prisoner's personal development and progress made during detention;
- prepare offenders for release by working to facilitate their return to the community, with particular emphasis on family reintegration and the work environment;
- ensure that individuals discharged from prison and released on probation, and their families, benefit from the necessary practical and psychological support;

- take all appropriate measures to avoid the damaging effects of a long prison sentence;
- tackle those difficulties which impede rehabilitation and re-socialisation;
- monitor the control and supervision conditions imposed on the offender;
- enable ex-offenders to lead a more decent lifestyle.

2.2.1 Factors that hinder the achievement of stated goals and objectives

As stated above, the Probation Service does not have an official mission statement, goals and objectives. Moreover, in practice various factors hinder the work of the Service:

- the SCAS annual reports from 2006 clearly states that regarding community service orders numerous projects which have been realized have been based on personal contacts as well as informal contracts which had been previously realized. One of the major difficulties resides in the establishment of a stable network of potential employers. Similarly, many organizations can only guarantee supervision of 40 hours per week from Monday to Friday, whereas most of the people under a community service order are only available at weekends and during holidays. Many people sentenced to a community service order are unsuitable for certain kinds of work because of a particular disability or alcohol-related problems. Many offenders sentenced to a community service order do not understand that they have been fortunate to be sentenced to work for the community rather than being sent to prison: this results in a lack of motivation and discipline. Courts sentence offenders to community service without checking with the Probation Service to see whether they are suitable. A lot of problems arise from a lack of communication between the Courts and the Probation Service. In this context however, for a few years, the service writes personality files after some pre-sentence enquiries in order to pronounce more suitable and individualised sentences;
- the amount of prisoner's wages make it difficult for Probation to organize the gradual discharge of victim compensation, fine payment, prosecution fees, personnel debts, etc.

2.2.2 Factors that help the achievement of stated goals

- the way the Luxembourg Probation Service system is set up enables the probation officer to follow the offenders they have been allocated through the different phases of detention (Schrassig prison, Givenich prison, regular prison leaves, semi-liberty, participation at DEFI- Job⁷) and during the early release period (suspended sentence, parole). The relationship established in prison

⁷ DEFI-Job is a programme in Givenich open prison that's allows work outside the prison during sentence. The main aim is to promote social integration and to help prisoners, through social learning, to cope with employment situations in the private sector and to help to find a job and a financial stability. Very often, Defi-Job is accorded before the semi-liberty where the prisoners are asked to be more autonomous and to find a job by themselves. Defi-Job works like an "interim agency".

- between the probation worker and their client is of the utmost importance if the probation worker is to successfully carry out supervision during early release;
- given the size of Luxembourg, informal contacts between members of the Probation Service and other professionals enable networking and facilitate a fruitful exchange of information in their daily work. Small geographical distances in the country allow probation workers to follow up clients on probation very closely;
 - the small number of Probation Service staff allows informal supervision to take place, which largely facilitates the daily work.

2.3 Crime prevention

The Probation Service has no organized primary crime prevention activities. The system works on the basis of secondary prevention i.e. preventing re-offending.

2.4 Victim protection

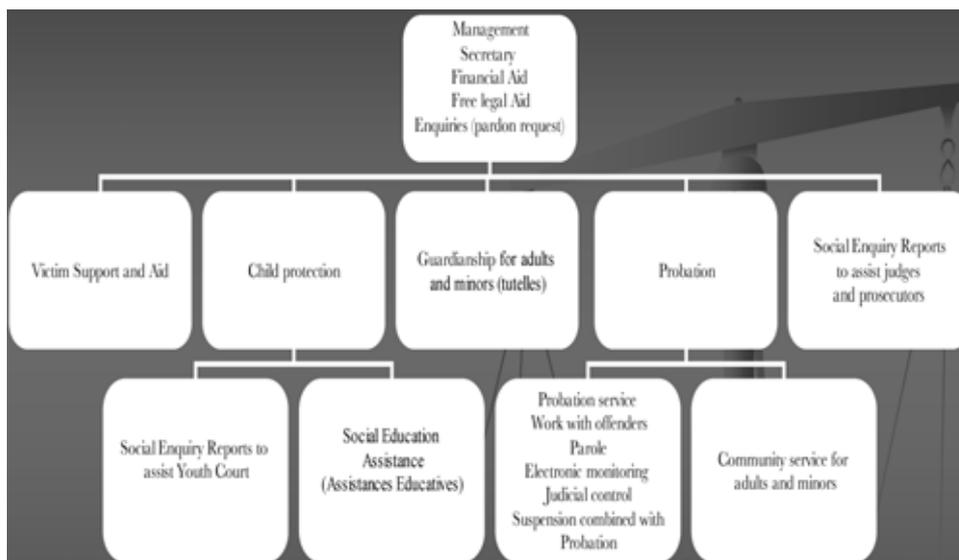
The probation service is not responsible for providing services for victims. A Victim Support Service was integrated into the SCAS by the act of 13th June 1994 on the regime of penalties. It is run by a sociologist and a psychologist and has for 2007 a budget of 75,000 €. There have been some meetings between the professionals of both services concerning the perpetrator (supervised by a probation officer) and the victim (supervised by one of the two members of the victim support service) of a specific crime.

3 THE ORGANIZATION OF PROBATION SERVICES

3.1 Main characteristics

With the creation of the Central Service for Social Assistance (SCAS) in 1977, services dealing with people subject to judicial supervision were grouped together. The organogram (below) shows that two different sections of the SCAS are involved in probation work.

- the Probation Service (formerly called Social Defence Institute) working primarily with offenders in prison and those conditionally released and since 2003 with suspension of conviction and suspension of pronouncement;
- a section dealing with community service for adults and juveniles.



3.2 Internal organization

In the Luxembourg Probation Service, there is no statutory allowance for any internal hierarchy between staff members. Civil service regulations merely provide for a difference in career between that of the psychologist, criminologist and that of the social worker. Career promotions are automatic and regulated by those statutes applying to all Luxembourg civil servants.

