

Chapter 2

Austria

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1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM

1.1 The start of the probation services in Austria

The Association NEUSTART - Probation, Mediation, Social Work ("Verein - NEUSTART Bewährungshilfe Konfliktregelung, Soziale Arbeit") or just NEUSTART underwent major changes in the year 2001, with a reform of the structure of the organization, a new logo and the new name NEUSTART (formerly VBSA, Association for probation services and social work). This new name was necessary because the clients were not only suspects or offenders any more but also victims.

Currently, NEUSTART works with 600 employees and 780 volunteers in 14 agencies, making it one of the largest job providers in the field of social work in Austria. Furthermore, in 2004 NEUSTART won a European bid to lead the probation service, court support and, to a limited extent, mediation in penal matters in certain project areas in Baden -Württemberg, Germany. For Europe, such a contract with a non-profit association is unique. After finishing the project successfully by the end of 2006, NEUSTART was awarded the contract for the whole Land of Baden–Württemberg and a subsidiary is now in charge to do the work. What is today a private association with innumerable tasks and objectives, started out as a private initiative in 1957. In the 1950s probation services consisted virtually only of supporting persons released from custody with donations of money or goods. During those years there was a marked increase in juvenile delinquency. The only alternative to custodial sentences and their execution at the time was the so-called protective supervision (Schutzaufsicht), which dated back to 1920 and was rather ineffective. The experience made by the probation systems in other countries began to be increasingly discussed in Austria, particularly in legal circles and among psychologists. One event in particular, a riot of juveniles in 1952, in a closed institution established for youngsters with problematic behaviour, provided the impetus to look for alternatives to such camps. In 1955 a judge in the Tyrol was the first to supervise a juvenile along probationary lines. Judges at juvenile courts called for the introduction of probation services. The Task Force for Probation Services (Arbeitsgemeinschaft für Bewährungshilfe) was founded in 1957 and eventually developed into the above-mentioned Verein für Bewährungshilfe und Soziale Arbeit (VBSA). In 2001 this name was changed to NEUSTART - Bewährungshilfe Konfliktregelung, Soziale Arbeit.

1.2 Important developments

The first important milestone in the development of the probation service system was the Juvenile Court Act (Jugendgerichtsgesetz) of 1961. This Act took into consideration all the experiences gathered by the members of the Task Force, who, with one exception, were all volunteers. The probation system started to operate on its own law. The general political attitude towards crime at the time was not a particularly liberal one. But a highly committed minister of justice (Dr. Christian Broda, who implemented many major reforms and had a decisive

impact for many years, not only on the probation system) was able to win the support of all political parties for this new law.

1.2.1 Chronology of further developments

- 1964: implementation of probation was entrusted to the, as it was then called, Association for probation and social youth work (Verein für Bewährungshilfe und soziale Jugendarbeit). Special emphasis was placed on the development of probation services in the federal provinces (Bundesländer) of Austria.
- 1969: the Probation Services Act (Bewährungshilfegesetz) was passed. It provided a legal and organizational framework and detailed the responsibilities, rights and obligations of probation workers.
- 1975: a comprehensive criminal law reform accompanied the modernising of society as a whole. Among other modifications probation services were extended to adults. As a consequence, the association changed its name to Verein für Bewährungshilfe und Soziale Arbeit (VBSA). It extended its services by establishing central agencies for aftercare. These were open to all persons released from custody. Furthermore the provision of assisted housing offered the possibility to open new places to stay for different groups of offenders and thus broaden the services offered.
- 1980 amendment of the Probation Services Act brought an end to discussions on nationalization (see below) of the VBSA. Up to this amendment several opinions and some support existed within the Ministry of Justice to establish like in other countries a public probation system.
- 1988: a new Juvenile Court Act was passed which, among other provisions, provided the legislative basis for mediation in penal matters for juveniles.
- 1991: the start of comprehensive structural reforms of the VBSA with the aim of putting the VBSA in a position to implement its mandates on a contractual basis. The position of the VBSA was that the probation system and other services should be carried out by a private non profit organization. In reality this was already the case in Austria since the existence of the VBSA, but the political system never made a final decision with all its necessary consequences. Therefore a working group with the participation of the Ministry of Justice developed suggestions for the structure, the tasks and responsibilities of the VBSA as well as for a controlling and report system to the Ministry. Thus a clear basis for the relationship between the Ministry and the VBSA in the future should be described.
- 1994: the Federal Ministry of Justice and the VBSA entered into the General Contract (Generalvertrag), which states the obligations and competencies of the Federal Ministry of Justice as the purchaser and the VBSA as the provider of services. This marked the successful completion of the structural reforms and followed the suggestions of the working group.
- 1999: parliament passed the Act on Diversion Measures (Diversionengesetz). The province of Styria was integrated into the VBSA organization, which meant that the VBSA became responsible to provide its service in all parts (provinces) of Austria.¹ Also in 1999 the VBSA started a project to support victims of severe offences.

