

Chapter 31

Spain

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1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM

1.1 The start of probation in Spain

We have to clarify that throughout the following chapter we are going to use the broad concept of probation, as the total of responses from the criminal system that is focused in reducing the application of custodial prison sentences, and clearing the path to re-entry. These responses are focused on strengthening social and educational care in open environments (medio abierto).

Traditionally, the conditional remission of the sentence (remisión condicional de la pena), a concept from the probation system, has its origin in the Law of 17 March 1908 that passed the Penal Code (Código Penal). It was a legal mechanism that allowed the suspension of the execution of the prison sentence (suspensión de la ejecución de la pena privativa de libertad). Such suspension was conditioned to the subject not committing a new offence during a certain period of time. It was the only alternative measure to prison that the Penal Code contemplated for many years. The effects of the suspension applied exclusively to the enforcement of the sentence. This means that before adopting this measure, a guilty plea (declaración de culpabilidad) and a subsequent sentence pronouncement were required. Our criminal system has distinguished itself, up to recently, by a scarce regulation of the enforcement of prison sentences if we compare it with other systems. The regulation of these alternatives is one of the most outstanding innovations of the 1995 Penal Code and its subsequent amendments.

The Spanish system of probation was centred exclusively in the requirement of not relapsing, without contemplating assistance or surveillance measures. It is considered an ordinary requirement that the convict does not commit a new offence during a certain period of time. The 1995 Penal Code incorporates the possibility, if the sentencing judge considers it necessary, of adding new responsibilities and obligations. These responsibilities and obligations can derive in more surveillance and control or in a specific assistance such as participating in certain programs. The supervision of these programs was usually entrusted to the judge or court. The 1995 Penal Code entrusted this supervision to specialized institutions, although it mentioned only "the competent Administration", without specifying which one. This lack of accuracy became the source of effectiveness problems and legal insecurity. The Royal Decree 515/06, of 6 May 2006, that establishes the necessary conditions for the enforcement of community service (trabajo en beneficio de la comunidad), permanent location (localización permanente), security measures (medidas de seguridad), and for the suspension of the execution of prison sentences, entrusted the supervision and control of all these measures to the penitentiary Administration through the penitentiary social services. Within the broad context of "probation system", we find another precedent in the Conditional Release (libertad condicional) Law of 1914, a legal concept that was later incorporated to subsequent Penal Codes, developed by the General Penitentiary Organic Law (Ley Orgánica General Penitenciaria) 1/79 and

the Penitentiary Rules (Reglamento Penitenciario). Conditional Release is a penitentiary concept that allows the convict, if certain circumstances concur, to complete the last part of his or her sentence out of prison, with the requirement of not committing a new offence during this period of time. It is a transition time from prison to free life.

In the early stages, social and welfare institutions were responsible for the supervision and assistance of the conditionally released persons. The creation in 1908 of the Convicts and Released Persons Trust Board (Junta del Patronato de Reclusos y Liberados) was an inspiration for subsequent Trusts. The last one was the Our Lady of Mercy Trust (Patronato de Nuestra Señora de la Merced), created in 1968 as an institution subordinated to the Ministry of Justice. When the General Penitentiary Organic Law was passed in 1979, this Trust was replaced by the Social Assistance Commissions (Comisiones de Asistencia Social), subordinated to the General Directorate of Penitentiary Institutions. These Commissions were in charge of providing the necessary social assistance to convicts and conditionally or definitively released persons and their families, incorporating civil servants and social work specialists to their structure.

A new restructuring in 1995 eliminated the Social Assistance Commissions, ascribing the competences in social assistance matters to the Autonomous Labour and Penitentiary Assistance Organisation (Organismo Autónomo Trabajo y Gestión Penitenciaria), who was in charge, up to that moment, of the promotion, organization and development of labour inside the prisons. In 2004 another restructuring of the Ministry of Interior ascribed the competences in social assistance matters to the Vice-directorate of Treatment and Penitentiary Management (Subdirección General de Tratamiento y Gestión Penitenciaria), subordinated to the General Directorate of Penitentiary Institutions. Finally, in 2006, a new restructuring of the Ministry of Interior created the General Vice-Directorate of Open Environment and Alternative Measures (Subdirección General de Medio Abierto y Medidas Alternativas), within the General Directorate of Penitentiary Institutions. The competences in social assistance were transferred to this new Vice-Directorate.

1.2 Important developments

During the past years we have witnessed a substantial increase in the number of judicial orders imposing alternative measures to imprisonment – this refers specially to community service and sentence suspension with the obligation to follow certain treatment programs in domestic violence cases - motivating the adoption by the penitentiary Administration of certain institutional measures that provide an initial coverage to necessities deriving as much from the number of sentences as from the inherent difficulties of a new kind of management. The first one of these measures has been the creation of the Vice-Directorate of Open Environment and Alternative Measures in September 2006 within the General Directorate of Penitentiary Institutions, with the aim of developing a specific intervention culture in open environment and alternative measures equalling the already existing intervention culture in closed environments.

Another measure has been the creation of new open environment facilities. At the present moment, the dispersion and ill state of the open regime facilities has interfered with the application of a generic and homogeneous treatment intervention pattern for open environment. We also have to point out the effort made by the penitentiary Administration during these past years in order to reach a number of collaboration agreements with public bodies and private organizations, thus allowing the creation of 4,862 new posts for the enforcement of community service sentences in seven years.

2 LEGISLATIVE BASIS AND MISSION

2.1 Legislative basis

The penitentiary social services are in charge of providing the inmates with the necessary social assistance, monitoring and controlling the enforcement of alternative measures. The penitentiary social assistance is regulated in the Articles 74 and 75 of the General Penitentiary Organic Law. The Royal Decree 515/2005 that establishes the circumstances applicable to the enforcement of community service, permanent location, certain security measures and suspension of the execution of prison sentences regulates the tasks of the social services in relation to these sanctions. Social action (acción social) is a public service provided by the different administrations as a consequence of the distribution of competences foreseen by the Constitution. Penitentiary social services are highly specialised, and their aim is to facilitate the re-entry in society to inmates and probation clients. The Vice-Directorate of Open Environment and Alternative Measures is in charge of controlling and organizing the penitentiary social services. The Royal Decree that created this new Vice-Directorate regulates the administrative activity of the penitentiary social services through circulars and instructions. Amongst these instructions we have to point out the Instruction 15/2005, regulating the social intervention management protocol in prisons and penitentiary social services.

