

# **Chapter 20**

## **Malta**

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# **1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM**

## **1.1 The start of probation in Malta**

The Maltese Criminal Justice System was considered to be ruthless until the introduction of the first Criminal Code in 1854. Prior to this date, punishment was arbitrary and not proportionate to the crime committed. It was Professor Nicola Zammit<sup>1</sup> who first wrote that punishment should be tailored for the offender and not the crime. The 1854 Criminal Code established a system of punishment consisting of the death sentence, life imprisonment, solitary confinement, interdiction (specific and general), fine, and reprimand and admonition. From this promising beginning the system continued to evolve. In 1900 'Articolo Venti Tre' (Article twenty three) was introduced. This article gave the court the power to sentence first time offenders to imprisonment, with the provision of releasing them on personal guarantee not to re-offend within a specific time period. This article can be considered as the precursor of today's conditional discharge.

In 1944, HM Commissioner of Prisons for England and Malta, Sir Alexander Paterson<sup>2</sup> submitted a report to the Governor of Malta, proposing the introduction of the release of offenders on license (parole) and the introduction of the probation services. Paterson, maintained that the Magistrate's courts were treating juvenile offenders unjustly. The judiciary was judging the educational level and social background of offenders rather than the crimes committed. This resulted in gross discrepancies in sentences. Sir Paterson recommended the creation of the probation systems, where young offenders could be transferred to the care of a probation officer, who, with the help of the Parish Priest, the parents and the village school head teacher, would be responsible for the supervision of offenders. Together with probation (ordni ta' probation), the use of orphanages or the Industrial School, was recommended for those youths who were in 'moral danger'. Finally, the training of wayward youths between the ages of 14 and 18 was emphasized. His proposals were not immediately taken into consideration. It was only in 1955 that Mr. Justice Guze Flores, tried to establish his own probation system.

Judge Flores decided to implement his own probation services by utilizing the social systems already in existence. Being a judge of the criminal court meant that he was called to judge people accused of all types of crimes carrying a term of imprisonment from six months to life. When hearing a case he wanted to understand the social background of the offender. With the help of the local police, he would contact the parish priest of the locality, to learn all the information that could shed light on the possibility of reform for the offender. In the fifties, Malta was still a very close-knit society, with the parish as the centre of village life. Therefore by asking the parish priest and the police for information about the offender, Judge Flores would have been in a good position to procure

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<sup>1</sup> Zammit, N. (1888), *Pensieri di un Retrograde*, Malta.

<sup>2</sup> Paterson, A. (1944), *Report by Alexander Paterson on the Treatment of the Offender in the Maltese Islands*, Government Printing Press, Malta.

most of the necessary information for sentencing purpose. When he was convinced, that if given a second chance the offender would reform, Judge Flores entrusted the offender in the care of the parish priest. Therefore, the village parish priests were the first voluntary Maltese probation officers.

The effort to transform Flores's experimentation into a legally implemented tool came after the Honourable Dr. Guze Cassar, the then Minister of Justice, presented a bill in parliament in 1957<sup>3</sup>. During his impassioned speech, he emphasized the need of this act for society and the offender. He maintained that it would be in the interest of society to rehabilitate offenders so that they could be transformed into law-abiding citizens. Dr. Cassar regarded this system as having two positive points. First it enabled society to approach certain cases in a humane manner and secondly it enabled professionals in particular and society in general to ameliorate the character of certain offenders. The Maltese parliament viewed this law positively and the Probation of Offenders Act was enacted during that year.

In the Government Gazette of October 1957, applications were invited for Family Welfare Officers whose duties included Social Work, Probation and Child Care. Five people were chosen (two men and three women). These people were sent for a six- month residential training course at the University of Birmingham (UK), after which a report by Mr. J. Ross was submitted to the government of Malta. Mr. Cassar Naudi was the first probation officer to be required to 'assist, advise and befriend' an offender in August 1961, after the first trainee probation officers returned to Malta.

## **1.2 Important developments**

Probation Officers were based in the Department of Social Welfare from 1961 onwards. In 1978 the Director of Social Welfare became the Principal Probation Officer. The training of probation officers was social work based. Those with a special interest in forensic issues were usually recommended for the post of probation officers, with little training for the job. In 1993, government faced with increasing crime and an overcrowded prison decided to train probation officers at University level. In 1994, the Institute of Forensic Studies within the University of Malta yielded the first fully qualified, locally trained, probation officers. In September 1994 the four students of the probation course with the help of a lecture formed a non-governmental organization (Probation Service Action Team – PSAT) to provide probation services for courts. It was only in 1996 that this group of qualified probation officers were officially employed as Social Workers within the Department of Corrections. However, it was only in 1998 that the first call for application for probation officers was issued by the public service. From that day onward probation officers have been directly employed by the department of correctional services. In 2002 the Probation Act was revised to include more alternatives to imprisonment.

## **1.3 Probation activities in a nutshell**

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<sup>3</sup> Parliamentary debates on the Second reading on the Probation of Offender's Bill, 1957.

The Probation Service is a government run service, under the Ministry for Justice and Home Affairs. The director of corrections who is assisted by two senior probation officers heads it. Most offenders under supervision would be sentenced to a probation order (ordni ta' probation), however from 1991 onward the courts could issue a suspended sentence with a supervision order (sentenza sospiza b'ordni ta' supervizjoni), which probation officers have to supervise. In 2002, with the change of the probation act one finds the introduction of community service orders (ordni ta' sevizz fil-komunita`) and combination orders (ordni ta' probation u servizz). There is also the possibility for the introduction of part-time imprisonment, which has not as yet come into effect. The Probation Service also writes reports for the courts (rapport ta' qabel is-sentenza). The supervision of an offender under probation or under suspended sentence supervision order is the same. The officer in charge of the case has to advise and assist the offender in living a law-abiding life. Probation orders carry a one- to three-year period of supervision, while suspended sentences carry a six- month to four-year term. Community service orders require an offender to carry between 40 and 240 hours of work in the community, while combination orders require the offender to be under probation supervision for a period between one and three years and to work within the community between 40 and 100 hours. In these cases the Probation Service is required to supervise the offender. Pre-sentencing reports are reports done by the Probation Service to assist the court in issuing the most appropriate sentence, taking into consideration the background of the offender, the crime committed and the victim. While social inquiry reports are similar, they are requested by the court before guilt is established and do not include any recommendations. The court may also order a Provisional Order of Supervision [ordni provizorja b'supervizjoni] for offenders who have been arraigned in court but who have not as yet been found guilty.