¹ A detailed description of the history of VBSA between 1957 and 1989 is contained in the brochure "*Probezeit*", see Index.

- 2001: a major reform of the organization was carried out, which reduced the number of 42 agencies (Einrichtungen) in the nine provinces of Austria to 14. Management staff was also reduced significantly. The association changed also its name from VBSA to Association NEUSTART - Probation, Mediation, Social Work (Verein NEUSTART-Bewährungshilfe Konfliktregelung, Soziale Arbeit, or just NEUSTART). A new name was necessary since the clients had changed over the years. They were no longer just offenders but also victims of crime.
- 2004: NEUSTART won a European bid to lead the probation service, court support and, to a limited extent, mediation in penal matters in certain project areas in Baden-Württemberg, Germany.
- 2007: a new contract for the duration of 10 years stipulates that a subsidiary of NEUSTART is in charge for all areas of Baden-Württemberg.

1.2.2 Private - public

For many years there have been discussions on whether the probation service system should be private or public. The political parties as well as the policy-makers within NEUSTART kept changing their points of view. In 1969, for instance, the implementation through private associations was made part of the Probation Services Act of 1969 and NEUSTART was entrusted with the mandate for its implementation. But this was only seen as a temporary provision until establishment of a public service. The advantages of a private probation service, however, in particular the relative independence of social work practice as well as the opportunity to test new activity fields in model projects and the flexibility to respond to changes of the criminal law or society needs, outweighed any other forms by far. After it became clear that Austria was to join the European Union, the Ministry of Justice and the Austrian parliament decided to have probation services provided by a private organization.

In 1994 the General Contract between the Federal Ministry and NEUSTART was entered into force. This contract states that the Federal Ministry of Justice is the purchaser and NEUSTART is the provider of services and clearly defines responsibilities and functions. Part of the contract are for example a catalogue of all the services for which NEUSTART is paid for by the Ministry, provisions for a controlling and reporting system, the duration of the contract and how to deal with certain circumstances which might occur in the future like the closure of NEUSTART. Important is also a list of decisions which have to be agreed by the Ministry in advance or where it has a right to veto.

1.2.3 Professional – volunteer

The Juvenile Court Act of 1961 had provided for volunteer probation workers only. But it soon became clear that professional social workers with adequate training were needed. Nevertheless volunteers are still carrying out part of the work today. They are simply indispensable. Professional staff of NEUSTART includes social workers engaged in all fields of activities, which NEUSTART is in charge of. Volunteer work is only done in the area of probation. It requires standards like recruitment, training, and selection of eligible cases, supervision by professional staff and a limitation of caseload from between one to five cases.

With some exceptions (sexual offenders and clients with multi problems are excluded) voluntary staff does the same probation work as professionals.

1.2.4 One national organization - a number of decentralized associations

Today, we take it as logical and self-evident that statutory probation services are performed by a single organization throughout Austria, a system that provides many advantages, such as a uniform, high professional standard, or considerable weight in crime policy. But first, in 1968, the Constitutional Court (Verfassungsgerichtshof) was called upon to rule whether probation fell under the jurisdiction of the federal government or of the provinces. According to the Court's decision, probation falls under the jurisdiction of the federal government. Therefore the Ministry of Justice is responsible for probation service and not the nine provinces of Austria. After years of having two associations organising and doing probation work, the Ministry decided in 1999 to contract only with NEUSTART as their single partner.

1.2.5 Assistance for delinquents - repression and control

The vision and mission of NEUSTART places support of offenders or victims in the centre of its tasks. Therefore, most of the persons employed are social workers by profession. NEUSTART would not carry out services focusing on control measures only. On the other hand it is obvious that the notion of a probation service not only includes assistance but also an element of control.

1.3 Probation activities in a nutshell

In Austria the court or the public prosecution orders probation activities. The court orders that probation services are provided when a delinquent is given a conditional sentence (bedingte Verurteilung) or a conditional release (bedingte Entlassung). Public prosecutors may order probation activities until the beginning of the trial phase, provided that the client consents. Most of the probation activities comprise assistance to individuals; however, group work is also possible. Specific standards in support programmes are compulsory for certain target groups (defrauders, refugees, stalkers, drug addicts etc.). Violent offenders are enrolled in anti-violence training.