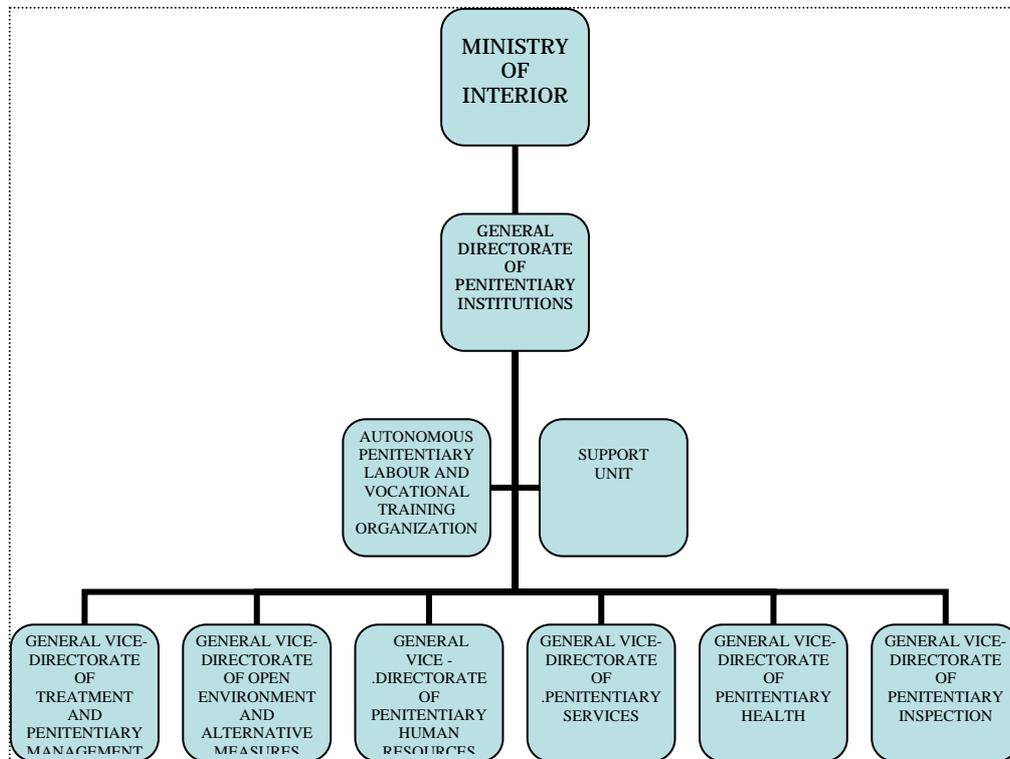
2.2 Mission and mission statement

The main task of the penitentiary social services is to facilitate and promote inmates' and probationers' integration into the community, working with their social environment, participating in the design and execution of treatment programs and establishing the necessary conditions so inmates, probationers and their families can accede to community services and resources.

3 THE ORGANIZATION OF PROBATION SERVICES

3.1 Main characteristics

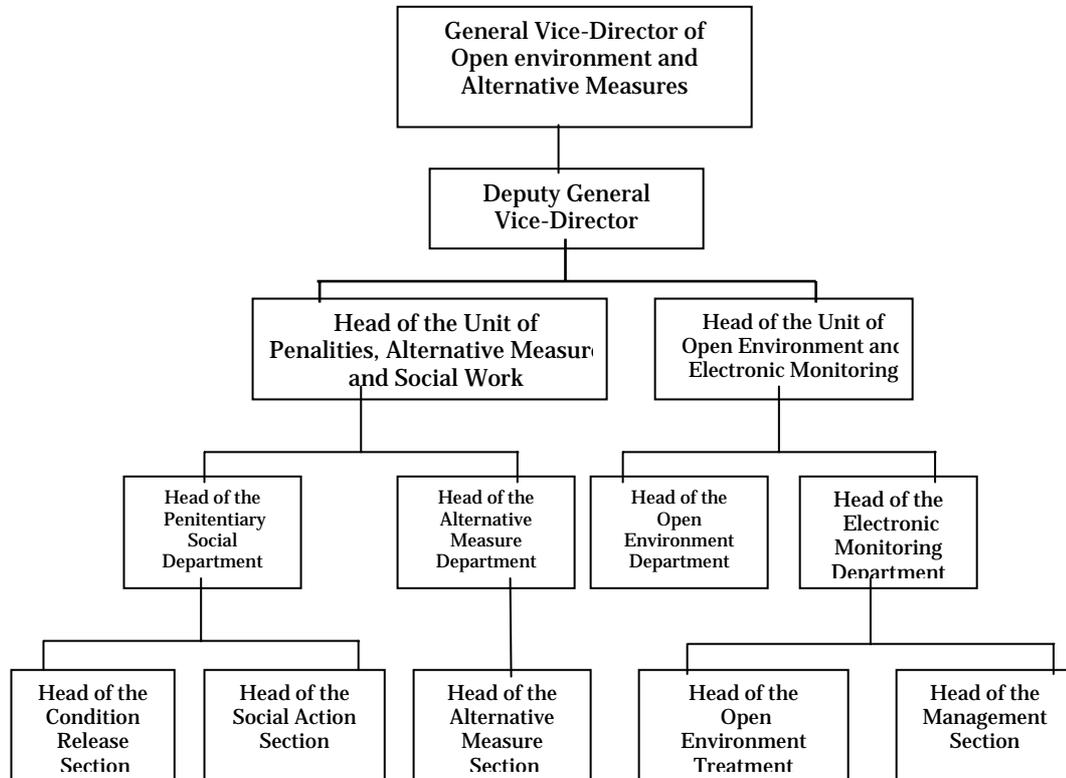
Organization chart 1: General Directorate of Penitentiary Institutions



The General Directorate of Penitentiary Institutions is the organization, within the Ministry of Interior, in charge of designing, organizing, and managing the penitentiary institutions, in all matters related to closed or open environments and community measures.