## **2 LEGISLATIVE BASIS AND MISSION**

### **2.1 Legislative basis**

The legal basis of probation in Malta comes from the Probation Act 2002. This act establishes the work and the organisation of probation officers. An amendment of the criminal code in 1991 introduced the suspended sentence (sentenza sospiza) increasing the then alternative penal sanctions available to the courts. In Malta there are no separate administrative rules, as the functions and responsibilities of probation are specified in the law.

The Probation Act was enacted by Parliament in 2002. This act substantially revised the 1957 act, pitching probation in Malta to the 21<sup>st</sup> Century. The 1957 act had been amended a number of times during the 50-odd years that it had been in place, however there were no significant changes. For a long time major modifications were felt to be necessary to have an Act based on criminal justice thoughts of the mid-twentieth century. These changes were entrusted to the Institute of Forensic Studies within the University of Malta and they occurred after long discussions with the Minister, the shadow minister for home affairs, the Attorney General's office and the Probation Service. At the end, the new Act

was approved by parliament unanimously. This Act legislated for the introduction of a supervisory board, made up of a chairperson and two members. The role of this board is to assess the work of the Probation Service. It is their duty to act as watchdogs, seeing to it that the Service is free from discrimination and malpractice. The Minister responsible for the Probation Service has the duty to appoint a sufficient number of probation officers. The director of probation is responsible for the organisation, the administration and the supervision of the Probation Service. Furthermore he/she should be the person whom probation officers should ask for guidelines in dealing with caseload. The director should also: receive periodical reports on each offender from the probation officer, keep a register with factual information on each probationer, keep a register for the pre-sentencing reports, decide if a probationer should be sent back to court because of breaches to the order and assign probation officers to each case.

Probation officers have the duty to perform home visits or ask offenders to visit them at the office, to plan, monitor and assist the probationer, to see to it that probationers remain law-abiding citizens, to raise awareness in the offender about the victim, to report to the court every six months on the general well-being of the probationer, to assist the offender in furthering his/her social and educational milieu, to assist the offender in finding a job, to keep detailed reports on the person under supervision, and to write the periodical report to the director on the probationer.

A probation order can be given by the Law Courts of Malta for any offence that is not punishable by a fine only, or by a term of imprisonment exceeding seven years and in exceptional circumstances not exceeding ten years. For certain crimes, such as drug or arms trafficking, probation does not apply. The operative term of a probation order must not be less than a year and not more than three years. Offenders over 14 years of age must accept the order, as it can never be imposed on them. In cases of offenders under 14 years, an order can be imposed. The Probation Service is one service catering to the needs of the whole forensic population in Malta. The implication of a probation order must be clearly explained to the offender before he/she is asked to accept its conditions. Moreover, the court may add any conditions that it deems appropriate for the good conduct of the offender. In certain instances a treatment order might be attached to the probation order. A probation order may be amended or discharged by the sentencing court on application by the probation officer or the probationer. However any change in the order has to respect the minimum and maximum operative period laid down by the law. The probation officer or the executive police can accuse a probationer of breaching the order, if the offender is found guilty of committing an illegal act during the operative period of the probation order. Furthermore an order can be breached if the offender fails to comply with any conditions of the order.

The court may also award a community service order (CSO). These orders require an offender to perform 40 to 240 hours of work in the community. These orders are issued under the same criteria as the probation orders. In CSOs a community service officer, who is also a probation officer, will be in charge of the case. It is also possible for the court to issue a combination order or the probation order and the CSO. The only difference being that in a combination order the offender cannot be made to work for more than 100 hours. In these cases the

offender might have a separate probation officer and a community service officer who will work together on the case. When the court wants to issue a CSO or a combination order, it has to ask for a pre-sentencing report. It is also mandatory to ask for a pre-sentencing report when an offender who is less than 18 years of age is faced with imprisonment. The court may also require pre-sentencing reports once an offender is found guilty and the court requires more information about the offender. The report would be used to assist the court in reaching the most appropriate sentence for the offender.

In 1990, the criminal code was emended to include the suspended sentence. A suspended sentence is considered to be harsher than a probation order. A sentence can be suspended if the court is of the opinion that, if not for the provision of the suspended sentence, the offender would be sent to jail for a period of two years or less. Such a prison sentence can be suspended for a minimum period of two years and a maximum of four years. If more than six months imprisonment is suspended, the court may place the offender under a supervision order. In these instances probation officers would supervise offenders for the operative period of the sentence. If offenders commit another offence during this period the original sentence would come into effect. The law stipulates that probation officers dealing with offenders under a suspended sentence supervision order should meet with offenders periodically.

## **2.2 Mission and mission statement**

The mission statement of the Correctional Services System of Malta is to contribute to community safety by:

- exercising appropriate, secure and humane control over criminal offenders;
- stimulating offenders to become productive, law-abiding members of society;
- aiding crime victims in their recovery;
- assisting communities as they confront the conditions that contribute to crime<sup>4</sup>.