Every probation activity starts with a detailed case history. It forms the basis for the choice of support programme and the focal points in support work. Support activities are planned in the form of work concepts with support goals and stages of work, which are continuously reviewed. NEUSTART is not only in charge of probation activities throughout Austria but also carries out the following other socially constructive measures in penal matters:

- mediation in penal matters (Außergerichtlicher Tatausgleich or short ATA) for compensation between offender and victim (Act on Diversion Measures; for juveniles since 1985, for adults since 1992);
- acting as an intermediary for community service (Gemeinnützige Arbeit) under the Diversion Act, since 2000;
- aftercare (Haftentlassenenhilfe) offered to persons released from prison who are not on probation (post-release aftercare) on a voluntary basis (since 1975)

- assisted housing (Wohnbetreuung) for clients of the probation service and the post-release aftercare service in two of the nine federal provinces (since 1975);
 - work training (Werkstätten) for clients of the probation service and the post-release aftercare service in two of the nine federal provinces;
 - victim support (Verbrechensopferhilfe) in three federal provinces (since 1999);
 - trial support for victims (Prozessbegleitung) throughout Austria (since 2005).
- Currently, in two model projects, support by social workers to persons under electronic monitoring (Elektronische Aufsicht) after a conditional release from prison and intermediary activities in respect of community service as an alternative to prison terms for people who fail to pay fines are being tested. All services of social workers are documented in a computer programme, which also furnishes data for statistical and qualitative surveys. All professional and volunteer workers in 14 agencies in Austria do social work. The agencies are managed by Agency Heads; the Heads of Departments report to these and in turn are in charge supervision of the professional workers. The volunteer probation officers are organized in teams headed by professional and specially trained probation officers.

2 LEGISLATIVE BASIS AND MISSION

2.1 Legislative basis

The organization and provision of probation services in Austria is governed by the Federal Probation Services Act (PSA) of 27 March 1969 as amended by Federal Law Gazette I No. 113/2006 (Bundesgesetz über die Bewährungshilfe or BewHG, hereinafter referred to as PSA). In addition to sections on probation services, the PSA also contains the following socially constructive measures:

- the provision of housing for clients who do not have appropriate accommodation, a fact which would jeopardise the success of probation measures (Section 13 PSA);
- involvement of social workers in the diversion measures, i.e. mediation in penal matters (ATA) and community service, as well as in education and training courses (Sections 29 to 29b PSA) and
- aftercare (Section 29c PSA).

On the basis of Section 24 PSA a General Contract was entered into, whereby the Republic of Austria delegated these social-work duties to the association NEUSTART. Probation as a measure of special prevention may as a matter of principle be ordered for adults and juveniles (14 to 18 years of age) in the following context, whenever punishable acts are concerned:

- when a prison sentence or preventive measure linked with imprisonment is suspended or when the convict is conditionally released from imprisonment (Section 50 Par. 1 of the Austrian Criminal Code (Strafgesetzbuch/StGB), hereinafter referred to as CC);
- if a juvenile has been found guilty of a criminal act under reservation of a penalty or if the service of a prison term for a punishable act committed

- before the perpetrator had turned 21 is postponed until the perpetrator has completed vocational education (Section 50 Par. 1a CC);
- when a diversion measure has been ordered on probation (Section 90f of the Code of Criminal Procedure (Strafprozessordnung/StPO), hereinafter referred to as CCP);
- when preliminary probation services are provided during criminal proceedings (Section 197 CCP);
- when a criminal report has been filed but further proceedings or charges are dropped or suspended temporary (Section 35 Suchtmittelgesetz/Act on Addictive Substances).

Voluntary probation service is possible after an unconditional release from prison or after the end of a probation period in which probation services were provided (Section 27a PSA). Diversion measures, i.e. ATA (mediation in penal matters), community service and education or training courses are primarily proposed by the public prosecution or the court, if

- the facts of the case are sufficiently clear;
- the punishable offence is dealt by a single judge and not a panel of professional and lay judges, or a jury (usually when the maximum penalty does not exceed 5 years of imprisonment);
- no serious fault is assumed;
- the act did not result in loss of life;
- a penalty instead of a diversion measure does not seem indicated with a view to special or general prevention.

Diversion measures require the consent of the suspect. Charges are dropped with final effect if the diversion measure was successful. Pursuant to Section 49a CCP victims who could have been exposed to violence, a dangerous threat or an impairment of their sexual integrity are entitled to psychosocial and legal trial support (Prozessbegleitung). Also entitled are relatives of a person who was killed. NEUSTART is one of the organizations in charge of trial support. In some provinces NEUSTART also offers victim support that goes beyond trial support.

2.2 Mission and mission statement

NEUSTART is an association, which has been creating benefit to society in and for Austria with its services for 50 years. In Baden-Württemberg, NEUSTART gemeinnützige GmbH, a non-profit limited-liability company and 100% subsidiary of the Austrian parent, has a staff of 350 and works for more than 22,000 clients. "Our assistance creates safety and security" is the position reflected in the work of 598 professional and 780 volunteer workers in 14 agencies and the association headquarters. In 2006 roughly 39,400 persons were supported by NEUSTART. The costs of services and programmes amounted to about 35.7 million euro.