3.2 Internal organization

Organization Chart 2: General Vice-Directorate of Open Environment and Alternative Measures.



The Vice-Directorate of Open Environment and Alternative Measures was created by the Royal Decree 991/2006 of 8 September 2006. The Vice-Directorate has the following tasks:

- planning, coordination and management of social action for inmates, conditionally released persons and probation clients and their families;
- management, coordination and supervising of the enforcement of the following measures: community service, permanent location, suspension of the execution of prison sentences, conditional release and security measures. Elaborating the reports requested by the judicial authorities.

More specifically, its tasks are:

- management of the different forms of enforcement in open environment of progressed persons and inmates classified in third degree of treatment (tercer grado de tratamiento);

- execution, supervision and control of those measures ordered by judicial or penitentiary authorities;
- development of certain actions and treatment programs;
- search, location and management of external resources to make different ways of enforcement in open environments possible;
- programs and penitentiary intervention actions focused on personal promotion, social re-entry and labour insertion in open environments;
- management of those departments and territorial units in charge of providing and developing certain services, activities and functions whose management and supervision are both competence of the Vice-Directorate of Open Environment and Alternative Measures.

The Vice-Directorate is structured in one Deputy Vice-Directorate and two Units. The Unit of Penalties, Alternative Measures and Social Work (Área de Penas, Medidas Alternativas y Trabajo Social) is in charge of the planning, management and supervision of the enforcement of sentences:

- in conditional release;
- to non-custodial alternative measures.

The Unit of Penalties, Alternative Measures and Social Work has the following tasks:

- coordinating, promoting and monitoring the social services management of conditional release and alternative measures;
- reaching collaboration agreements with organizations with the aim of obtaining different resources for target groups. Managing these resources in order to provide assistance for inmates, conditionally released persons and their families;
- coordinating, promoting and supervising social assistance within the prisons through the social work departments;
- drafting instructions and regulations for a better application of the rules that
 - regulate social intervention for target groups. Drafting reports about different
 - intervention lines and human resources and equipments that help achieving the established purposes

The Unit of Open Environment and Electronic Monitoring (Área de Medio Abierto y Control Telemático) is in charge of the coordination and management of permanent location services. It has the following tasks:

- setting up aims and managing the enforcement of sentences in open environments;
- organizing, supervising and coordinating open environment programs;
- developing regulations and programs that use new technologies as an alternative to prison sentences;
- reporting about other countries and administration systems for alternative enforcement and use of new technologies;
- collecting and presenting statistic data. Drafting reports and proposals;
- designing training courses for the staff about new electronic monitoring technologies;
- drafting and spreading bulletins inside and outside the penitentiary administration;

- relations with other administrations and NGOs;
- drafting and monitoring collaboration agreements with other organizations and NGOs that work in “dependent departments” (unidades dependientes) and extramural institutions (instituciones extrapenitenciarias).

3.2.1 Probation workers

Social intervention is provided in each one of the 66 prisons and 51 penitentiary social services that depend administratively of the prisons. In every prison we can find a Social Work Department (Departamento de Trabajo Social), with a social workers team coordinated by a social work coordinator. This department is in charge of providing the social intervention within the prison. At the same time, social workers are part of the Intervention Team and members of the Treatment Board (Junta de Tratamiento). The number of social workers assigned to each prison depends on its size. Some prisons have only one social worker and other prisons have up to 14. There are about 320 penitentiary social workers and 60 social work coordinators. Social workers tasks are focused on social assistance to inmates and their families. They have to draft technical reports, collaborating in every aspect of the treatment. The coordinator has to “coordinate” the staff, organizing the penitentiary social service and working with the external social resources.

Penitentiary social services provide social intervention through 51 offices, 49 regional and 2 local ones. Every office has a head of the Department, social workers, support civil servants and program managers. The number of employees depends on the target population. In all, there are 51 heads of the Department, 56 support civil servants, 86 social workers and about 20 program managers. The head of the Department is in charge of the administrative unit, although this unit depends on the prison. The support civil servant has administrative and support tasks. The social worker tasks are: working with inmates, released persons and probation clients; drafting the necessary reports for other departments or prisons for leaves, transfers, degree progressions, etc. The program manager is in charge of developing certain measures, such as permanent location, community service, etc.

3.2.2 Education, training requirements and opportunities

Social workers hold a labour relationship with the penitentiary Administration, through an administrative contract. They are required to hold a university degree in social work. The rest of the staff is formed by civil servants that are admitted into public service through a special selection process. Depending on the assigned and performed tasks, a different education and training is required: high school diploma for administrative tasks, bachelors’ degree for counsellors, Social Insertion Centres coordinators, heads of Social Services, etc; masters’ degree for psychologists and penitentiary lawyers. Civil servants have to follow a special training program as part of their selection process. Every member of the staff attends continuing training programs regularly.

3.2.3 Other organizations involved in probation work

The General Directorate of Penitentiary Institutions has signed a number of collaboration agreements with several public bodies and private organizations for

the enforcement of alternative measures, and more specifically for the enforcement of community service measures. The contribution of the community with human and public resources is basic. Community service has to be performed always in public bodies or through common interest activities, showing a cooperating behaviour towards society. The task of the penitentiary administration is the coordination between the judicial system and the community resources. The penitentiary administration is in charge of supervising and controlling the enforcement of sentences, while organizations are in charge of providing tasks and places. Presently, there are 305 organizations collaborating in this field. We have to point out the Collaboration Agreement signed with the Spanish Federation of Local and Provincial Administrations (Federación Española de Municipios y Provincias: FEMP). The FEMP fulfils an important promotion and coordination task with local administrations focused in offering posts for the enforcement of community service measures. The action areas are: drug-dependency treatments; intervention with the mentally ill; intervention with domestic violence offenders; support to conditionally released persons; community jobs offer, etc.