The Probation Service is an integral part of the correctional services; therefore they share the same mission statement. The Probation Service gives priority to the first two objectives as their work involves primarily offenders. The aim of the Service is "to help ensure social stability by contributing to minimise the frequency of crime and by ensuring the re-integration of offenders to functional societal frameworks. To ensure that, the myriad of services offered will address the needs of the Criminal Justice System."<sup>5</sup> The principal aim is to transform offenders into law-abiding citizens. Priority is given to young non-hardened offenders, as these are the people who would surely be given a non-custodial sentence. Typical clients of the Probation Service are young male offenders in need of assistance to enable them to overcome their problems, to find work and become productive members of society.

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<sup>4</sup> "Vision Document" (1994) prepared by Prison Fellowship for the Ministry for Home Affairs and Social Development.

<sup>5</sup> <http://www.gov.mt/frame.asp?l=1&url=http://www.justice.gov.mt/localgov.asp>. Retrieved on 27<sup>th</sup> March 2007.

### **2.3 Crime prevention**

General programmes of crime prevention do not feature amongst the duties of the Probation Service, mainly because it is too small to be able to produce general crime prevention programmes. However the Service is always willing to send its representative on any programme aimed at reducing crime, such as awareness programmes in schools. The Probation Service's main commitment is to the reduction of crime. Due to this its main involvement is in tertiary crime prevention.

### **2.4 Victim protection**

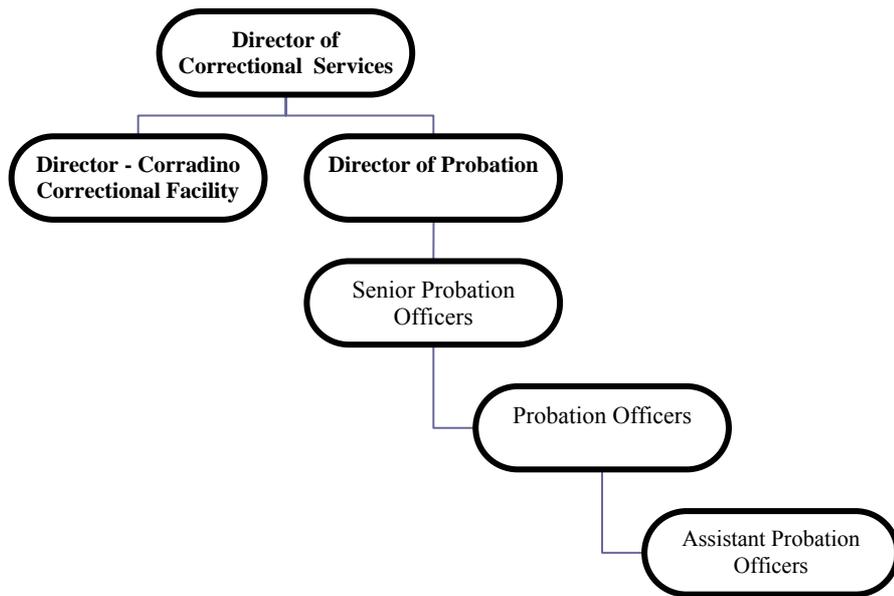
Under the Probation Act and the Suspended Sentence, the court may issue compensation orders for the victims. In such instances, although the code does not specify that the probation officer has to see to it that the compensation takes place this is usually necessary. If this is not done, offenders will be accused of a breach. In certain circumstances the Probation Service will have the opportunity to work with crime victims. This occurs in two instances: during the pre-sentencing report writing and in specific cases where the victim is directly mentioned in the sentence issued by the court. During report writing the opinion of the victim vis a vis the offence, the offender and the criminal justice system is sought. A victim impact statement is taken by the probation officer to be later presented in court. Furthermore, the court may decide to order compensation to the victim through a probation order a CSO, a combination order or a suspended sentence supervision order. In these instances the court may deem it fit to ask the probation services to act as an intermediary between the offender and the victim to ascertain that compensation has taken place.

## **3 THE ORGANIZATION OF PROBATION SERVICES**

### **3.1 Main Characteristics**

The current structure of the Probation Service has been in place since June 1998. Previous to this, the public service did not recognise the terminology probation officers although probation officers had been working with the government department since 1961. A probation officer was employed as a social worker, therefore falling under a social work structure. For a long time the need had been felt for the introduction of a probation structure, therefore, when all the official documents were signed in 1998, this change was welcomed. It was seen as an opportunity to modify and ameliorate the service bringing it at par with modern developments, as now probation officers could concentrate on probation work alone. The probation structure was put under the Ministry for Home Affairs, within the Correctional Department. This department comprises the Corradino Correctional Facilities (the only civil prison in the Maltese archipelago) and the Probation Service. The organogram below gives an overview of the probation structure as it is envisaged.

**Figure 1: Probation Services Structure in Malta**



## **3.2 Internal organisation**

At present there are 10 probation officers and two senior probation officers employed by the Department of Correctional Services. The post of director of probation is presently occupied by the director of corrections while that of trainee probation officers are still vacant. Today probation officers work as a team, performing all the work required by the courts. They are directly accountable to the senior probation officers, with the director of corrections giving them support. It is envisaged that when enough probation officers are employed, they will be divided into specialised units so that they can work more efficiently. Probation officers are accountable to the courts and to the director of corrections. However, in reality they are very much autonomous, relying on inter-departmental support to perform their work in the best possible manner. Staff turnover in the probation sector is usually limited to the first four months of service. If a person performing probation work does not leave the service in the beginning of their career, they are unlikely to leave it in the years to follow.

### **3.2.1 Probation workers**

The probation officers and senior probation officers all perform the various duties enlisted in the Probation Act – from report writing to supervising offenders. Due to the small number of workers, none focus on one particular field. The number of years employed in the service varies from 13 years to a few months, with the majority having 5 to 7 years of experience. The average caseload for each probation officer is about 62. Additional support staff to the probation officers includes one member employed directly by the correctional services to act as security guard when the probation officers are on premises as well as one secretary that acts as administrative staff to the Probation Service.