In its mission statement NEUSTART advocates a way of dealing with crime that does not rely on deterrence but work on the underlying causes. In terms of specific services, this means de-escalation and constructive resolution of conflicts instead of conviction and punishment, preventive work with juveniles and children, instantly available victim support and (re-) integration of perpetrators into society. Our mission, our services to people concerned by crime, in a nutshell

is work through the past, cope with the present and safeguard the future. The prevention of crime and its consequences is the supreme principle underlying our work, which is reflected in the three fields of activity:

- in victim support, to overcome victim status and regain self-determination;
- in perpetrator support, to avoid recidivism by assisting in re-integration;
- in prevention, to avoid potential conflict and give guidance for the constructive resolution of problems;

In the context of these measures, it should be remembered that social work is much more cost-effective than expensive detention measures. Victims of crime need special commitment from government, business and society as a whole. For this reason NEUSTART offers mediation in penal matters (Außergerichtlicher Tausgleich) and thus supports the victims' efforts that their needs and emotions are taken seriously and that they receive restitution, both emotional and material.

2.3 Crime prevention

Crime prevention and help in crisis situations are provided by means of information via institutions, social work at schools, assistance to juveniles, drug counselling and online counselling via Internet (help within 24 hours). Furthermore the goal of probation work or aftercare is to prevent offenders committing new crimes and creating new victims with the means of support for re-integration.

2.4 Victim protection

Under Austrian law there is no obligation for probation officers to see victims and offer them help. However, in probation services it is important to confront perpetrators with the acts they have committed and to make the impact on and consequences for the victims clear. Stalking offences are special cases. There is an internal guideline for probation officers to get in touch with the victims. Victims are offered support against the stalker who is seeking contact with the victim with all means. If the stalker tries to make contact, the victim can turn to the probation officer immediately. The stalker has to sign a written note of caution according to which he/she has to expect to be reported to police and charged if he/she tries to make contact with the victim. The goal is to enable the victim to be undisturbed and live free from anxiety, and to make the perpetrator stop.

In 1999 NEUSTART launched its crime victim support programme. The reason for this was that Austria had no qualified services for social work offered to victims with the exception of women and children suffering from domestic violence. NEUSTART crime victim support offers assistance in the form of visits from social workers to victims of mainly serious violent crimes. Women and children who had been victims of domestic violence were referred to the specialized institutions. 2005 psychosocial and legal trial support became an additional service offered to the victims of violent crimes. Social workers and lawyers accompany victims to court so that the victim feels stronger and safer in the proceedings and asserts his/her rights. This support programme is highly

successful; it is funded under a contract with the Federal Ministry of Justice. In Austria, numerous other associations offer trial support. In 2007 the Ministry of Justice decided that the work with victims and offenders should not be carried out in one organization. As a consequence NEUSTART had to close down its victim support as well as the psychosocial and legal trial support by the end of the year.

All things considered, it can be said victims have been the central issue of crime policy discussions in the past few years. This engagement with the victim led to numerous victim rights, mainly aiming at respectful treatment during proceedings, comprehensive rights to information, compensation and professional support.