4.1 General

We can find the basic regulation of alternative measures in the following legal texts:

- the Penal Code, passed by Organic Law 10/1995 of 23 November 1995, and its subsequent legal amendments, regulates the Spanish system of alternative penalties and measures;
- the Royal Decree 515/2005 regulates the circumstances for the enforcement of community service, suspension of the prison sentence and security measures;
- the General Penitentiary Organic Law 1/79 and the Royal Decree 190/96 that passed the Penitentiary Rules regulates the circumstances for the execution of prison sentences, the open regime and conditional release within the probation system.

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
Supervising/organizing etc. community service		x	
Supervising/organizing training or learning projects		x	
Supervising etc. drug/alcohol treatment		x	

	Pre-Trial Phase See: 4.2	Trial and Enforcement Phase See: 4.4	Post Release Phase See: 4.4
programs			
Supervising etc. sanction of probation		x	
Supervising etc. suspended sentence		x	
Supervising etc. semi-liberty		x	
Supervising etc. semi-detention		x	
Supervising etc. the mentally ill or retarded offenders (in-out patient orders)		x	
Supervising etc. special measures for drugs addicts		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	

4.2 Pre-trial phase

The intervention of social workers and other probation staff is not regulated in this phase of the adults criminal justice system. The Article 21 of our Penal Code foresees the compensation of the harm caused to the victim as an attenuating circumstance (circunstancia atenuante de la responsabilidad criminal). Such compensation can take place at any phase of the proceedings, as long as it is before the hearing.

4.3 Trial and enforcement phase

4.3.1 General

4.3.1.1 Suspended sentences

Regulated by the Articles 80 to 87 of the Penal Code.

Prison sentences to less than two years of imprisonment can be suspended as long as: it is the first time the convict commits an offence, his or her criminal records have been cancelled and he or she has met the resulting civil liabilities. The suspension prescribes that the convict does not commit a new offence during a certain period of time, depending on the length of the sentence that has been suspended. The duration of the suspension is of 2 to 5 years in case the suspended prison sentence is to less than 2 years of imprisonment, and of 3

months to 1 year, in case of lesser offences. Article 83 establishes the possibility of imposing a series of obligations or behaviour rules when the suspended sentence is a prison sentence. In the majority of the cases the Judge can impose them optionally. The Spanish probation system was centred exclusively in the requirement of not relapsing, without contemplating assistance and surveillance measures. These measures were introduced for the first time by the Penal Code of 1995.

These obligations can be:

- prohibition of going to certain places;
- prohibition of approaching the victim or some of his or her relatives or other persons, or prohibition of communicating with them;
- prohibition of travelling and staying away without authorization of the local Judge or Court;
- to appear personally before the Court or Administration Service, in order to report and explain his or her activities;
- to take part in vocational training, educational, cultural, driving or sexual education programs;
- to comply the duties that the Judge or Court considers indispensable for the social rehabilitation of the convict.

The supervision of these behaviour rules is entrusted to the penitentiary Administration services, having to report to the judge or court at least every three months.

1. After receiving the court order, a social worker from the External Penitentiary Social Services holds an interview with the offender. This interview allows to:

- assess the offenders' situation (family, labour activity, if he or she is actually following any treatment program, training course, etc.);
- the offender is informed about his or her rights and obligations, the imposed behaviour rules and the consequences of breaking these rules. The offender has to sign an Information Slip;
- in any case, and counting always with the offenders' agreement, an agenda of visits to the Penitentiary Social Services will be set up;
- a program or training course is established.

2. The prohibitions of approaching the victim, going certain places, and travelling and staying away without authorization are administrated, on one hand, through the previous information, and on the other hand, through the reports to the State Security Forces and Bodies, that will inform the Penitentiary Social Services in case of a breach. Additionally, if the person is already following some community program (e.g.: drug abuse treatment program) delivered by an external resource or service, the Social Services will contact this resource or service in order to supervise it.

3. When the measure consists in following a training course, treatment program or special therapy, the Social Services are in charge of organizing the diverting to an already existing community resource (public or private). If this external resource does not exist for specific treatment programs, the penitentiary Administration will provide it through the penitentiary psychologists working in open environment.

Once the resource is contacted, an execution plan is drafted, with a close collaboration with the resource managers. The Social Services will be specifically informed of any irregularity in its development. Once the course or program finishes, they will issue a report to the Social Services. An Individual Monitoring Plan is drafted, including the specific activities and fulfilment dates. This Plan is sent to the judge or court in order to get the necessary approval. Once the Plan is approved by the judge or court, its fulfilment starts. Any incident arising during the fulfilment of the Plan will be immediately reported to the sentencing judge or court, who will take the appropriate measures (asking for reports, leaving the suspension without effect, etc). Committing a new offence implies the automatic cancellation of the suspension, while the breaking of some obligations or additional duties can imply the substitution of one behaviour rule for another, the extension of the suspension term – in any case, for less than 5 years – or the cancellation of the suspension if the breaches are continuous. The Penal Code establishes as well a few special exceptions for certain cases. For drug-user convicts who have committed the offence as a consequence of their drug dependence, it is not a requirement that it is the first time they commit an offence. The sentences that can be suspended, thus, can have a duration of up to five years. In these cases the concurrence of the following requirements is peremptory:

- having committed the crime as a consequence of the drug-addiction;
- certifying that the convict is following a treatment program.

The convict assumes not only the responsibility of not committing a new offence, but also the responsibility of completing the treatment program. The suspension term from two to five years can be extended for two additional years when the reports and the lack of continuity of the treatment advise it. On the other hand, the Code establishes that in case the convict suffers from a serious disease and has insufferable pains, the sentence can be suspended without any requirements concurring, as long as the convict has not had any other sentence suspended for the same reason.