### **3.2.2. Education, training requirements and opportunities**

To enable the officers to perform this work they are given a one-year post-qualification training in probation either prior to their employment or during their traineeship. This course is given at the Institute of Forensic Studies under the auspices of the University of Malta. To be eligible to join the course students must have a humanistic or legal degree from the university or from a recognised equivalent entity. The board for admission in the course looks upon degrees from the humanities field such as social work and psychology favourably. During this year students are taught various subjects such as the various criminological theories, the role of the probation officer, report writing, research strategies as well as other subjects that would enable prospective probation officers to perform their job diligently. The Institute of Forensic Studies also offers periodic in-service training for probation officers. This training is based on the requirement of the probation services. Local and foreign experts do this in-service traineeship.

### **3.2.3. Other organisations involved in probation work**

In Malta the Probation Service does not utilise the help of volunteers. However the Maltese Probation Service relies heavily on the services that voluntary, state and non-governmental organisations provide. Certain services that probation clients utilise are provided by other agencies. The Probation Service brokers many services from drug rehabilitation organisations, both those supplied by the state and the church. The main difference between these organisations and the Probation Service, is that the drug agencies feel that their first responsibility is to the client/probationer, while the Probation Service sees its main responsibility as being directed to the court and society. However there are no major problems in collaboration between the Probation Service and drug rehabilitation agencies. The services of drug rehabilitation centres are invaluable, especially when one considers that about 12% of offenders in the care of the Probation Service are sentenced for drug possession and almost 47% are sentenced for theft (most of them being drug-related thefts).

The Probation Service must rely on other services when a probationer from Gozo, Malta's sister island, is placed under supervision. Although the probationer visits the Probation Service on a regular basis, the probation service does not have an office in Gozo. Therefore, in those instances when the probation officer needs to go to Gozo, sometimes he/she has to utilise the premises of another agency or else carry out home visits. The Employment Training Corporation (ETC) is an important agency, which almost every probationer will be asked to visit. This corporation trains people and assists them in securing jobs. ETC has an office which tries to place people with a criminal history in jobs. This is an invaluable service as offenders find it very difficult to secure and maintain a job.

Probationers are sometimes held in institutions such as the prisoner in the mental health hospital. Although such probationers consist of only about five per cent (5%) of the probation caseload, they nonetheless are a demanding group. Working with these clients usually involves aftercare. While still housed in the institution the probation officer is faced with the task of training a person for freedom in a place where no freedom exists. Although there were never any problems with the institutions as such, it is the clash of ideology that might result in some problems with the institutions' staff. However, any problems are usually solved, as goodwill from all is usually paramount, with all the professionals involved wanting to help offenders. Some offenders, either because they have been in prison or because their family members do not want them at home, become homeless. In these cases the Probation Service has to rely on church organisations that house the homeless for their help. In those instances where family members are at risk the Probation Service also works with those non-governmental, state and church agencies that work with battered women and abused children. Although their aim is that of helping the victim while the Probation Service is there to assist the offender, in cases of abuse, especially in those instances concerning children, the Probation Service would support most decisions taken by social workers and other professionals involved in the case. It is not the first time that a probation officer would ask for the assistance of these professionals if a case of child abuse was suspected. Furthermore probation officers that suspect battering in the home, encourage the woman to seek help from professionals.



## 4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

### 4.1 General

A probation order, a CSO, a combination order, a suspended supervision order, or a pre-sentencing report can only be issued once guilt has been established in a criminal court by due process. The work done by the Probation Service is regulated by the 'Probation Act 2002' and the 'Criminal Code, section 28 A to I. These legislations regulate each sanction; however the Probation Service has developed procedures and guidelines to be used by probation officers according to the task at hand.

**Table1 :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	
Supervision / assistance etc. to offenders whose cases were conditionally waived	x		
Mediation/victim support		x	
Supervising / organizing etc. community service		x	
Supervising etc. drug/alcohol treatment programs		x	
Combination Orders		x	
Provisional order of supervision		x	
Pre - sentence report		x	
Supervising etc. sanction of probation		x	
Supervising etc. suspended sentence		x	

Section 6 of the Probation Act 2002 gives the power to the court to ask for a pre-sentencing report before sentencing the offender or a social inquiry report before guilt is established. Section 7 of the same act lays down the probation order, provisional order of supervision, and the various conditions that a person under probation supervision can be ordered to follow, such as mental or drug addiction treatment. CSOs are regulated by Section 11, of the Probation Act, while section 18 regulates combination orders. Victim compensation is possible under section 24 of the said act. The suspended sentence is found in the criminal code in section 28. Section 28 (G) makes it possible for the courts to issues a suspended sentence with supervision order. In this legal provision it is also possible for the court to issue a compensation order. To date, there is no legislation regarding Victim Offender Mediation Programmes, but the Probation Service sometimes

works on these lines. Section 7 subsection 3 of the Probation Act 2002 states that the court in 'a probation order may in addition require the offender to comply during the whole or any part of the probation period, [with any] requirements, necessary for securing the good conduct of the offender.'