3 THE ORGANIZATION OF PROBATION SERVICES

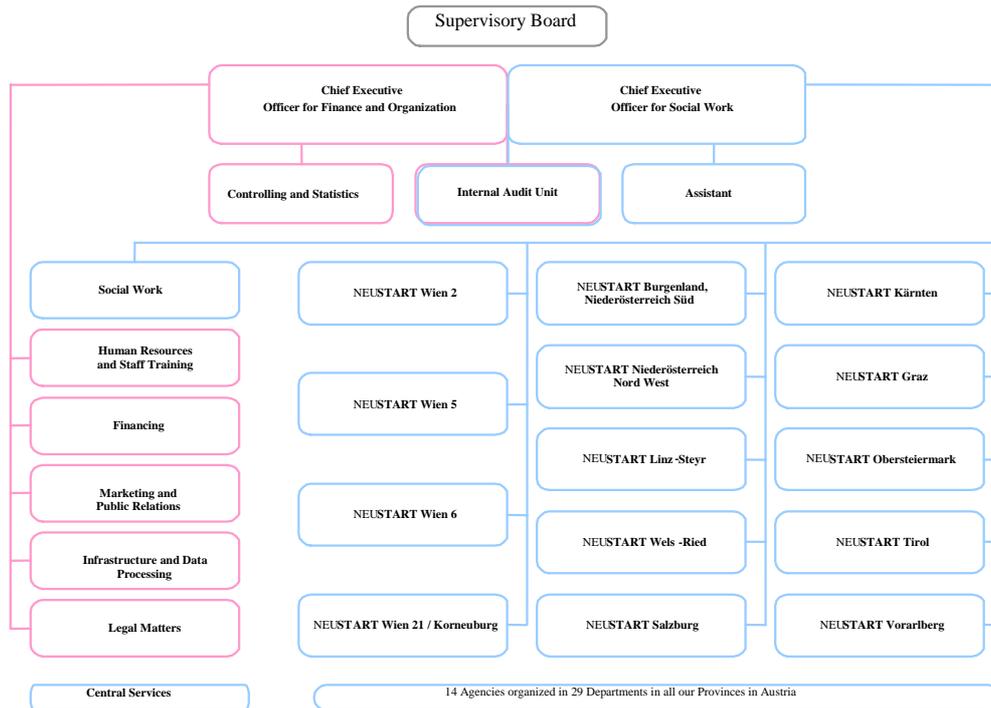
3.1 Main characteristics

In 1994, the association NEUSTART was mandated to provide probation services nationwide under a General Contract with the Republic of Austria represented by the Federal Ministry of Justice. In accordance with its organizational form as a non-profit association, its supreme body is the General Assembly (Generalversammlung), which elects the Supervisory Board (Aufsichtsrat) for a term of three years. By majority resolution, the Supervisory Board appoints one or more Chief Executive Officer/s (currently two), or CEO/s (Geschäftsführer) for a period of five years. The CEO(s) appoint(s) the top level executives for five years. NEUSTART has its own internal audit unit department directly reporting to the CEO(s). The staff of the audit department is hired with the consent of the Federal Ministry of Justice. Moreover, NEUSTART has a 100% subsidiary called NEUSTART gGmbH, which is active in the German Land of Baden-Württemberg. In 2007 NEUSTART gGmbH was entrusted with providing probation services, trial support and mediation in penal matters for adults within all parts of Baden-Württemberg.

3.2 Internal organization

The structural and procedural organization of NEUSTART conforms to the principles of a matrix organization and is based on regional responsibilities and the business process model underlying these. On the one hand, the focus is on having one officer in charge whose central task it is to keep the outcome of processes and the related operational principles geared to the needs of the service recipients and to optimise them; on the other hand, processes also have to be designed in such a way that the quality of services rendered is as required and the same throughout Austria.

Figure 1: organisational structure of NEUSTART



3.2.1 Probation workers

In addition to 14 directors of agencies who are in charge of the operational side, i.e. the practical provision of services in the regions, there are central services in charge of internal support processes nationwide, e.g. legal issues, marketing, personnel development, finances or the development of new social work services; these have overall process responsibility. Decentralised agencies are structured in 2 to 3 Departments. Depending on the size of the region the agencies serve, agencies may run additional locations to make sure that services are within optimum reach of clients. The departments are managed by Department Heads who are in charge of supervision of 10-20 social workers assigned to each department. The administrative workers report directly to the Agency Director.

Table 1: Staffing levels on 28 February 2007

(1 stands for one full-time equivalent)

Staffing levels	Probation work total	Management	Social work	Administration	Cleaning
NEUSTART - total	482.50	56.50	339.50	72.30	14.22
Percentage of female workers	63.21%	42.47%	54.42%	95.00%	100.00%
Percentage of part-time workers	36.79%	53.42%	51.02%	77.00%	100.00%
Average age	44.68	46.56	43.77	45.84	49.72
Length of service	13.34	16.34	13.76	13.30	12.38
482.49 full-time jobs are staffed with 598 persons.					

Table 2: The assignment of specialised personnel (social workers) on 28 February 2007 in the following areas:

Probation Services	192,07	Workshop	2,56
Community Service Intermediary	11,70	Crime Victim Assistance	2,20
Extra judicial Mediation	58,05	Trial Support	3,30
Post-Release-Aftercare	37,03	Assisted Housing	8,22
Juvenile Assistance	1,60	Drug Prevention	1,80
“Saftladen” Restaurant	3,60	Social Work in Schools	0,51
Projects (e.g. Electronic Monitoring)	10,98	Moreover, 775 volunteers work in the probation services area	

3.2.2 Education, training requirements and opportunities

The skills and qualifications required from professional social workers in charge of counselling and support in the individual service areas are evidenced by a diploma from a senior technical college (Fachhochschule) for social work. For all other positions, qualifications required depend on the central tasks and may be from a wide range of educational institutions. All specialised personnel in the agencies are organized in departments that have regular meetings. Reflection on cases is done in groups (for 5-10 participants) that exist in all the agencies offering a framework for an intense weekly exchange on case management. Up-to-date job profiles exist for all functions in the organization, describing objectives, responsibilities and detailed tasks. Organizational regulations comprise rules and guidelines, which differ by degree of binding force and

include a detailed description of services and processes. The Heads of central services (social work, personnel etc.) are in charge of updating and describing services. Quality workshops, which employees of all hierarchical levels participate in, serve the purpose of regular evaluation of processes and work aids so as to determine potential needs for change and development. Newly hired employees are carefully introduced to their jobs. mentor working in the same location gives practical guidance for one to two years, and reflection is done with an external expert in three to five weeks of seminars. The central service "Personnel and Personnel Development" prepares the introductory seminars and draws up an extensive annual continuing-education programme. The average number of days social workers spend at continuing-education events is five working days per year. Development needs of employees are agreed upon in the annual appraisal interviews seniors have with their staff.