3.2.1 Probation workers

All members of the Probation Service are fully qualified. They work full-time, 40 hours per week, or part-time, 20 hours per week. As provided for in law, there are today 5 volunteers (agents bénévoles) working for the Probation Service. Their aim is to visit prisoners and to build up a relationship with them. The probation service (as of 1st January 2007) comprises of:

- 1 psychologist, head of Probation service and community service
- 1 criminologist
- 5 full-time probation officers
- 4 part-time probation officers
- 1 full-time secretary

The section dealing with community service comprises of:

- 1 criminologist
- 1 full-time probation officer
- 1 part-time probation officer
- 1 part-time secretary

There are also 2 skilled workmen who assist those organizations that accept an offender on community service and supervise specific workshops (the explanatory memorandum of the Act of 13 June 1994 on the penalty regime). Within the SCAS, job opportunities are limited to internal transfers to another section e.g. dealing with child protection, victim support, community service or guardianships. It is possible to change within the civil service career structure to another Ministry; however, in reality this is a bureaucratic and complicated process. Probation officers who leave their job to work for non-statutory organizations often lose their civil servant status. SCAS employs 70 civil servants. In 2006, the average daily caseload of a Probation Service worker was 68. The average number of offenders a probation officer was dealing with per year was 110 (cf. statistical annex). These numbers include offenders in prison and those who have been granted early release. They do not include figures on community service.

3.2.2 Education, training requirements and opportunities

As far as education and training requirements and opportunities are concerned, there are no social work courses available in Luxembourg. Students usually graduate from a higher education establishment in Belgium or France, recognized by the Luxembourg authorities. After a 3 year course students have to attend a month-long course on Luxembourg legislation. If the student passes all course exams he or she receives the State Diploma in Social Work (“Diplôme d’Etat d’Assistant Social”). After their three-year period abroad, most social workers spend 12 months training with a Luxembourg social institution or agency. To work as a probation officer requires a Diploma in Social Work recognized by the local authorities, and the State Diploma in Social Work. In the future, probation officers will have to pass an exam at the beginning and the end of a 24-month mandatory training period, as stated in civil service statutes. Candidates are allocated to one section of the SCAS and as long as they pass their final exams then become fully-fledged probation officers. During their training period and in order to allow them to be familiar with how SCAS completely functions, the probation officers have nevertheless to attend -on average- one month training in all the services composing the SCAS. Staff may apply to attend seminars and workshops on subjects relating to their field of practice. Usually they have their fees reimbursed. During the past few years, several members of the SCAS have undergone - at their own cost - part-time training to become qualified psychotherapists.

All the probation officers and the psychologist, as head of the Probation service, deliver the same type of service to their clients. This is largely due to the random allocation of offenders to probation staff as they enter prison. Experienced probation officers, however, tend to work with people on life sentences. The Probation Service does not run any kind of groups or training sessions, largely due to the lack of staff and appropriate premises.

Regarding the management of staff, there is no formal control of staff performance. Members of the Probation Service have a high degree of autonomy in their work and are not formally held to account. They are individually responsible for the content of their reports and the organization of their weekly schedule e.g. prison and office duties, home visits and weekly staff meetings. There is very little overall hierarchical control. Guidelines for good practice or good conduct do not exist. For the last four years, the requested external supervisor was introduced for all the probation officers to assess their field practice and to provide support and guidance, especially in difficult cases. Difficult issues are dealt with during the weekly staff meeting. Informal contact and discussion between staff members about particular cases undoubtedly contributes to the efficient running of Probation Service.

3.2.3 Other organizations involved in probation work

The Probation Service works regularly with the SPSE and DEFI-Job, created in 1995 and based at Givenich open prison. DEFI –Job provides temporary employment and a follow-up service for Givenich prisoners during their detention. Probation workers also liaise with other organizations specializing in the area of employment and training; these work with a broader client group but are familiar with the behaviour patterns of ex-offenders. The very fact that the Luxembourg Probation Service forms part of the Prosecution Service largely determines the nature of its work. The more “controlling” aspects of probation work with offenders are unfamiliar to many hostels, agencies, and organizations. Some hostels are reluctant to accommodate clients who are still under some form of supervision. Many agencies hesitate when requested to implement control measures or are asked to report to Probation if, for example, an offender breaches parole conditions. Probation workers liaise with care institutions with regard to substance abuse i.e. drugs and alcohol, and with the only psychiatric hospital in the country. Some prisoners are allowed to serve part of their sentence in one of these institutions, in which case regular meetings between probation and specialist staff take place.

Probation workers dealing with community service orders liaise with a large number of organizations that accept offenders on community service. The majority of these institutions are charities, institutions for people with disabilities, youth hostels and the animal pound. In the wider setting, if the situation requires contact. Probation staff works collaboratively with the SCAS’ Child Protection Service and its Victim Support Service.

A specific organization of probation staff does not exist. But, civil service law gives the scope of the creation of staff representations within the public sector. The aim of these associations is to defend the professional interest of civil servants in the same career. Their mission is defined under section 36 of the Act

of 16 April 1979. On 23 February 1996, the members of SCAS founded an association called "Association du Personnel du SCAS asbl".

4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

4.1 General

Probation activities in Luxembourg derive their legislative basis from the following:

- Section 100 of the Penal Code defining parole (“Libération conditionnelle”)
- The Act of 13 June 1994 on the penalty regime, amending articles 1-99 of Book 1 of the Penal Code
- The Act of 26 July 1986 on the suspension of the pronouncement of conviction, the suspension of enforcement, probation and rehabilitation, partially amending the Code of Criminal Procedure
- The Act of 26 July 1986 on the enforcement modalities of certain penalties
- Throughout the criminal justice system in Luxembourg, various sanctions and measures come within the responsibilities of the Probation Service.

4.1.1 Parole (§ 100 of the Penal Code)

All offenders can be granted parole. First offenders must have served at least half of their sentence. If the total sentence is less than six months parole can be granted after three months. Recidivists can be paroled if they have served at least two-thirds of their sentence. If the total sentence is less than nine months parole can be granted after 6 months. Offenders subject to a life sentence can be granted parole if they have served at least 15 years (c.f. § 1, 2 & 3 of section 100). To be granted parole offenders must present “sufficient evidence of good conduct and serious grounds for believing them capable of social resettlement” (§ 4). Parole can be run in conjunction with certain support and control measures, intended to assist and supervise the rehabilitation of the discharged prisoner (§ 6). In the case of a penalty of between a minimum of eight days and a maximum of five years (“peine correctionnelle”), the probationary period must cover at least the remainder of the sentence to be served, or at most extend 12 months after the end of the sentence. In case of a penalty with a minimum of five years and maximum of life sentence (“peine criminelle”) the probationary period is between 5 and 10 years (§ 7 & 8). When parole conditions are breached, the Attorney General or his delegate decides whether or not to revoke the measure (§ 10).