## **4.2 Pre-trial phase**

### **4.2.1 General**

In Malta, intervention in the pre-trial phase started to be experimented upon during the mid-1980s in what were called the 'Police Cases'. An agreement was reached between the Police Commissioner, the Attorney General and the Principal Welfare Office (who was also the Principal Probation Officer), on the way to deal with petty criminal cases, especially those that were committed by first offenders. This agreement was envisaged to avoid the stigma and negative experience that a court case might have on juvenile first offenders. Once the police arrest a suspect whom they are considering prosecuting, they have the option to refer the case to probation officers. The probation officers would work with the offender and where necessary with the offender's family. The police would be given a report once every three months on the general progress of the client. Unfortunately, due to a change in the social welfare policy, these cases have stopped. At present discussions between the police and the Probation Service are being held to try to develop diversion programmes. It is envisaged that these programmes will have a similar set-up to the police cases, with probation officers being more involved than social workers. In Malta the police cannot keep a suspect arrested for more than forty-eight hours, before arraigning him/her in court. Therefore, the pre-trial phase is short, with very little time for intervention. Often suspects would seek help of their own accord, hoping that if they are arraigned in court the sentencing judge or magistrate, would look favourably on their case, grant them bail and in the long-term avoid a prison sentence. Furthermore the police might use the pre-trial detention to shock naïve first time offenders into reforming their behaviour. However, in none of these instances would the assistance of the Probation Service be needed. The Probation Service intervenes more in the trial phase and mostly in the post-trial phase.

## **4.3 Trial and enforcement phase**

### **4.3.1 General**

During the trial phase, the Probation Service is usually called upon to prepare a pre-sentencing report on offenders found guilty of a crime. However the services of the Probation Service might also be requested at any point between arraignment and sentencing to supervise the offender [Ordni Provizorja b'Supervizjoni]. This order will cease to exist when the trial is over or if the court decides to terminate it.

During the enforcement phase, the Probation Service can supervise offenders who have been awarded a probation order, a suspended sentence with supervision order, a CSO or a combination order. In all these cases a probation officer has the dual role of care and control. It is up to the officer in charge of the case to see that the offender remains crime free. During the supervision period, the probation officer can act as a resource manager when the intervention of other entities is required. However, it is the probation officer who has the final responsibility of the probationer in front of the court.

Offenders over the age of 14 years have to agree to be put under probation, and a CSO or a combination order can only be issued for offenders over 16 years of age who give their consent. However suspended sentence supervision orders can be imposed by the court. A provisional order of supervision can also be imposed. The Probation Service works in collaboration with the courts, the police, and the public prosecutor, lawyers and other professionals and social service organisations. Victims and victim support services are also taken into consideration when preparing the pre-sentencing report.

#### **4.3.2 Pre-sentence report**

A pre-sentencing report can be requested by the court when a suspect has been proven guilty in a court of law, but the court still requires social or familial information about the accused before issuing a sentence of imprisonment, a probation order or a suspended sentence (Probation Act 2002 section 6(1)). However the court must ask for a pre-sentencing report for all offenders, under 18 years of age who are faced with imprisonment and for those offenders that the court is considering awarding a CSO or a combination order. According to the law, only the court can ask for a pre-sentencing report, therefore should the prosecution or the defence lawyer wish to have a pre-sentencing report on the concerned offender, they have to ask the court. In practice this is usually granted. The Probation Service will only prepare a report on the offender (with the exception when a pre-sentencing or a social inquiry report is ordered) if a provisional order of supervision order is issued. Social inquiry reports are reports requested by the court before the deliberation of guilt. These are social reports on the psychosocial life of the accused. This report is similar to the pre-sentencing report, with the exception that the part which deals with the crime and recommendations are not included.

The Probation Service created an outline of the content and writing of the social inquiry and the pre-sentencing report for the courts (see Annex 2). This was necessary so that the report writer, the sentencing court and the offender or his/her lawyer, will know what to expect once these reports are requested. The role of the pre-sentencing report is to summarise an offender's criminal and non-criminal history, in order to assist the judiciary in dealing with the most appropriate manner with the accused, keeping in mind the welfare of the victim and society.

A pre-sentencing report should include an exposition of the current offence from the official point of view, as well as from the offender's and victims point. All relevant information on the offender's background should be verified and included in the report. The pre-sentence report would include sections containing the criminal history, the family background, educational and vocational history, employment history, psychosocial history, the economic situation, health issues and religious/spiritual affiliations. Furthermore any professional report prepared on the offender should also be annexed to the main report. An important part of the report is the summary and recommendations of the probation officer to the court. While the absolute majority of the report is made up of factual information, verified whenever possible, the summary is the

place where the probation officer can give his/her opinion on the offender and justify the proposed recommendation.

The information required from the pre-sentencing writer may vary from case to case, depending on the seriousness of the offence and the sentence being proposed. However, the ultimate purpose of the report is always to provide information for the sentencing judge/magistrate. Although the final judgement remains the role and duty of the judiciary, the probation officer writing the report, has to make some decisions with regards to risk assessment. In certain instances the report writer might realise that a combination of sentences or a variety of sentencing dispositions might be available. In such cases the information on all the options must be clearly listed.

When requesting the pre-sentencing report the judge/magistrate might give a preliminary indication of his/her view regarding the seriousness of the offence and the sentence imposed. However the report writer still has the duty to completely investigate the case, taking into account the judge's wishes however he/she should not feel bound by them. An important consideration is whether the offender should be given a custodial or a non-custodial sentence. If a custodial sentence is being considered, one has to think if the offender and/or society would actually benefit from it. With more offenders being but in prison this point has to be given even more importance. In the case of a non-custodial sentence: treatment orders, community service, straight probation or intensive supervision has to be seriously evaluated. One again has to balance between the risk posed to society and the needs of the offender. Considering the scarce resources much thought has to be given before such a recommendation is drafted.

The offender has a right to read the pre-sentencing report. Although the report is confidential in nature, both the prosecution and the defence lawyer will be given a copy of it. They have the right to challenge any information contained in the report. This is part of the due process of any criminal trial. For all other parties the report is confidential. In no instance, can the Probation Service give a copy of the report to third parties. All reports are given to the court. It is then the court that distributes copies to the prosecution and to the defence. Should a professional or a social agency, which is working with the offender request a copy from the Probation Service, the department would seek the offender's consent.