3.2.3 Other organizations involved in probation work

Probation work is only provided by NEUSTART in Austria. Our Agencies cooperate closely with other social/welfare institutions in the regions and have entered into co-operation agreements with the Public Employment Service (Arbeitsmarktservice or AMS), the social welfare offices, agencies for the homeless, work projects, therapy institution etc.

4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

4.1 General

This chapter describes the legislative basis of probation activities, mediation in penal matters and intermediary activities for community service. These are social-work interventions that make it possible to waive criminal proceedings or the enforcement of a penalty. Public prosecutors or judges order them exclusively. In the other fields of activity of NEUSTART, i.e. post-release aftercare, probation and assisted housing, victim support and prevention, work with the clients is performed on a voluntary basis without court orders. For most of these voluntary services, the Probation Services Act contains provisions only on organization and financing. All social work services are subject to job profiles and relevant minimum and maximum standards defined for social work in the respective fields.

4.1.1 Probation

Probation has the legislative mandate to actively "strive to help the offender towards a way of life and attitude which will prevent him/her in the future from committing deeds which are subject to sanctions" (Section 52 Par. 1 CC). For this purpose a court may order probation if it deems it necessary in order to suspend an imposed sanction either completely or in part for the duration of a supervised

period. Section 50 of the Criminal Code provides for probation orders in the following cases:

- if a sentence is suspended conditionally in full (zur Gänze bedingt nachgesehen), which is possible in case of fines (Geldstrafe) or custodial sentences (Freiheitsstrafe) not exceeding two years (Section 43 Criminal Code);
- if part of a sentence is suspended conditionally; which is possible in case of fines or custodial sentences not exceeding three years (Section 43a Criminal Code);
- if a convicted person is conditionally released (bedingt entlassen) from a custodial sentence; which under various conditions is possible after serving half or two thirds of the sentence (Section 46 Criminal Code);
- if a detainee (Angehaltener) is conditionally released from a preventive measure accompanied by detention that is possible in cases of cessation of the assumed danger that was the basis for the detention (Section 47 Criminal Code).

The basis for a probation order is usually the fact that the court does not deem the implementation of a sentence (or at least not of the whole sentence) necessary, but deems supervision by a probation worker necessary, in order to prevent the convicted offender from committing further offences. A precondition for each type of conditional suspension or release from a custodial sentence is furthermore that the (continued) execution of the sentence is not required in order to prevent others from committing offences. In cases of juvenile offences (offences committed by persons between 14 and 18 years of age), Section 22 of the Juvenile Court Act also provides for the possibility of probation orders for the following cases:

- temporary suspension of proceedings (vorläufige Einstellung eines Strafverfahrens auf Probe);
- provisional suspension of penalty (Vorbehalt des Ausspruches der Strafe), and
- deferral of the execution of a custodial sentence (Aufschub des Vollzugs einer Freiheitsstrafe).

In accordance with §35 of the Act on Addictive Substances, the public prosecutor can temporarily suspend criminal proceedings related to an offence involving addictive substances or accessory crimes, if the suspect (among other measures) agrees to supervision by a probation worker. The same conditions apply to the temporary suspension of criminal proceedings by a court. With the consent of the suspect, provisional probation (vorläufige Bewährungshilfe) can be ordered before sentencing according to § 197 of the Code of Criminal Procedure. This order may serve as a more lenient measure for avoiding pre-trial detention (Untersuchungshaft). Voluntary probation (freiwillige Bewährungshilfe) in accordance with §27a of the Probation Service Act is possible after an unconditional release (unbedingte Entlassung) from custody or a preventive measure involving detention (Freiheitsentziehung).

4.1.1.1 Mediation in penal matters (Außergerichtlicher Tatausgleich, ATA)

ATA started in Austria in the year 1985 as a project for juveniles. Because of its success it got a legal base in 1989. With this positive experience as a role model a 2nd pilot project started in 1992 for adults. Again the outcome was very convincing. Therefore on first January 2000 it was given a statutory basis together with other measures of diversion. ATA can be ordered either by the public prosecutor (which is almost exclusively the case) or by a court. The following requirements must be met:

- the circumstances of the case must be sufficiently clarified (An admission of guilt is not necessary. The acceptance of ATA is not a requirement for the public prosecutor but for the mediation process. If either the suspect or the victim does not agree the case is referred back to court.);
- sanctions must not be deemed necessary in order to prevent the suspect from further offending or to prevent others from offending;
- the offence must be within the jurisdiction of a single judge (applies to most offences with a maximum penalty of 5 years);
- the suspect's guilt must not be deemed grave, and
- the offence must not have resulted in the death of a person.

Requirements for ATA are similar under juvenile criminal law. The most significant difference to the adult criminal code is that the public prosecutor can order ATA in cases of maximum penalties of up to 10 years and the courts in all cases (no maximum penalty ceiling).