4.1.2 Community service (Act of 13 June 1994 on the regime of penalties)

Community service may be used as a principal sentence if the Court considers that the offence will not lead to a prison sentence of more than six months (§ 22 of the Penal Code). The offender must complete unpaid community service of between 40 and 240 hours with a public or philanthropic organization or society, community association or hospital. The offender’s consent and presence at court is required; he or she may refuse to do community service. If he or she accepts, it has to be completed within 18 months of the sentence becoming irrevocable. The

Attorney General, who may temporarily suspend participation on serious medical, family, professional or social grounds, decides community service enforcement. If the offender has a paid job, community service can be completed outside his or her working hours. Statutory instructions and regulations that relate to night shifts, hygiene, security, the employment of women and juveniles, are also applicable to community service. Where the agreed terms and conditions of service of community service are breached, a prison sentence of between two months and two years may be substituted (§ 23). Community service has to be manual or intellectual and has to be adapted to the offender's natural abilities and aptitudes. The social usefulness of the community service order and the perspectives of social and professional reintegration it offers to the offender have to be taken into account. The Attorney General in co-ordination with the SCAS determines in each individual case the nature of the community service (Decree of 20 September 1994).

4.1.3 The suspension of the pronouncement of conviction, the suspension of enforcement, probation and rehabilitation (the Act of 26 July 1986)

Sections 619-634 of the Code of Criminal Procedure (CCP) list the suspension of the pronouncement of conviction ("suspension du prononce de la condamnation") and the suspension of enforcement of the penalty ("sursis à l'exécution de la peine") as two possibilities for the offender's probation ("mise à l'épreuve). The suspension of the pronouncement of conviction and the suspension of enforcement may or may not be combined with a probation order. The four possibilities the law provides for are as follows:

- the suspension of the pronouncement of conviction ("suspension simple");
- the suspension of the pronouncement of conviction combined with probation ("suspension probatoire");
- the suspension of enforcement ("sursis simple");
- the suspension of enforcement combined with probation ("sursis probatoire").

"In order to enforce the above-mentioned measures the Prosecution Service, the examining magistrate ("juge d'instruction"), the examining authority ("jurisdictions d'instruction") and the sentencing authority ("jurisdictions de jugement") may request the SCAS as a matter of course, or at the defendant's request to carry out a social enquiry on his behaviour, his social circumstances and background" (§ 620 of the CCP). Section 63-1 states that "defendants who are sentenced to a suspended sentence combined with a probation order and those who are sentenced to a suspension of enforcement combined with a probation order, are subject to control and assistance measures in order to monitor their behaviour and their social rehabilitation." In addition to these measures, further conditions can be imposed. Section 633-2 states that those subject to the measures and conditions cited below must not have their freedom of thought, religious or political convictions contravened. The control measures are as follows (Section 633-5 CCP):

- to reply to the Attorney General's or the probation officer's instructions;
- to receive probation officers' visits, provide all necessary information and relevant documentation to enable the authorities to monitor their lifestyle;

- to justify the reasons for any change of job or residence;
- to inform the SCAS of any change in residence.

The aim of this assistance is to help and support the defendant's and the offender's efforts in their social, family and professional rehabilitation (§ 633-6 CCP). The SCAS, or any other social service or organization mandated by them, implements these measures in the form of guidance and where necessary, practical aid. Further obligations (§ 633-7 CCP) that may be imposed on defendants and offenders are as follows:

- to carry out professional activities, to study or to attend professional training;
- to establish residence in a specified place;
- to be subject to monitoring and control measures and specific hospital care in the case of detoxification;
- to contribute to family expenses or to pay alimony on a regular basis;
- to pay damage claims incurred by the offence;
- to carry out community service in accordance with the Attorney General's provisions.

In this context, the 1986 Act considers community service as an auxiliary penalty: it is one of the special conditions of a probation order.

4.1.4 The enforcement provisions of certain penalties (the Act of 26 July 1986)

Section 13 of the Act states that the offender's personality, his development and any risk of recidivism will be taken into account in the application of the following provisions. The implementation of prison sentences provided for in the 1986 Act includes periodic enforcement ("exécution fractionnée"), semi-liberty ("semi-liberté"), prison leave ("congé pénal"), suspended penalty ("suspension de peine"), and pre-release for foreign prisoners ("libération anticipée"). All of these are widely used and form an integral part of the penal treatment of offenders. Periodic enforcement applies to custodial sentences of up to 12 months and is therefore a penalty for minor offences. The sentence can be served in instalments if this manner of implementation guarantees the offenders' social rehabilitation and in particular, allows them to keep their jobs and maintain family relationships. A sentence of up to three months may even be served on a daily basis at weekends, during holidays and annual leave.

Semi-liberty allows the offender to go on working outside the prison. Imprisonment is limited to night-time and spare time. It can also be used to pursue education outside the prison, to undergo professional training or for medical treatment. Where the sentence is less than 12 months semi-liberty can be applied right from the beginning. If the sentence is more than 12 months semi-liberty can be granted after six months have been served.

Prison leave allows prisoners to leave the prison during part of the day, or for 24-hour periods. This is very widely used amongst those prisoners who are Luxembourg residents. Time spent outside the penal establishment is counted as part of the sentence being served. Prison leave may be granted for family reasons, to prepare for rehabilitation and return to employment or as a form of probation ("mise à l'épreuve") with a view to future parole. First offenders may be granted prison leave after serving one-third of their sentence, recidivists after half of their

sentence and life prisoners after 10 years. In exceptional circumstances, the Penitentiary Committee may make exceptions to these qualifying periods because of the offender's personality or their family situation.

Suspension of the penalty is usually granted towards the end of a prison sentence when earlier prison leaves have gone well and a social support plan ("plan de guidance sociale") has been set up by the probation officer and approved by the Attorney General or his delegate. The suspended period is counted as part of the sentence.

Anticipatory release means that a non-resident foreign national offender may be granted early release without the application of parole if he or she has already served the penalty period required for parole. It includes a territorial prohibition. If the offender enters Luxembourg following anticipatory release, the remaining sentence will be enforced without further hearings or formalities.