4.3.1.2 Substitution of prison sentences

Regulated by the Articles 88 and 89 of the Penal Code. Prison sentences to up to one year of imprisonment can be replaced by alternative measures such as fines or community service, as long as the personal circumstances of the convict, the nature of the action, his or her behaviour and his or her efforts to repair the harm advise it. One day of imprisonment is equivalent to two quotas of the fine, and to one day of community service. This measure cannot be applied to convicts that have committed three or more offences included in the same chapter of the Penal Code, during a period of time of up to five years and who have been convicted because of them. Exceptionally, prison sentences to up to two years of imprisonment can be replaced if the completion of the prison sentence can frustrate the prevention and rehabilitation aim of the sentence.

If the offender has been convicted for domestic violence offences, the imprisonment can be replaced exclusively with community service. In such cases,

it is required that the Judge or Court establishes the obligation of following specific re-education programs and psychological treatment. The obligations foreseen in the Article 83 can be imposed as well, as long as they have not been included as penalties in the sentence with a maximum duration equalling the duration of the replaced sentence. The partial or total breach of these obligations entails the execution of the initial prison sentence. In such a case, the time completed on the substitute sentence will be discounted. Substitute sentences cannot be replaced.

4.3.1.3 Community service

Regulated by the Articles 49, 53 and 88 of the Penal Code. The convict has to accomplish either certain unpaid public tasks focused in repairing the harm caused by the offence, or certain duties consisting in assisting victims of similar offences. The consent of the convict is necessary. The daily duration cannot exceed 8 hours and it cannot be imposed for more than 180 days. The community service can be imposed as the main penalty for some offences, or more frequently, as a substitute for a fine penalty (one day for every two days of the fine or one prison sentence to up to two years of imprisonment). It is the competence of the Penitentiary Supervising Judge (Juez de Vigilancia Penitenciaria) to control its compliance, and the Penitentiary Social Services are in charge of monitoring it.

4.3.1.4 Security measures

Regulated by the Articles 95 to 108 of the Penal Code. Security measures are indicated for those cases in which the convict is declared exempted from criminal responsibility. Security Measures can be custodial or non-custodial. Custodial security measures can be internment in a psychiatric centre, in a detox centre or in a special education centre. Non-custodial security measures can be: professional disqualification; expulsion from the national territory for legal non-residents in Spain; obligation to live in a certain place; prohibition to live in a certain place; prohibition of going to certain places; prohibition of approaching the victim or other persons; prohibition of communicating with the victim or other persons; following external health treatments; attendance of training, cultural, educational, sexual education or professional programs; family custody; restriction of the right to drive motor vehicles and motorcycles; and restriction of the right to carry weapons. If penalties and security measures concur, the security measure susceptible of being taken into account for the time calculation of the sentence will be completed in the first place. Once the security measure is completed, the enforcement of the rest of the sentence can be suspended (as long as it is no longer than its duration), or a non-custodial security measure can be applied as well. The Sentencing Court at the request of the Penitentiary Supervision Judge can alter the security measures. They have to be at least annual. Depending on the evolution of the case, the continuity of the security measure can be requested. Its complete suspension, substitution by another

measure or its suspension for a maximum amount of time equalling the remaining serving time can be requested as well with the requirement of not committing another offence.

4.3.2 Pre-sentence report

Nor the Vice-Directorate of Open Environment and Alternative Measures nor the departments for social work from each prison are responsible for submitting pre-sentence report to the courts.

4.3.3 Probation procedures and processes

The procedures for the staff in charge of the enforcement of community service measures are regulated by the Instruction 15/2005 of the General Directorate of Penitentiary Institutions, that establishes the necessary documents and activities that have to be used in social intervention. Basically, the main tasks of the staff are: monitoring and controlling the adequate fulfilment of the established obligations; reporting to the competent judicial authorities about the enforcement of measures and the unexpected circumstances that can come up; promoting re-entry through social work techniques; searching the adequate community resources for the target group; and awakening the awareness of society. The established procedures are Supervision of Conditionally Released Persons, Community Service Procedures and Procedures for the Conditional Suspension of the Execution of the Sentence.

4.3.3.1 Supervision of conditionally released persons

The activities can be divided in a preliminary phase and an enforcement phase.

4.3.3.1.1 Preliminary phase

- once initiated the conditional release dossier, the inmate has to be interviewed in order to state where he or she is planning to live, how he or she is going to earn his or her living and if he or she accepts the supervision and control of the Penitentiary Social Services;
- interview of the family or organization by the penitentiary social services of the city where the released person is going to settle down, verifying his or her future work activity and/or future means to earn his or her living and the social and family environment for re-entry;
- drafting a Conditional Release Individual Program and Supervision Plan, proposing one or several of the behaviour rules or measures foreseen in the Articles 83 or 96.3 of the Penal Code. The social worker will inform the person to be released about the requirements of the program;
- the Regime Vice-Direction will give a copy of the conditional release sentence to the Treatment Vice-Direction so the Treatment Board can draft the final

Individual Program and Supervision Plan, incorporating the behaviour rules and measures established by the sentence.

4.3.3.1.2 Enforcement phase

- the Head of the Penitentiary Social Service will interview the released person during the following week of his or her release in order to inform him or her about his or her situation. During the interview the released person will be given a new appointment within a month at the latest;
- the Conditional Release Slip and the Clients Slip have to be filled out and filed away in the discharge file, adding the documents and the social dossier sent by the prison;
- the social worker will interview the released person in order to inform him or her about both the Individual Plan and the Supervision Plan;
- when the sentence imposes the released person some behaviour rule or measure (from the Articles 83 or 96.3 of the Penal Code) that requires some specific intervention, the case will be monitored and re-directed to the adequate resource;
- an adequate supervision of each case will be carried out, reporting about the evolution of the released person. The social worker will interview the released person at least once a month;
- the Penitentiary Supervision Judge, the prison and the Vice-directorate of Treatment and Penitentiary Management will all be informed about any unexpected circumstance that comes up. The Director of the prison will fax a report to the Director of the prison of origin and to the penitentiary social service informing about the re-admission in prison of a released person;
- once the conditional release is completed, the penitentiary social service will send the social dossier to the prison, where it will be filed;
- the Head of the Penitentiary Social Service supervises and decides on the correct application of the different action procedures regarding the conditionally released persons;
- the Head of the Penitentiary Social Service drafts the activity performance, assesses the outcomes and makes improvement proposals.