When preparing a pre-sentencing report the writer is bound to prepare the report as expeditiously as possible in order to avoid any unnecessary delays. On average a probation officer usually needs about four weeks to finish the report. The probation officer has to be more efficient if the offender is remanded in custody, as there is always the possibility that a non-custodial sentence will be issued. Furthermore, if the recommendations are going to include the intervention of other agencies, their commitment prior to the submitting of the report has to be sought.

#### **4.3.3 Probation procedures and processes**

The Probation Service receives all its clients from the law courts. When an offender is found guilty and is issued a probation order, a suspended sentence supervision order, a CSO or a combination order, a copy of the judgement is sent

to the Probation Service. Once the order arrives in the department, a senior probation officer assigns the case to a probation officer. The senior probation officer takes into consideration such things as the probation officers' aptitudes and their caseload before assigning the case. It is the responsibility of the senior probation officer to monitor the probation officers. Periodic meetings as well as case conferences are held on the various cases. This assures that the work being done is of an adequate level. Furthermore the director of corrections and the supervisory board are in a position to monitor the service and to make sure that the service being offered has the necessary quality.

The probation officer who receives the case will send for the probationer. During the first interview an intake form (see Annex) will be filled up. The aim of this form is to collect information about the individual, his/her family and support system, his/her drug and alcohol use (if applicable) and his/her problems. During the first interview a strategy plan for the individual is formed. Each offender is assessed according to needs and orders from the court. There are no assessment forms or other standard tools for this end. Probation officers in Malta perform varied general tasks. Due to the small number of staff, it would be highly problematic to have people working in their specialised area alone. However, some officers have acquired a certain level of specialisation, as in the case of juvenile offenders. Probation officers use a mixture of 'Motivational Interviewing' and 'Strength Based Therapy'. Motivational interviewing is a person-centred therapy that encourages people to change while strength based therapy takes the clients' strengths and works on them. By uniting these two therapeutic models, offenders are encouraged to change by starting from their positive points and moving towards working on their weaknesses. Officers meet with their clients at least once a week during the first three to six months of the supervision. This would be later cut down to once very two weeks, until the offender is subject to meetings on a monthly basis. The aim of these meetings is to assess the progress of offenders and to see to it that they are doing their utmost to remain crime free. The ultimate aim of any supervision is to render the offender capable of living a crime free and independent life. Home visits are part of any supervision. Usually the second or third meeting takes place in the offender's home. This enables the probation officer to assess the family life and surroundings. Home visits continue to be conducted periodically. Sometimes it is also necessary to conduct surprise home visits. In these cases, very often a colleague will accompany the probation officers.

In the case of a CSO or a combination order, the probation officer, who in this case is referred to as community service officer, will have to plan the community work. In these cases, the work placement is secured prior to the issuing of the sentence. Once an appropriate agency, usually a non-profit making entity, is identified, the probation officer can recommend a CSO or a combination order to the court. If the court awards such a sentence, the Probation Service relies heavily on the supervision of the agency that has accepted the offender. The structure of this service has been planned in such a way that the placement providers provide their own monitoring, whereas the Probation Service conducts surprise field visits while the offender is performing the work, regular meetings with the placement provider and even more frequent contact through the phone.

The Probation Service does not work in the prison set-up, with the exception of when a probationer is also undergoing a prison sentence or is under arrest. The lack of work by the Probation Service in prison can be explained in two ways. The small number of officers can scarcely cope with their own workload and the fact that since there is no provision for parole prisoners are released without any form of supervision rendering the work of probation in prison superfluous.

#### **4.4 Post- release phase**

The prison regulations of 1995 (sec 61) allow a prisoner to be granted prison leave. Long prison leave is granted for rehabilitation and educational purposes. At present prisoners can follow three drug rehabilitation programmes and can be sent to an educational institution to follow a course. To be eligible for this prison leave, offenders must be in their final two years of the prison sentence. During the last three month of the sentence a prisoner can be released from prison for a total of eight hours per day for not more than 15 days per month to engage in employment. The probation service is only called upon for advice in case where the prisoner had previous contacts with the probation service.

There are two types of amnesties that can be granted in Malta: The general amnesty and the individual pardon. A general amnesty is granted through the recommendation of the Prime Minister on the occasion of an important event. The last general amnesty was granted in 1996 on the election of a new government. This was not repeated in the two subsequent elections or on other special occasions. General amnesties may result the release from prison of prisoners with long sentences much earlier than was originally intended. The general public tends to frown on this especially when people who have committed notorious crimes are released after a short period. General amnesties do not necessarily apply to all prisoners as some crime categories can be excluded.

An individual pardon is viewed much more favourably. Individual pardons are granted when there is a miscarriage of justice or for humanitarian reasons. A prisoner requesting a presidential pardon has to submit a petition to the President of Malta, who in turn asks the advice of the Minister for Justice and Home Affairs. The courts, the attorney general's office, the police and the correctional services are asked for their opinion on the granting of the amnesty. In very serious criminal cases, such as drug trafficking and multiple murders the final recommendation to the president has to be made by the Cabinet of Ministers and not by the Minister alone.

#### **4.5 Care and after-care outside the criminal justice system**

The Probation Service does not follow any offenders who come to it on a voluntary basis. Clients who finish the operative period of a community sanction are told that should they need help they could come to the Probation Service. However, dependency on the service is discouraged. Usually clients who need further help are referred to social work agencies.

## **5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION**

### **5.1 Finances**

The Probation Service is financed through the annual government budget allocation for the Correctional Service Department. For 2006 the total budget allocation was of Lm 3,035,000 (€ 7 071 032). The annual budget spent for the Probation Services was Lm 93,000 (€ 216 615) while the prison budget was Lm2, 942,000 (€ 6 854 417). As one can note almost the whole budget of the correctional services is spent on prison with only a small amount needed to cover salaries as well as maintenance, is allocated to the Probation Service. It would be beneficial should the Probation Service have a separate budget allocation within the corrections department, as this would facilitate its growth. As the Probation Service is a government agency it cannot raise funds for itself and cannot accept donations or payment for any service.