Table 1: Activities of Probation during the Different Stages of Criminal Procedure

	Pre-Trial Phase See: 4.2	Trial and Enforcement Phase See: 4.4	Post Release Phase See: 4.4
Preparing a Social Enquiry report		x	x
Supervision / assistance etc. to offenders whose cases were conditionally waived	x		
Supervising / organizing etc. community service		x	x
Supervising / organizing training or learning projects		x	x
Supervising etc. drug/alcohol treatment programs		x	x
Supervising etc. electronic monitoring		x	
Pre - sentence report		x	
Supervising etc. sanction of probation		x	x
Supervising etc. suspended sentence			x
Supervising etc. semi-liberty		x	
Supervising etc. special measures for drugs addicts		x	x
Supervising etc. conditional sentence			x
Assistance / support to prisoners in prison	x		
Supervising etc. conditional release/parole			x
Advisory report with respect to amnesty / pardon		x	x
Assistance / support to persons who		x	x

are granted amnesty / pardon.			
Support offender's family		x	x
Coordination of volunteer prison visitors		x	x

4.2 Pre-trial phase

4.2.1 General

A person kept in pre-trial detention is not allocated to a probation officer any more, but to an SPSE officer right from the beginning of his or her stay in prison (see explanations about the guidance committee, chapter 2). As a matter of fact, the point at which probation officially commences is not clearly defined by law. It is general practice that in the case of a prison sentence the expiry of the appeal period is considered as the starting point for probation work. Until 2001, the tasks of the probation officer during pre-trial detention were to provide support and assistance to the defendant, to get free legal aid and if necessary to contact members of their family. All these tasks are nowadays accomplished by the prison's internal social service. One could say that a historical shift has taken place in matters of penitentiary guidance. Probation as a sanction can be used as part of suspended enforcement ("sursis probatoire"). The Probation Service is never involved in police custody procedures. Probation workers recently began to intervene during Court procedures. The Act of March 6 2006 states in its article 107 that the SCAS may intervene in the domain of judicial control.

4.2.2 Pre-trial report

In the domain of judicial control, the probation agent supervises the conditions imposed on a person by the investigating magistrate. The probation officer submits a regular report regarding the evolution of a provisionally liberated person. This report particularly describes the respect of the imposed conditions, but there is no standardized report. The probation officer is asked by the investigation magistrate to strictly supervise the conditions by seeing the offender once or twice a month. Probation service is not consulted when the same magistrate decides upon preventive arrest or judicial control. The probation officer has to execute the decision. But, through the report, there are quite a lot of professional exchanges between the magistrate and the probation officer. One of the conditions that often have to be supervised are therapies imposed by the magistrate to drug-addicts.

4.3 Trial and enforcement phase

4.3.1 General

Section 620 of the CCP gives scope for the Probation Service (or since 2002 for the Service of Personality Files) involvement in the trial phase.

4.3.2 Pre-sentence report

Probation workers may be asked to provide social enquiry reports for the examining magistrate, the examining authorities, the Courts of the Prosecution Service. The defendant may also request this pre-sentence report. Unfortunately, this has happened extremely rarely in recent years. At this stage, the Probation service cannot take any initiative. The report consists in reflecting the defendant's behaviour and his social background: psychological elements of his personality, his family situation, his professional situation, version concerning his crime and eventually the victim.

4.3.3 Probation procedures and processes

The Attorney General or his delegate decides how to implement court sentences. It is the responsibility of the Guidance committee to provide a social support plan containing written proposals, worked out with the offender and submitted to the Attorney General. This facilitates the decision-making process regarding the offender's treatment. The enforcement of prison sentences exceeding 12 months must start within six months of the final verdict. Shorter prison sentences have to be enforced within a year; the offender thus waits to go into prison.

4.3.3.1 Implementation of community service

Given the fact that Courts hardly ever ask Probation to produce a social enquiry report, probation officers often have to assist and supervise offenders who are not always suitable for these measures. In practice, there are several community service options available to the judicial authorities:

- community service is almost systematically implemented in the case of a pardon request made by offenders sentenced to prison;
- the Attorney General's delegate increasingly uses community service to avoid the enforcement of prison sentences of less than 6 months;
- the Courts use community service as an auxiliary penalty or as a principal penalty.

As outlined above, community service is one of the options in cases where suspension of the pronouncement of conviction is combined with a probation order, and in cases where the suspension of enforcement of a penalty is combined with a probation order. Offenders who have their community service orders revoked (generally drug users) due to breach of the conditions, can be sentenced to a four to six month prison sentence. A tendency over the last two years shows that more and more non-accomplished and revoked community service orders (as a principal penalty) are transformed by Courts to one of several conditions of a suspension of enforcement of a penalty (that lasts minimum three to maximum five years). In this context, although incarceration is avoided, undoubtedly a paradox remains: the offender who wasn't able (deliberately) to begin his community work within 18 months (up to his judgement) now has "five" years to carry out his sanction.

Probation work with sentenced offenders in custody focuses first of all on the offender's attitude towards the crime for which they have been sentenced. Work may focus on whether the offender is admitting, minimizing, rationalizing or negating the facts of the case; attention is given to analysing the vocabulary the

offender uses to describe his or her criminal behaviour, by working through his or her life story and assessing his or her capacity for victim empathy. Probation workers assess the offender's behaviour in prison by interviewing all the professionals the offender is in contact with e.g. psychologists, social workers, prison wardens, workshop supervisors, sports instructors, prison teachers and tutors.

On a more administrative level, the probation worker helps the offender to monitor his financial situation such as the payment of fines, the prosecution fees, victim compensation and personal debts. By meeting the offender's family and/or close friends, the offender's release can be prepared for in the best possible way. Once the offender has legally reached the point whereby he or she qualifies for one of the above-mentioned penal privileges, the Guidance Committee (where the probation officer is part of) submits a social support plan to the Attorney General's delegate and/or the Penitentiary Committee. This social support plan has to be viewed as a kind of contract between the Attorney General's delegate and/or the Penitentiary Committee, the prison, the probation officer and the offender. Occasionally probation workers meet with representatives of agencies working with ex-offenders in the area of substance abuse, or they discuss accommodation problems with a hostel. There are specific prison programmes for drug users but not yet for sexual abusers. For the last mentioned, external therapists are often required. A specific programme in both prisons has been implemented for drug users called "Projet Tox" (see chapter 7).

In 2004, the Attorney General's Delegate suggested to think about the implementation of security and surveillance measures at the end of the sentence for persons with dangerous characters, especially for sexual offenders because of a high recidivist risk.

4.4 Post- release phase

At this stage, one of the probation worker's tasks is to liaise with specialist agencies e.g. therapeutic communities, detoxification units, the psychiatric hospital and employment agencies, in order to assess the possibility of alternatives to prison. After serving part of their sentence in Schrassig main prison, offenders can request a transfer to the open prison at Givenich. In the case of a transfer, the Attorney General's delegate usually takes a decision having considered a report from the Guidance Committee which takes into account the following criteria: the probation worker's and Givenich's opinion; the offender's consent to a transfer and to regular work; the offender's willingness to co-operate with probation; a record of no disciplinary matters, or very few, during the previous detention period; absence of incidents in previous prison leaves; low risk of escape; and risk of psychological deterioration if subject to a long stay in Schrassig. By reporting to the Attorney General's delegate and/or the Penitentiary Committee on the offender's situation, the probation workers are closely involved in organizing and monitoring the following.