4.1.2 Other diversion measures

As of 1 January 2000, criminal proceedings or sentences can be replaced under the same conditions as ATA by a fine, by community service, or a probationary period (Probezeit) that is sometimes complemented by a probation order. The selection of the diversion measure depends on which of these measures best serves the interests of the victim. In cases in which a conflict between the suspect and the victim was the cause of the offence, it will most likely be ATA.

Table 3: 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
Supervision/assistance etc. to offenders whose cases were conditionally waived	x		
Mediation/victim support	x		
Supervising/organizing etc. community service	x		x
Supervising etc. electronic monitoring			x
Supervising etc. suspended sentence	x		
Supervising etc. the mentally ill or			x

retarded offenders (in-out patient orders)			
Supervising etc. conditional sentence		x	
Supervising etc. conditional release/parole			x
Post-release aftercare			x
Assisted housing		x	x
Voluntary training program in workshops			x

4.2 Pre-trial phase

NEUSTART implements the following, mainly diversional, measures in Austria:

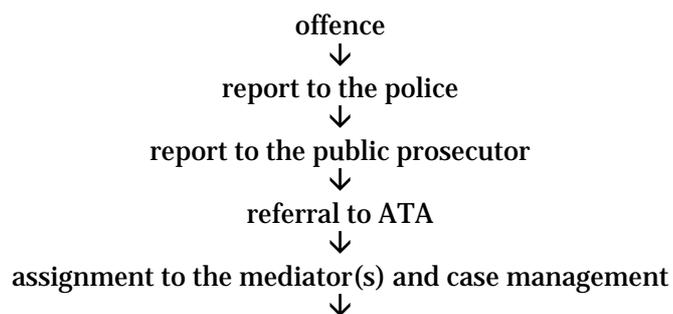
- ATA (for juveniles and adults);
- community service orders (for juveniles and adults);
- diversion of the case (Rücktritt von der Verfolgung) on the part of the prosecutor or the judge for a probation period if the suspect consents to supervision by a probation worker and/or to fulfilling specific orders;
- temporary suspension of proceedings in case of drug-related offences if the suspect consents to supervision by a probation worker;
- provisional probation.

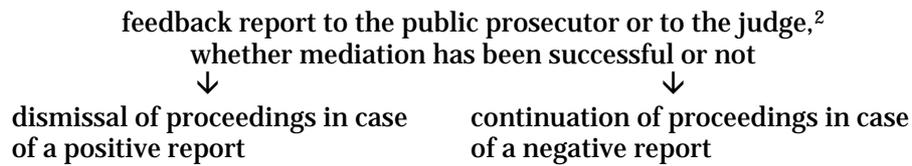
The main feature of these measures is that they can only be imposed by the public prosecutor or by a judge. The police cannot apply these measures. NEUSTART therefore only takes action upon order of the public prosecutor or of a judge but never on behalf of the police.

4.2.1 Mediation in penal matters (ATA)

ATA is the most important and most frequently used diversion socially constructive measure in Austria. In 1989 a new Juvenile Court Act provided the legal basis and regulations for ATA involving juveniles. The statutory basis for ATA for adults and other diversion measures for adult took effect on 1 January 2000 (as for contents see above and under 4.1“General”).

Figure 2: The mediation process





4.2.1.1 Objectives of ATA

- the victim has the possibility to receive restitution, both emotional and material;
- needs and emotions of the victim are taken seriously;
- the suspect is given an opportunity to consider how to make good the offence. The suspect is not in a defensive position as during a trial but can take an active role to repair the harm caused;
- the dismissal of proceedings after a positive report avoids a criminal record with its possible negative consequences (job-seeking in a crowded labour market);
- a viable agreement negotiated by the suspect and the victim offers the chance for durable social peace (55% of allocated cases originate in the immediate social environment).

4.2.1.2 Types of offences and conflicts

84% of all referred cases are offences related to aggression (Aggressionsdelikte), in particular assault and battery (Körperverletzungen), others include serious threats (gefährliche Drohungen), coercion, harassment (Nötigungen) and in some cases robbery (Raub). The remaining 16% comprise mainly property offences (Vermögensdelikte), i.e. theft, burglary, vandalism. With regard to conflict types and environments particularly important for mediators handling cases, 55% concern the immediate social environment, i.e. partnerships (mainly violent offences), family and friends, work place, school, as well as the most difficult type of conflict to mediate, conflicts among neighbours. As the clients have known each other before the offence was committed and will in most cases remain in contact in the future it is of particular importance to work out a perspective of what future contacts could be like.

4.2.1.3 Organization and methods

Mediation is organised as a specially defined field of practice. This means that without exception only specialised and trained mediators carry out mediation in penal cases. There are no social workers in Austria who work concurrently as probation workers and as mediators. Depending on the type of conflict different methods may be employed. One or two mediators may work on individual cases. A female and a male mediator, for instance, will handle cases of domestic

² In 90% of the cases, referral is done by the public prosecutor. In 10% of the cases the order comes from a judge.

violence. Special methods are applied in stalking offences to prevent perpetrator and victim from meeting.