**Table 2**

	Probation Services	Prison System
Total current yearly expenditure for 2006	€ 216,615	€ 6,854,417
Average number of employed staff for 2006	12	210
Daily average number of offenders /clients dealt with in 2006	460	343

## 5.2 Accounting

Every government department has an accounts section that is responsible for the control of its revenue and expenditure. This sections fall under the responsibility of a director of corporate services in the ministry. Any extraordinary expenditure will have to be approved by the Permanent Secretary at the respective ministry and by the Ministry for Finance. All government revenue and expenditure is subject to the scrutiny of the Auditor General. The head of accounts in the prison system is also responsible for the spending of the Probation Service.

## 5.3 Registration systems and evaluation procedures

The Probation Service keeps a centralised ledger book where the particulars of each client are kept. The register includes the case file reference number, the surname, name, address, date of birth, address, and name of next of kin. The register will also contain information about the sentencing court, the offence, the date of the order, the date of the termination of the order, the probation officer in charge of the case and any other remarks. In the remarks column, the probation officer is expected to note any breaches or major problems that have occurred during the operative period of the order. Each probation officer, in turn, keeps a register about his/her cases. This is necessary to record of all the cases the officer is responsible for. The central register is used for statistical and management purposes. The statistics are used in the annual report and to periodically advise the judiciary on the caseload being supervised by the Probation Service. These statistics are also used in the reports compiled by the Ministry for Social Welfare and Social Policy in its Focal Point for Drugs and Drug Addiction. These statistics are not made public but they are used for policy purposes and distributed to other agencies that work with the Probation Service.

Every client of the Probation Service has a personal file in the agency. This file is confidential and can only be accessed by the probation staff, the client and the courts. The offender has a right to challenge the contents of the file, and such objections will have to be recorded. Although offenders are aware of this, in reality they are only minimally concerned about it. This file must include the court sentence, the pre-sentencing report, or any other report done on the clients, if available, the intake sheet and the periodic reports (including any drug test results or other reports) done by the probation officer. In the file one should also find the working plan for the offender, the contact persons (both those working with the offender and the next of kin), the offenders' progress and any

problems. Files should be kept up to date, in the appropriate form. These are kept in filing cabinets, each officer having their own independent section. It is not usual for one officer to look through the files of another officer, although there is nothing to physically stop them. Usually files are only seen by the officers concerned, by senior probation officers and by support staff, when necessary. The purpose of the file is to keep a detailed and up-to-date record on each client. This information is used both during case conferences, in the periodic reports written for the court and when testimony on the client is asked for in court. The files contain sufficient details for a researcher to be able to assess the success rates of the Probation Service; however this research has not as yet been undertaken.

#### **5.4 Societal support and clients' views**

There is no information available on this issue.

### **6 PROBATION CLIENTS' RIGHTS**

In Malta there is no specific legislation on the rights of probationers. However, the rights of a suspect or an offender are guaranteed under the Constitution of Malta of 1964. Chapter 4 of the Constitution specifies the 'Fundamental Rights and Freedoms of the Individual'. Furthermore in 1987, the European Convention on Human Rights and Fundamental Freedom became part of Maltese Legislation upon the enactment of Act XIV. The first Schedule was of paramount importance in integrating the European convention into Maltese law.

Fundamental human rights specify that no person shall be subject to torture or inhumane treatment. Moreover, no one can be subject to slavery, servitude or forced labour. With regard to CSOs, offenders have to agree to perform community work, as this solves the problem of forced labour. The constitution and the European Convention establish the rights for the accused to have a public hearing and be assisted by a lawyer. Hearing in the Maltese courts are conducted in Maltese however when an offender does not understand Maltese the hearing will be conducted in English. When the accused does not understand English the services of an interpreter is provided. Due process is a constitutional right – therefore, the probationer has a right to be accused in a court of law and assisted by a lawyer in the case of a breach of the order. When an offender is charged with a breach, they have the right to be informed in writing that the court is notified. Furthermore enough time should be given for the accused to prepare his or her defence. If an offender maintains that his or her fundamental rights have been breached, he or she can arraign the Probation Service in the Civil Court, in its capacity as a constitutional court for redress. The offender can appeal the decision of this court by applying to the Constitutional Court, where the case is tried in front of three judges. If still dissatisfied the individual could apply to the Court of Human Rights in Strasbourg. Legal aid is a right of every person and if the individual cannot afford to pay a lawyer, the court will provide free legal representation. An offender can theoretically seek assistance from the Ombudsman for any breach of human rights. However, in these cases the

Ombudsman would direct the probationer to seek redress in the Civil Court. Should all legal action be exhausted the Ombudsman would hear the case, although it is unlikely that the judgement would be different.

As the Maltese law is based on continental law and the common law tradition, decisions taken by the superior courts become law. As there has never been any case law on breach of human rights by the Probation Service, it is difficult to speculate on the outcome should a probationer take the service to court. The Maltese courts tend to consider decisions taken by the English courts when there is no case law in Malta. Malta has adopted the European rules on community sanctions and measures and the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). The legal safeguards specified in these two documents are taken into consideration in probation service practice.