4.4.1 Prison leave

Probation workers deal with the specific details of prison leave. They check the purpose of the request e.g. family visit, job search, search for accommodate the offender. If an offender becomes eligible for semi-liberty, he or she is usually granted ten separate days of prison leave until a work contract is secured. To visit family, an offender is usually granted one or two weekends per month from the moment he or she is eligible for prison leave.

4.4.2 Periodic enforcement

Periodic enforcement takes place almost exclusively in the open prison at Givenich. Probation officers have little contact with this category of offenders because they have often been discharged (serving a two week instalment, for instance) before the probation officer has had the opportunity to make contact.

4.4.3 Semi-liberty

Semi-liberty is almost exclusively enforced in the open prison at Givenich, to date an institution exclusively reserved for male offenders. Semi-liberty for female detainees can also be enforced in Schrassig, if required. In the context of the extension of the prison at Givenich, the transfer of female detainees is planned in order to facilitate the enforcement of semi-liberty. Semi-liberty is considered as a stage in the gradual preparation of the offender for life outside prison. It requires a great degree of autonomy on the part of the offender because they leave the prison in the morning, taking public transport or using their own car, and come back to the prison at night. While the offender is on semi-liberty, probation workers keep in close contact with his or her employer.

4.4.4 Parole

The parolee, his or her lawyer, the probation officer or sometimes the prison's social service, makes the parole request. Section 100 of the Penal Code does not, however, explicitly mention probation. The law does not provide for any procedure for parole. Moreover, the imposition of the measures provided for in Section 100 PC § 6 are not statutorily required and their nature is not defined. Although the offender's consent for parole is not specifically required by the Act it is widespread practice for the probation officer to discuss the conditions of parole with the offender, to thoroughly explain the exact meaning of parole and the consequences in case of breach. The probation officer periodically submits a report on the client's progress to the Attorney General or his delegate and also makes proposals to maintain, to modify or to revoke the imposed measures (with regard to the prisoner's work situation, his professional training and job orientation or housing situation). If the conditions are not upheld, the probation officer immediately reports this breach to the Attorney or his delegate. Frequency of contact between the probation officer and the parolee can be weekly or monthly. It varies with regard to the need for support and the monitoring required. Modifying the length of parole is at the discretion of the Attorney General or his delegate. Where the parole of an offender serving a life sentence is

revoked, the initial life sentence is reinstated. The revocation of parole does not prevent parole being granted in the future.

4.4.5 Anticipatory release

The conditions set by the Attorney General for anticipatory release are usually as follows: the offenders have to pay their travel expenses back to their country and pay their prosecution fees. Furthermore, they have to agree not to enter the territory for a period of up to 10 years and to pay (usually) 10% of the fine. This practice is discriminatory, as all offenders who are resident in Luxembourg sooner or later have to pay their fines in full. Moreover, offenders who are granted anticipatory release hardly ever compensate the victim before their release, unless the Guidance Committee in its report to the Attorney General's delegate explicitly mentions the existence of victim compensation and insists that they should be paid, at least in part.

4.4.6 Suspension of the sentence

In the case of suspension, the probation officer writes a monthly report to the Attorney General's delegate. The probation officer may propose to extend the suspension if the offender has abided by the conditions set up in the social support plan. An Attorney General's delegate's instruction, dated March 1998, states that the Penitentiary Committee will grant parole after a successful period of between two and four months of the sentence being suspended.

4.5 Care and aftercare outside the criminal justice system

4.5.1 Aftercare

At the offender's request, probation officers may continue to assist the offender after discharge or after the expiry of any previous supervision conditions. The motives for this kind of contact are very often urgent financial need, accommodation or employment issues. In other instances, the former offender may ask for assistance to put together a pardon request, regarding an outstanding fine or a driving ban. The probation officer works in close cooperation with social services and other specialists' agencies to organize help for the offender in the most efficient way and avoiding any duplication of effort. Sections 644 - 658 CCP covers rehabilitation procedures. This enables the offender to clear his or her criminal record after a given period of time depending on the gravity of the offence. Although the Probation Service does not interfere at all in this procedure, probation workers can advise ex-offenders how to proceed.

4.5.2 Pardon and amnesty

Section 38 of the Luxembourg Constitution enables the Grand Duke as Head of State to "remit or reduce sentences pronounced by the judges, except for those pronounced against members of the government. The Grand Duke can grant pardon to a member of the government only if the Chamber of Deputies has asked him to do so" (§ 83). Furthermore, section 53 specifically mentions the "right to vote" for which pardon can be granted. This refers to the legal prohibition to vote and legal ineligibility with regard to general and local elections in Luxembourg, linked to certain court sentences. Section 87 of the Penal Code states that "incapacity sentences pronounced by judges or connected by law to certain sentences" can be pardoned by the Grand Duke. Incapacity sentences include the withdrawal of a person's driving license, prohibiting someone from running a drinking establishment, carrying out public functions, jobs or duties, wearing a decoration, carrying or possessing a weapon, teaching or being employed in a teaching establishment.

Although pardon is usually a measure granted to individuals, it may exceptionally be granted collectively. The role of the Probation Service in the pardon procedure is significant, as recommendations put forward by the SCAS are generally followed. The procedure, from the introduction of a pardon request to the decision, can take around 4 months. Out of the 358 pardon decisions taken by the Grand Duke in 2006, 180 pardon requests were rejected, 13 were filed, 3 were revoked and 162 pardons were granted. Even after pardon has been granted, the initial sentence remains on the person's criminal record with a specific note concerning the pardon. The legislator defines amnesty as the "forgetting" of certain facts, regarded as reprehensible by penal law. In Luxembourg, the last amnesty was included in the Act of 21 February 1976, following the decriminalisation of adultery (Act of 11 November 1974). Section 3 of the 1976 Act states that convictions for adultery will be removed from the criminal record of those who have been granted this amnesty.

5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION

5.1 Finances

The Luxembourg Probation Service is exclusively financed by the State. The State Budget is annually approved by Parliament. It specifies the funds allocated to the jurisdictions and penal establishments; the SCAS funds are well itemised in the Ministry of Justice's budget but they are not labelled under "Service Central d'Assistance Sociale". The probation service is not allowed to receive any income from private sources. It is not allowed to raise its own funds. The SCAS received in 2007 an amount of 269,030€ which is used for the support of discharged prisoners and offenders in probation (120,000€); for the child protection unit (60,000€), for the community work service (14,030€) and for the Victim support service (75,000€)

Table 2: Annual expenditure of the Luxembourg Probation and Prison System in 2006:

	Probation Service	Prison System
Total current yearly expenditure	6,314,994	34,247,861
Average number of employed staff	9	275
Daily average number of offenders/clients dealt with	612	683 (in 2005)

5.2. Accounting

The Head of the SCAS is accountable by decree, via the Ministry of Justice, to the Court of Auditors (Cour des Comptes) for spending its annually allocated fund for discharged offenders. This Court of Auditors (provided for under § 105 of the Luxemburgish Constitution), as an auxiliary body of the Chamber of Deputies, monitors all State accounts in the Grand-Duchy of Luxembourg.