4.3.3.2. Community service procedures

These activities take place in an enforcement phase.

4.3.3.2.1 Enforcement phase

- once the Penitentiary Social Service from the city of residence of the convict receives the court order, the convict has to be summoned in order to interview him or her;
- the convict will be interviewed in order to find out about his or her personal situation, labour skills and social environment, so the service can offer him or

- her the available posts, specifying what the community service and the schedule are going to be. The convict will sign the Service Agreement;
- then the convict is going to fulfil the community service measure in a different city or with a different organization, and there is a collaboration agreement, the social service from the city of destiny can carry out the initial interview, reporting the penitentiary social service of origin so they can make the proposal to the Penitentiary Supervision Judge;
 - the service proposal will be sent to the Penitentiary Supervision Judge. The Judge will either give his or her consent or make the necessary amendments;
 - once the Penitentiary Supervision Judge accepts the service proposal, the Social Dossier is opened and the Clients Slip filled out;
 - the convict will be informed about the assigned service;
 - during the enforcement of the community service, the correct fulfilment of the measure will be monitored through meetings and visits;
 - the Penitentiary Social Service will report to the Penitentiary Supervision Judge about the monitoring of the community service: absenteeism, low performance, sick leaves, etc.;
 - once the measure is served, the Penitentiary Social Service will inform the prison director so he or she can report about this circumstance to the Penitentiary Supervision Judge.

4.3.3.3. Procedures for the conditional suspension of the execution of the sentence (articles 80 tot 87 of the Penal Code) and Security Measures (articles 95 to 105 of the Penal Code).

4.3.3.3.1 The activities are:

- Once the Penitentiary Social Service receives the court order establishing the suspension of the security measure, the following actions have to be carried out:
 - assessing the information sent by the judicial authority;
 - interviewing the client, and, if necessary, his or her family;
 - contacting the resource where the client is following the treatment or program, or searching for it, if necessary;
- the sentence suspension and security measure slip and the individual monitoring plan are filled out and sent to the judge or court in order to get the necessary approval;
- the social dossier, clients slip and interventions file are opened;
- once the sentencing judge or court gives the approval to the Individual Monitoring Plan, the case will be diverted to the corresponding Service or Centre so the program or treatment can be started or continued;
- once the fulfilment of the measure is initiated, the Penitentiary Social Service has to monitor it, reporting to the corresponding judge or court at least every three months if it is a suspension or annually if it is a security measure. In case of one of the imposed rules being broken, an incidents report will be sent to the judge or court and to the Vice-directorate of Treatment and Penitentiary Management. When the alteration of any of the personal circumstances of the convict advises a change in any of the imposed behaviour rules, the penitentiary social service will make a substitution or suspension proposal to the judge;
- when the suspension or measure term is over, the Judge or Court will be informed.

4.4 Post-release phase

The Article 25.2 of the Spanish Constitution establishes that prison sentences have to be focused in social re-entry and re-education. In order to achieve this aim, the Article 72 of the GOPL establishes that “prison sentences will be fulfilled under the scientific individualization system (sistema de individualización científica) “, divided in degrees of treatment (grados de tratamiento), the last one being the conditional release. The degrees are numbered correlatively. The first one corresponds to a maximum-security life regime, the second one to a medium-security ordinary life regime in a close environment and the third one to an open environment. The open environment is intended for inmates classified in the third degree of treatment that can continue their treatments in a semi-liberty regime on specific facilities. There are two basic categories: full and restricted.

- full open regime has the following characteristics: mitigated control measures; self-care; social normalization; preparation for re-entry, providing the inmate, if possible, with external services assistance; collaboration with public and private organizations that work for inmates' assistance and re-entry in society. Inmates have to sleep 8 hours in the penitentiary facilities. During the day they perform different activities, such as working, attending training programs, therapeutic assistance, etc. They usually enjoy weekend leaves;
- restricted open regime is for inmates classified in third degree of treatment that require a special regime due to their individual characteristics, such as criminal path, abnormal personality, incapability to perform any professional activity once released, etc. In these cases, weekend leaves and day outings are restricted and they have to follow an individual plan.

The Article 86.4 of the Penitentiary Rules foresees the possibility of inmates sleeping in their homes under electronic monitoring (*vigilancia electronica*) or other control devices. In these cases, they have to stay on the penitentiary facilities just for the time fixed in their treatment program in order to take part in treatment activities, interviews and personal controls. Up to the 31 December 2006, 3,215 inmates had followed the program and 890 of them were wearing at the moment an electronic bracelet. Up to the 30 March 2007, the total number amounted to 3,635 inmates and 1,211 of them had been authorised to wear such device. Drug-dependant inmates that need to follow a specific detox program can be admitted in public or private external institutions, such as therapeutic communities (*comunidades terapéuticas*) and special education centres (Article 182 of the Penitentiary Rules). These admissions are conditioned to the sheltering institution giving its approval to the specific treatment program, the inmates consent and the existence of monitoring program drafted by the prison. These admissions have to be reported to the Penitentiary Supervision Judge.

Within the special forms of enforcement of prison sentences, the Article 165 of the Penitentiary Rules foresees the existence of Dependant Units (*Unidades Dependientes*). These units are architecturally separated from the prison, preferably in ordinary buildings, with no external distinctive sign. They are designed for the enforcement of sentences in open regime for inmates classified in the third degree of treatment. External organizations are in charge of managing training, work and treatment programs, while the penitentiary Administration coordinates and controls.