## **7 NEW DEVELOPMENTS**

In 2002 the new probation act was approved by parliament. This act substituted the 1957 act enabling the Probation Service to guarantee a more modern service. This act introduced a variety of reports that could be asked by the court before a sentence is issued, two new alternatives to imprisonment and a new mode of supervision during the trial phase. With this law the courts could ask for social inquiry reports when the case is still in the trial phase and for a pre-sentencing report when the case is at the sentencing stage. The court could also grant a provisional order of supervision at any point between arraignment and sentencing. The new law provides for CSOs and combination orders. It also emended the probation order, expanded the probation order, and specified the role of the probation officers. Probation officers together with their usual role of advisors, sentencing planners and report writers are now expected to make the probationer aware of the harm he/she caused the victim and society. Maybe the most important administrative change in the probation act was that of taking away from the judiciary the possibility of choosing the probation officer themselves. In the law we also see the role of the director for the Probation Services. The idea was to separate the Probation Service from the prison system. Unfortunately this has yet to materialise, as the director of prisons is also the director of probation. The law also established the department of probation services as a government department. This was an important development as for the first time in almost 50 years the Probation Service was given its own position in the public sector. The new law also provided for the introduction of a Supervisory Board. The role of this board is to review the performance and to suggest improvements for the Probation Service. The board is bound by law to write a yearly report on the work of the Probation Service and submit this report to the Minister responsible for the service. The idea behind the creation of the board was to have independent persons judging the operations of the service. They would check on the service and where necessary provide the necessary support both for the service and clients.

At present the Probation Service is trying to expand the use of community service orders by the judiciary. The fact that the law specifies that a pre-sentencing report has to be compiled before a community service order is issued

has rendered the development of community service orders rather slow. This happened because of the lack of staff in the Probation Service and because the judiciary still feel that they should not be forced to ask for a report if they decide to issue a community order. Due to this situation, a change in law is being thought about. While the importance of report writing before an order cannot be ignored, developing a system for a speedier and shorter report might be a partial answer to this problem.

The probation law in section 7 subsection 6 also envisages the use of part-time imprisonment with a probation order. The minister has not put this part of the law in force. This section of the law enables the courts to add an order of part-time imprisonment to the probation order. In these cases the probationer will be asked to reside for six weeks in an institution approved by the Minister. The probationer will be allowed to go out for work and study during the week while spending the evening, weekends and public holidays in prison. Although this part of the law has parliament's approval it has not as yet come in force, due to the lack of facilities to accommodate such people and the lack of staff. If the Probation Service is given more support by the government it would be able to develop more. At present the possibility of a fully developed structure with a corresponding employee complement is not very tangible. Much has been done but still more needs to be done. With an ever-increasing caseload, more resources need to be invested. If one had to look at the caseload of ten years ago, one would see a caseload of drug addicts accused of petty thefts or drug possession. Today the scenario has changed. The caseload includes paedophiles, sexual offenders, child abusers, child pornographers, arsonists, thieves, and persons who have committed grievous bodily harm. Drug possession cases that made up 75% of the probation services caseload in 1998, now only make up 12%.

With more investment in the Service offender programmes can be developed. There seems to be a need for a violence management programme as well as a programme for child abusers/molesters. Provided the Probation Service is supplied with the necessary resources, diversionary measures, especially for juveniles, would be set up. Also, it is felt that it is also high time for a parole service to be developed. At present prisoners are released and leave the prisons without any form of supervision. This is undesirable as the system is letting prisoners go before the whole time of their sentence is served without any form of control. The only way forward is for the Probation Service to be completely cut off from the prison system and for a steady investment in the service. There is still a lot to be done in community corrections in Malta before one can see a fully developed service. The service is developing, maybe not as fast as one would ideally wish, but nonetheless from the enactment of the first law, 50 years ago, important developments have been recorded. Today we are at a stage where we can demand more for the service while until a few years ago we were still at the stage of demanding an independent and recognised department within the public service.

## **8 IMPORTANT PUBLICATIONS**

There are no relevant publications on the Maltese Probation Services. The Probation Act 2002 is the main source of information. The Probation Service keeps statistics but no study was ever published on the service.

## **9 CONTACT DETAILS**

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## ANNEX 1

### 1 Crime Statistics

**Table 1.1 Input offender Statistics**

	<b>2004</b>	<b>2005</b>	<b>2006</b>
Fine (Multa)	889*	Unknown	201**
Conditional Discharge	150*	Unknown	236
Probation Orders	107	153	134
Community Service Orders	3	5	3
Combination Orders	6	0	0
Suspended sentence	258	236	324
Suspended sentence supervision order	32	28	36
Imprisonment	335 <sup>s</sup>	151	164

\* Data obtained from a student's dissertation regarding the inferior courts (Magistrate courts) only - Millo, A. (2006), Judicial Sentencing Dispositions: The Cottonera Area against the rest of Malta. Unpublished BA (Hons.) criminology dissertation.

\*\* Approximation – the known figures kept by the law courts refer to the amount of money the courts fined. These are: 2004 – Lm 1 701 504 (€3 956 529.97); 2005 – Lm 1 277 090 (€2 974 032.69) and 2006 – Lm 768 759 (€1 790 530.16).

- This figure refers to the newly admitted prisoners aggregated to the number that was already present at the end of 2003. The number of prison sentences awarded by the Magistrate courts was 46 (Millo, 2006).

### 2 Average Offender Population Statistics for 2006<sup>6</sup>

**Table 2.1**

	<b>2006</b>
Probation Orders	282
Community Service Orders	6
Combination Orders	5
Suspended sentence supervision order	77
Imprisonment	343

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<sup>6</sup> These statistics are not available in Malta with the exception of offenders' sentences to Probation and Imprisonment.

### 3 Staffing Statistics

**Table 3.1 Number of staff engaged in probation work<sup>7</sup>**

Year	2006
Senior Probation Officers	2
Probation Officers	8
Secretarial staff	1
Security personnel	1
Total number of employees	12

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<sup>7</sup> Due to the small number of employees in the probation services it is impossible to work out turnover rates that would have any statistical meaning. Probation officers usually leave in the first few months of employment. If they do not leave by the 6<sup>th</sup> month of employment than they usually stay for a long time with some of them leaving the employment for short periods and than returning. Medical leave was normally availed of. The employees of the Probation services availed themselves of 69 days of sick leave during the year.