5.3 Registrations systems and evaluation procedures

There is no systematic registration/storing of probation workers' activities, such as prison and home visits, telephone calls. But, in 2004 a database has been created where probation officers' reports, numbers of client contacts and accompanied prison leaves can be registered. The aim is not to quantify and analyse the performance of each probation worker; it's more a tool for better probation supervision.

The only available data to measure the effectiveness and efficiency of the Probation Service are the statistics in the SCAS's Annual Report. It is included in that of the Ministry of Justice and covers the judicial year, starting mid-September. The annual report of the Ministry of Justice regroups the statistics of the police, the judiciary and the penitentiary and post-penitentiary services.

Unfortunately, every administration treats its statistics separately and by different methods: there are those that are more elaborated but there are also those that are limited to the sole end numbers. The resulting heterogeneity of approaches makes a dynamic analysis very difficult. Therefore a transversal and longitudinal study in order to determine a tendency on a criminal political level is for the moment difficult to achieve, as there is a lack of homogeneity and of research cells. The existing studies on probation are few, some are out of date and the last one was realized in 2003 concerning the penological approach to parole. Information on offenders is well stored in individual manual files, but at the same time some are also kept in a computerised database. Files kept by the Probation office include formal documents, such as a copy of the offender's criminal record, copies of the Guidance committee's and Probation worker's reports to the Prosecution Service, decision taken by the Attorney General's delegate or the Penitentiary Committee, copies of the offender's pay rolls and copy of the offender's sentence. The files of discharged offenders are stored in the Probation service's archives.

Since 2001, the Probation has access to the computer programme called "Basis". It links the Prosecution Service with the two Prisons and the Probation Service and gives a multiplicity of information about the detainee: the length of his sentence (beginning & ending) and indicates automatically the exact dates on which he may benefit from the favours provided by statute (see chapter 4), his last place of residence, disciplinary sanctions, other sentences, confession, fines and judicial costs, civil suits, workshops, name of the "section" he resides in, the professionals responsible for his scrutiny. This general information can be accessed online. This software that belongs to the CPL will be updated at the end of 2007.

Apart from this database, old software named "penal chain", dating from the seventies, has been updated. This software may be used by the Prosecution Office, the investigating magistrates, the Prosecution Services (including the SCAS) and Luxembourg's Courts of first instance. The idea behind this chain is to allow the judiciary administration to treat a penal case from beginning to end in a unique application. For example, the Probation Service can soon access (and download) this national database the criminal records, and the judicial decisions. Nowadays Luxembourg is associated on the ongoing effort to realize the interconnection of the European criminal records.

In the context of this penal chain, and more precisely in the domain of the enforcement of penalties, it has been decided that after three unsuccessful summonses (to a meeting), the file of the offender on probation containing a report on the non-attendance is returned to the Prosecution Office. The probation officer has to write a report to the Attorney General's delegate on a regular basis. Due to the inexistence of encoded and digital material in 2002, the Probation service had to build up its own internal database concerning offenders released on parole, on semi-liberty, on suspension of the sentence. The same applies to the beneficiaries of the probationary reprieve. The database also includes information on the workplace of the offender.

The Probation Service has also instant access to the database of the entire population of Luxembourg called "RPNI". Each individual manual offender file includes RPNI data. This system enables the probation agent to access

information not only on the place of residence, but also on the composition of the household, on the last change of address and the date of birth of the offender. This data is of course subject to the regulations of the Act of 2 August 2002 regarding the protection of persons concerning the treatment of data of personnel nature.

5.4 Societal support and client's views

Unfortunately, there is no data available on how the clients of the system view the work of the Probation Services. The Luxembourg Probation Service does not carry out any kind of promotional activity regarding its work. In February 2003, the Committee for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment visited the main prison. The report criticized firmly the placement of minors by the Youth Court in an establishment aimed at adult offenders. The Committee estimates that these surroundings are not adapted for minors and that the contact with adult offenders is not beneficial for young people. Therefore the Committee pleaded for the immediate opening of a special unit for the detention of minors at the Socio-Educational Centre in Dreibern. In 2007, such a unit still does not exist.

Luxembourg's Parliament scheduled for July 2007 a general debate on national security. To this effect, the Parliament's Judicial Committee has met with members of the police, the penitentiary and judicial services, including representatives from the prison, the SCAS, the Probation Service and the Prosecution Service. This method enabled the Commission to gather the necessary data regarding the state of the prisons, the implementation of sentences and the benefits and difficulties of probation. The debate will help to promote a reflection on the possible future criminal politic in Luxembourg.

6 PROBATION CLIENTS' RIGHTS

The rights of clients specifically dealing with the Probation Service are not statutorily regulated. All clients of the Probation Service are free to address written complaints to the Head of the SCAS, to the Attorney General or the Minister of Justice. In practice, the most frequent complaint is when a client takes issue with his or her probation officer and requests a change. In these instances, an internal decision would be taken on a case-by-case basis once the issue has been thoroughly discussed with both the Head of Service and staff member. In the case of repeat offenders, a change of Probation worker gives them an opportunity to start afresh with a new relationship. There is no external monitoring of complaints or any supervision boards that deal with client complaints. Recently, the national ombudsman (who was a former Minister of Justice) announced that he will hold permanent office in Schressig in order to receive the prisoners' complaints about the penitentiary system and the decisions of the Prosecution Service that are considered as "administrative" and not "judicial" decisions. This intention shows at the same time that the offender, although he is guilty and has been judged for his acts, is also seen as an "administré". All foreign nationals, whether in detention, on probation or non-offenders, who have been given notice by the Ministry of Justice to leave Luxembourg, may appeal against this decision at the administrative Court of Luxembourg.

A professional secrecy law (§ 458 of the Penal Code) binds probation workers. However, within the framework of professional secrecy or confidentiality, relevant information on the offender may be shared with professionals from

other agencies. Section 10 of the Act of 16 April 1979, on the status of civil servants of the Grand Duchy states that “civil servants are forbidden to reveal any information pertaining to their job”. As civil servants, however, Probation workers have to report any information given to them by a client regarding their intention to commit further crimes or to escape from prison, and any admission of previous crimes.