4.4.1 Conditional release

Conditional Release is regulated by the Article 90 and subsequent ones of the Penal Code. The conditional release is the advancement of the convict's release from prison. The convict is released under parole for the last remaining part of the sentence. There are some general requirements for the conditional release: the convict must be classified in third degree of treatment, he or she should have served the $\frac{3}{4}$ parts of the sentence, and the penitentiary services have to make a positive prognosis on his or her rehabilitation. Exceptionally, it is possible to anticipate the conditional release for convicts that have served the $\frac{2}{3}$ parts of

their sentence, if they have taken continuous active part in cultural, professional or occupational activities. This possibility cannot be applied in case of terrorism or organized crime. Likewise, and exceptionally, convicts over 70 or convicts who suffer a serious and incurable disease can be conditionally released without having to complete a fixed part of the sentence.

The Penitentiary Supervision Judge can request that the conditional release concurs with certain behaviour rules included in the Article 105 of the Penal Code, such as: following medical centre programs, attending educational, professional, or sexual education programs, etc. Conditional release can be revoked if the convict commits a new offence or breaks the imposed behaviour rules. The convict will therefore return to prison, although the time served in conditional release will be discounted from the total serving time.

4.4.2 Amnesty and pardon

The Spanish Constitution, in its Article 62, forbids general amnesties. Individual pardons are a gracious measure granted to sentenced convicts by the King. The Ministry of Justice has to make the formal proposal after a previous deliberation of the Cabinet of Ministers. The convict, his or her family, or anyone in his or her behalf can request it. The penitentiary legislation, in the Article 206 of the Penitentiary Rules, foresees the granting of individual pardon as a penitentiary benefit for certain convicts. It is peremptory that on these convicts concur, during a minimum period of time of two years, continuously, and in an outstanding manner, a series of circumstances that endorse their social re-entry. On these cases, the Treatment Board makes a formal petition to the Penitentiary Supervision Judge that will be conducted afterwards, as in the preceding case.

4.5 Care and after-care outside the criminal justice system

Released persons that have served a prison sentence of more than 6 months of imprisonment have the right to receive an allowance during a maximum period of 18 months, as long as they have not received a suitable employment offer during the 15 days following their release (Article 35 GPOL). Other requirements are:

- being unemployed;
- registering as employment seeker during the first month after the release;
- not having rejected an offer during the past month;
- not receiving any income over 75% of the minimum wage;
- not having the right to receive a contribution pension.

5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION

5.1 Finances

The probation services described in this chapter are financed with the General Directorate of Penitentiary Institutions annual budget. The total budget for the General Directorate in 2006 was 1,018,876,460 euro's. On Chapter I – human resources – with a total budget for the penitentiary system of 633,423,000 euro's and on Chapter IV – for prison expenses -, with 285,655,380 euro's there is no difference made between the two different budget concepts of open environment management and closed environment management. The only Chapter in which this difference can be made is Chapter IV, about grants to NGOs and private organizations that aid conditionally released persons, mothers in prison, enforcement of non-custodial measures, sentence suspension and community service with a budget of 1.772.178 1,772,178 euro's.

5.2 Accounting

The accounting of economic resources for open environment and community sanctions is the same as the accounting of the rest of the administration services, and it is executed according to the General Budgets Law (Ley General Presupuestaria). The expenses are controlled by the Delegate Intervention of the Ministry of Interior (Intervención Delegada del Ministerio del Interior) and the Accounts Court (Tribunal de Cuentas).

5.3 Registration systems and evaluation procedures

The Penitentiary Social Services (PSS) have a registration system that starts the moment the criminal file is received. This system foresees the collection of personal and criminal information (court orders, sentences, offences, etc), as well as information about the allocation of the resources used during the enforcement of the sentence. There is a good practices procedures handbook for the PSS. This handbook regulates their operation system, assigning duties to each member of the staff.

The PSS make several monthly reports: one statistics report (during the first 5 days of the month) and one complete management report (during the first 15 days) gathering all the necessary managerial information about each measure and sanction. This information is used for assessing each PSS and for adopting decisions about the achievement of the established aims. Monthly, the PSS have to report about the fulfilment of court orders by domestic and gender violence offenders. Presently, each PSS has an independent database, although a central database is being developed. This central database will manage all the alternative measures, procedures, communications and statistics. It will be shared by all PSS and the Central Service, so anyone can look up information in dossiers and files, reviewing programs, and elaborating reports.

The Central Service has to issue a monthly report and any other requested report. Every month, a report about conditionally released persons under special supervision has to be drafted, and every three months, a report about conditionally released persons with serious diseases has to be issued.

6 PROBATION CLIENTS' RIGHTS

There is no probation clients' rights system different to the general system for inmates foreseen by the penitentiary and criminal legislation. Generally, the Penitentiary Supervision Judge is in charge of guaranteeing the observance and safeguarding of convicts and probationers rights.

7 NEW DEVELOPMENTS

As a consequence of the subsequent legal amendments carried out since 1995, the Spanish penitentiary Administration had to design a new panel re-assigning tasks, services and activities in community and open environment intervention. Open environment, up to very recently, was poorly developed in everything that referred to the targeted population. The rate during the last 10 years was 12-13 %, while at present it has grown to 16%. To address resource assignment and the lack of specific organization models for the management of alternative measures, an action field that requires specific resources and a separate budget was recently entrusted to the penitentiary administration. The present Spanish penitentiary Administration found a big deficit of open environment posts due to past administrations' lack of thrust in this field. This deficit has been levelled through two open fronts: firstly, re-defining new classification in third degree criteria by the Central Service of the General Directorate of Penitentiary Institutions, thus achieving a significant increase in open environment population; and secondly, creating new specific posts in Social Insertion Centres (Centros de Inserción Social) as a part of a general penitentiary facilities renovation plan.