Free legal aid is statutory regulated (Act of 18 August 1995; decree of 18 September 1995). Access to free legal aid is granted on the basis of income and material possessions. Free legal aid is provided to all nationals and all foreign nationals without sufficient financial means, whether in detention or not. People who have been granted the services of a state lawyer also have free access to the services of interpreters and bailiffs. A member of the Probation Service will assist those who are unable to fill out the form for free legal aid, which has been developed by the SCAS. In prison, defendants, offenders and people in administrative detention have access to an interpreter paid for by the State. In reality, due to a lack of available interpreters and to complicated and time-consuming procedures to access them, probation workers often use prisoners as interpreters when they are available.

7 NEW DEVELOPMENTS

7.1 Electronic monitoring

The placement under electronic surveillance is a new method of the implementation of sentences. This measure has been introduced in July 2006 and will be subject to an experimental phase for two years. After this provisional period, an evaluation will be realized in order to determine whether electronic monitoring constitutes an asset in and for Luxembourg’s penal arsenal. A specific legal framework for electronic surveillance does not exist for the moment; this measure is implemented in the context of the suspension of sentences. The declared goals of electronic monitoring are of two orders: to avoid incarceration and to reduce the prison’s (over) population. A third objective is the social reinsertion and the preservation of social and professional relations. This method is applied on persons sentenced to an imprisonment equal to or less than a year and on detainees (sentenced to imprisonment or reclusion) who have less than a year of their sentence left to serve. For the first category, it consists in avoiding incarceration (front door system); for the latter, it should promote an anticipated release (backdoor system). In both cases and before placing a person under electronic surveillance, the Probation Service undertakes an opportunity investigation. The Probation agent collects social, professional and medical data on the candidate. In order to install the devices, the Probation Service obviously necessitates the consent of the sentenced person as well as from the cohabitating person. This collection of diverse elements is important to give the Attorney General’s Delegate an advised opinion on the opportunity and the utility of the measure. Electronic monitoring is a system that incorporates a schedule of assigned hours at home and periods during which the home may be left (to pursue paid work, to go to therapy, and to maintain familial obligations). This

method aims to establish equilibrium between a utilitarian sanction and reinsertion.

7.2 Judicial control

The Act of 6 March 2006, introducing a simplified investigation and judicial control, states in its article 107 that judicial control may be ordered by the investigating magistrate if the sentenced person is likely to be punished by a correctional imprisonment or a more severe sentence whose maximum is equal or superior to two years of imprisonment. Judicial control is an alternative to preventive detention. During provisional release, the sentenced person has to respect a catalogue of conditions. By the intermediary of the Probation Service, the SCAS may be designated (together to the police service or any other judicial or administrative service) by the investigating magistrate to control the adherence to the imposed conditions. To this effect, the SCAS can summon or visit the sentenced person. The SCAS may also resort to other measures and investigations that may be useful to its mission (article 108).

7.3 Participation of the Probation Service at the activities of the “Treff-Punkt” in the prisons

From 2002 on, a probation agent has been detached to participate in the work of the “Treff-Punkt”-Service in the prisons. The service organizes visits accompanied by professionals between children and detained parents. The goal is to establish or to preserve the links between children and their parents in a penitentiary environment in order to reduce the negative aspects of the separation. At the moment, the service does not intervene only in situations in which the implementation of the visiting rights causes problems, but it plans to enlarge the accompaniment to visits to other children and their detained parents. Starting this year, activities such as craftwork and painting, which are in high demand from the children as well as from the parents, have been organised. They take place during the visits organized by the service. Discussion groups for imprisoned mothers also take place once a month.

7.4 Prison facilities at Schrassig and Givenich

In 2002, a global project financed by the Justice and Health Department to support persons in penitentiary surroundings (Project Tox) has been established. At Schrassig, there exists a consultation, exchange and legal assistance for detained drug addicts. The project has also addressed the question of the exchange of syringes in prison. At Givenich, the Project Tox disposes of a pavilion without drugs for 6 detainees. This is a program of intensive support by work, sport, courses, a bio-energetic approach (encouraging body conscience), group discussions and individual talks. It is planned to accept soon detainees at Givenich to make them benefit from semi-liberty in a semi-open detention environment. In September 2002, a Grand Ducal decree has been taken to create inside the prison of Schrassig a centre for foreigners in illegal situations. These persons, called “retenus”, are subject to a restriction of liberty on the basis of the

modified act of 28 March 1972 concerning the entrance and the stay of foreigners. The centre with a capacity of 25 cells essentially receives persons without residence permits; they are not guilty of any criminal acts. There exists a draft of an act concerning the construction of a retention centre next to Luxembourg's airport. In 2002, after a convention between the Ministers of Justice and Health, a psychiatric service has been created. Psychiatrists and psychiatric nurses from the neuropsychiatry clinic of Ettelbrück have been detached in order to treat detainees with multiple troubles. This service also ensures a monitoring of sexual and violent offenders. Nevertheless, at this time, Luxembourg has no formal treatment programme for sex offenders, whether in detention or in the community. The only supervision that can be assured is the one of the psychiatric unit in Schrassig.

7.5 Project equal

Since 2005, the Probation Service has been asked to establish collaboration with other social services in order to realize a Project Equal. This project, initiated by a Luxembourg workers union, aims for the employment of marginal persons, including former detainees and persons under judicial scrutiny, with the objective to reintegrate them on the first employment market.

7.6 The construction of a third prison (maison d'arrêt)

Because of the current overpopulation present in Luxembourg prisons, which distinguishes itself by a growing number of preventive detainees, the Ministry of Justice has stated his intention to have a third prison built. This would allow alleviating the prison of Schrassig. One has to notice that following the terms of SPACE I (a 2005 inquiry), Luxembourg has a ratio of 152,3 detainees (preventive and sentenced detainees) per 100.000 residents. This number has considerably grown bigger from 2000 to 2005: from 90,4 (394 detainees) to 152,3 (693). In this context, it has to be mentioned that recourse on judicial control is rarely utilized, despite the fact that it has been introduced in 2006 as an alternative to preventive detention.

8 IMPORTANT PUBLICATIONS

Annual reports of the Ministry of Justice 2004 to 2006

These reports contain the annual statistics of Police, Courts, Prisons and Probation.

Annual report of Statec (2006), Service Central de Statistiques et des Etudes Economiques.

D. Biancalana, *La libération conditionnelle entre ancienne et nouvelle pénologie. Etat de la question au Luxembourg*, 2003, Université catholique de Louvain-la-Neuve, 185p.

Projet de loi concernant le budget des recettes et des dépenses de l'Etat pour l'exercice 2006 et 2007, Ministère des Finances

G. Schmit, Chapter 12 Luxembourg, in : A. Van Kalmthout A., T.M. Derks, *Probation and Probation Services. A European Perspective*, 2000, CEP, Utrecht, pp.323-354.

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P. Combessie, Sociologie de la prison, Repères, la découverte, 2004, Paris, 119p.

J-Ch. Froment, *Justice et technologies. Surveillance électronique en Europe, 2006, Preses Universitaires de Grenoble, Grenoble, 214p.*

D. Kaminski, M. Kokoreff, *Sociologie pénal : Système et expérience, 1994, Trajets, Ramonville, 334p.*

R. Lévy, X. Lameyre, *Poursuivre et punir sans emprisonner. Les alternatives à l'incarcération, 2006, Les dossiers de la RDPC, La Chartre, Bruxelles, 144p.*

J. Simon, *Poor discipline. Parole and social control of the Underclass, 1890-1990, 1993, University of Chicago Press, Chicago, 286p.*

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ANNEX 1

Criminal Statistics

In the Luxembourg Probation service system, statistical information is very limited. As the country disposes only of limited statistical data, it is therefore difficult to compare Luxembourg with other countries. Court and judicial studies, which are found in the annual report of the Ministry of Justice, have not changed: they are still presented in a rather incoherent way. The data set out in the annual report consists merely of information issued by different judicial bodies and strung together. Consequently, serious empirical analysis is quite difficult. In its own annual report, STATEC (Service Central Statistique et des Etudes Economiques) has been able to present some summary data on Luxembourg's judicial activities. The following figures are taken from SCAS and Ministry of Justice reports from 2004 to 2006.

1. Input offender statistics

Currently, the examination of the reports of the Inferior and Superior Courts from 2004 to 2006 does not allow to clearly identify how many persons have been sentenced to imprisonment from the total of those, having been the subject of a correctional or criminal decision. This difficulty resides on one side on the heterogeneous methods of the agencies to reflect data (there exists no common statistical structure) and on the other side these same agencies, in lack of funds, are often limiting themselves to a listing of the nature of the treated offence.

Table 1.1

	2003/ 2004		2004/ 2005		2005/ 2006	
	L (1)	D(2)	L	D	L	D
Peine criminelle	26	5	22	1	27	
Peine correctionnelle (emprisonnement ferme)	641	145	662	117	680	90
TIG	92	6	67	9	86	6
Sursis probatoire	95	4	91	3	104	2
Suspension du prononcé	17	n.m(3)	11	n.m	11	n.m.

1 Arrondissement judiciaire de Luxembourg
2 Arrondissement judiciaire de Diekirch
3 Statistically not mentioned

2. Average offender population statistics

Prison population

There has been a consistent increase in the total prison population from 1st September 2004 to 1st September 2006 (see below). The major reason for this increase is the number of (resident foreigners and non-residents) suspects kept in pre-trial detention.

Table 2.1

	Population of the main prison, (Schrassig)			Population of Givenich prison (open regime)	Total number of offenders in both establishments
	Men	Women	Total		
01-01-04	435	20	455	43	498
01-09-04	529	19	548	54	602
01-01-05	555	27	582	53	635
01-09-05	594	32	626	67	693
01-01-06	635	32	667	68	735
01-09-06	639	38	667	79	746

In 2006, the Attorney General's Delegate estimated that the prison of Schrassig is an "all category » prison, receiving sentenced and preventive detainees, juvenile detainees, and retained persons. Because of the growing number, the prison's infrastructure does not permit anymore to proceed at a satisfying separation between different categories of detainees. One has to notice that following the terms of SPACE I (a 2005 inquiry), Luxembourg has a ratio of 152,3 detainees (preventive and sentenced detainees) per 100.000 residents. Luxembourg largely outgrows Great Britain, Spain, Italy, Germany, France and Belgium. This number has considerably grown bigger from 2000 to 2005: from 90,4 (394 detainees) to 152,3 (693).

Semi-liberty

Semi-liberty is applicable to male offenders at Givenich and for women at Schrassig.

Table 2.2

	03/04	04/05	05/06
Semi-liberty	33	53	50

Suspension of enforcement with probation

Table 2.3

	03/04	04/05	05/06
Suspension of enforcement with probation	99	94	106
Number ongoing	226	313	355

Concerning probational reprieve in general and in particular the 106 listed above, one notices that the Courts employ more often this measure in cases linked to drug abuse, family abandon (absence of payment of maintenance) and violent conduct. Concerning suspension of pronouncement of a conviction combined with probation; there is no data available. This measure is perhaps rarely pronounced and so only used once a year.

Community service

The following figures show that community service is rarely used as an auxiliary penalty.

Table 2.4

	03/04	04/05	05/06
Total number of CSOs	200	196	212
Origin of CSOs:	226	313	355
<i>Linked to pardon request</i>	5	6	9
<i>Decision of the Attorney General</i>	43	38	37
<i>Auxiliary penalty</i>	4	0	0
<i>Principal Penalty</i>	96	83	83
<i>CSOs for young offenders</i>	52	69	82

Parole

Table 2.5

	03/04	04/05	05/06
Parole	31	28	30
Ongoing	129	121	121
Ended successfully	22	22	24
Revocation	14	8	10

The « Luxembourgish Detainees-Foreign Detainees » report has clarified that 69% of people of Luxembourgish nationality and 31% people of foreign nationalities benefit at the moment from conditional release (compared to 67% and 33% in 2004 and 2005). 16% of tried persons are aged between 18 and 30 years, but this

age group represents 38% of the people monitored in the penitentiary environment. These numbers show that young people benefit less and less from conditional release, even as they are the ones that are most vulnerable and stigmatised by incarceration. Young detainees are also often considered, as in other countries, a risk population likely to relapse.

Anticipatory release for foreign Nationals and non-resident foreigners

Table 2.6

	03/04	04/05	05/06
number	44	68	67

Suspension of penalty

Table 2.7

	03/04	04/05	05/06
Suspension	20	24	31
Ongoing	26	31	38
Ended successfully	17	24	21
Revocation	2	0	0

3. Staffing Statistics

The actual staff numbers have been listed in chapter 3.

Table 3.1

	03/04	04/05	05/06
Daily average number of clients	65	69	68
Total number of offenders per year	96	107	110

Linked to these staff numbers, the following figures refer to the number of clients per probation officer.