The new Centres Amortization and Creation Plan (Plan de Amortización y Creación de Centros), signed by the Cabinet of Ministers on 2 December 2005, foresees the building up of 31 social insertion centres during the next 5 years. During the present term, 9 social insertion centres have been opened. The significant increase in the application of alternative measures by courts and judges has forced the penitentiary administration to re-define new aims and strategies promoting new collaboration agreements with social organizations for the enforcement of sanctions within the community. Amongst the short-term aims and strategies of the Vice-directorate of Open Environment and Alternative Measures, we have to point out the following:

- extending the offer of programs and resources for the enforcement of community service sanctions through specific collaboration agreements thereby controlling their quality and efficiency. Presently, 305 organizations hold collaboration agreements with the penitentiary Administration for the enforcement of alternative measures. Likewise, besides continuing with the awareness campaign for organizations, entities and public and private institutions, several collaboration agreements for developing therapeutic treatment programs for probationers have been reached with the Psychologist Association and some public and private universities;
- re-dimensioning the resources assigned to open environment and community service sanctions, taking into account the increasing target population, as well as the specific intervention programs that have to be developed. During this year we are going to hire 50 psychologists and 95 social workers for penitentiary social services and social insertion centres, in order to develop treatment intervention programs, focused preferably in domestic and gender violence. A basic catalogue including a list of available posts in social insertion centres is being drafted so new centres can be equipped adequately;

- promoting, diversifying and pursuing the specialization of penitentiary intervention programs focused on personal development, social re-entry and labour insertion of those persons serving in an open environment. During the next three years, a new Program of Support for Labour Insertion of Imprisoned and Conditionally Released Persons (Programa de Acompañamiento para la Inserción Laboral de Personas Privadas de Libertad y en Libertad Condicional) will be started by the Autonomous Organization. Our plan is to extend it to 2,100 inmates, 429% more than in 2004;
- due to the recently entrusted tasks that require a precise coordination with different administrations and organizations, the penitentiary social services have to be reorganized, promoting the functional autonomy of territorial structures;
- computer equipment: developing and starting up the computer system in 51 new penitentiary social services. A Collaboration Agreement with the Ministry of Industry has been signed. This agreement will allow the computer equipment of all social services and their access to information nets and information management. Likewise, in June 2007, a new database that will allow processing the information more effectively will be set up.

8 IMPORTANT PUBLICATIONS

N. Torres Rosell, *La pena de trabajos en beneficio de la comunidad (The community service measure)*, 2007, Tirant lo Blanch, Valencia. In this book (her PhD thesis), the author makes a comparative research of the regulation of these measures in several European countries (UK, Germany, France, Belgium, Italy and Portugal), and the regulation in our country, offering ideas for the continuation and promotion of their application by the Spanish criminal law.

A. Tellez Aguilera, *Nuevas penas y medidas alternativas a la prisión (New alternative measures)*, 2005, Sofer. Madrid. Within the framework of alternative measures, this book analyses the backgrounds and present regulation of permanent location measures, community service, suspension and substitution of prison sentences, and the tasks assigned to the Penitentiary Supervision Judge.

M. Serrano Pascual, *Las formas sustitutivas de la prisión en el Derecho Penal español (Alternative measures to prison sentences in the Spanish Criminal Law)*, 1999, Trivium. Madrid. This book makes a detailed assessment of alternative measures and their contribution to the achievement of social re-entry.

ML. Maqueda Abreu, *Suspensión condicional de la pena y probation (Suspensión of the execution of prison sentences and probation)*, 1985, Ministerio de Justicia, Centro de Publicaciones, Madrid. It is a detailed assessment of the historical development of the probation system and its regulation in comparative law and Spanish law.

J. Cid Moline, E. Larrauri, i Pijoan *Penas alternativas a la prisión (Alternative measures to prison sentences)*, 1997, Bosch. Barcelona. This book makes a review and a critical reflection of the alternative measures introduced by the 1995 Penal Code.

MA. Nuñez Paz, *Alternativas a la pena privativa de libertad: suspensión del fallo y suspensión condicional de la pena (la aplicación de la Probation en el derecho positivo español (Alternative measures to prison sentences: sentence suspension and suspension of the execution of prison sentences-Probation in Spanish Law)* in "Reflexiones sobre las consecuencias jurídicas del delito" (Reflections about the legal consequences of crime"), 1995, Madrid.

T. Chapman, *What matters in probation/What works in probation and youth Justice: developing evidence-Bases practice*. 2005, British Journal of Criminology N° 5, 2005.

R. Morgan, *Rethinking what works with offenders: probation, social context and desistance from crime*, British Journal of Criminology , n°4, 2003.

AAVV (2003), "Moving Probation forward. Evidence, arguments and practice", 2003, Wing Hong Chui. Mike Nellis.

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9 CONTACT DETAILS

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ANNEX 1

STATISTIC DATA ALTERNATIVE MEASURES POPULATION AND OPEN ENVIRONMENT 1st SEMESTER 2006/2007

	2006	2007
Community Service		
Received Sentences	847.-	3.863.-
Served Sentences	227.-	386.-
Presently being fulfilled		2.121.-
Active as at 30.05.07		11.335.-
Custodial Security Measures		
Received Sentences	122	223.-
Served Sentences		31.-
Presently being fulfilled		178.-
Active as at 30.05.07		281.-
Non-custodial Security Measures		
Received Sentences	513	614.-
Served Sentences		115.-
Presently being fulfilled		697.-
Active as at 30.05.07		1.041.-
Suspensions of the sentence executions		
Received Sentences	1.592	3.446.-
Served Sentences		318.-
Presently being fulfilled		3522.-
Active as at 30.05.07		4.872.-
Conditionally Released Persons		
	5851	6217
Semi-liberty Persons		
	5.144*	6.488*

Received Sentences = up to 30.05.07, not accumulating the year 2006.

Served Sentences = up to the same date.

Sentences presently being fulfilled = persons presently serving their sentences, without taking the starting date into account.

Active = in force

*This number represents the 14,3% and 16,9%, of total convicts.