4.2.1.4 Acceptance and success

81% of the cases involving juveniles and 68% of the cases involving adults are concluded by the mediator(s) submitting a positive report to the public prosecutor.

4.2.1.5 Co-operation between other institutions and the probation service

There is intensive co-operation particularly with referring institutions such as the public prosecutors and, to a lesser extent, with the judges. These contacts involve questions relating to individual cases as well as to the development of joint concepts as to which cases are suitable for ATA and which are not (indicators). Depending on the problems additional co-operation is undertaken with other social organisations, lawyers, therapists, for example for referral for legal advice, debtors' advice service, referring a couple for partnership therapy. If the mediation process shows that a suspect needs supervision by a probation worker, the mediator(s) will try to obtain a probation order from the court. There are also a few model projects involving co-operation with the police. In these cases the police submit its report to the public prosecutor together with a proposal for an ATA.

4.2.2 Community service

Since January 2000 community service can be ordered throughout Austria for juveniles and adults. In 2006 the public prosecutors or courts referred a total of 2464 persons to NEUSTART for community service. They are required to work for a maximum time of 240 hours (120 hours for juveniles). In 77% of the cases community service was successful.

4.2.3 Probation work

The objectives and tasks of probation work are described in section 4.3.3

4.2.3.1 Diversion of the case on the part of the prosecutor or the judge for a probation period if the suspect consents to supervision by a probation worker and/or to fulfilling specific orders

This provision, which entered into force as of the year 2000, enables the public prosecutor to order probation and at the same time divert criminal proceedings for a probation period. In addition to it or as a separate measure, suspects can be ordered to fulfil certain obligations, such as, for instance, taking driving lessons.

4.2.3.2 Temporary suspension of proceedings (Zurücklegung der Anzeige) in drug-related offences

This measure requires that the suspect consents to supervision by a probation worker.

4.2.3.3 Provisional probation

Particularly in cases of persons in custody awaiting trial, a probation order and thus their release, can be effected as a more lenient measure than custody. In cases of provisional probation a probation worker supervises the client until the end of the trial. Probation can continue thereafter if the sentence provides for it.

4.3 Trial and enforcement phase

4.3.1 General

If the suspect is pronounced guilty, the central social work intervention is a court order for probation. If the suspect is found guilty a probation order can be issued if a sentence is conditionally suspended (bedingt nachgesehen) in completely, which is possible in cases of fines or custodial sentences not exceeding two years and if a sentence is conditionally suspended in part. This is possible in cases of fines or custodial sentences not exceeding three years. Finally, in juvenile jurisdiction probation orders can also be issued in the case of temporary suspension of proceedings, provisional suspension of sentencing, and deferral of the execution of a custodial sentence. In all cases the persons concerned are entitled to seek legal remedy against the order.

4.3.3 Tasks and objectives of probation work

It is the task of probation workers to support persons who are accused of or sentenced for committing an offence, with the objective of enabling these persons to lead a life free of offending and sanctions. This involves building a relationship with the purpose of guiding and supporting the probation clients with respect of their manifold everyday life problems. Probation workers are to help their clients solve their psychosocial and economic problems in a self-responsible manner and support them in securing accommodation and income. In order to provide for efficient ways of reaching this goal, the probation workers try to co-operate closely with other local social services and social welfare institutions but also with the police and other authorities. In each case a social assessment must be done with a problem and resource analysis in respect of the economic situation, housing, health, psychosocial situation, and with respect of delinquency. During this phase it is already possible to define objectives for the supervision period in close co-operation with the client. A work concept is developed which states the short-term objectives, the method envisaged, and the frequency of contacts. These working concepts are reviewed every six months and, if necessary, modified or redrafted. Specific supervision guidelines are in place for certain

groups of clients, such as sexual offenders, defrauders, violent offenders, stalkers etc. Depending on the risks and expectations of the courts the guidelines also include compulsory supervisory actions.

In addition to the probation order the court has a wide discretion to issue other orders (dictates and prohibitions) that have to be complied with. A person may, e.g., be ordered to take up residence in a given place, to contact the court at certain intervals, or to avoid certain places. An order to undergo withdrawal treatment or psychotherapeutic treatment can only be issued with the consent of the offender. The probation worker must submit a written report to the court no later than six months after the issuance of the probation order as well as at its termination. Additional reports are only required upon request of the court or if the probation worker deems it necessary to disengage from a specific probation case. Regular contents of the reports contain information if the client stays in contact with the probation worker, if he fulfils certain court orders (for example if he meets his psychotherapist) and in general if there is a progress to build up a life free of offending. As a result the judge might impose an unconditional sentence, if the client refuses to comply with his obligations.

4.4 Post-release phase

4.4.1 Probation work after conditional release (bedingte Entlassung) from custody

In case of conditional release from custody probation can be ordered by the judge for juveniles and adults after at least one half or two thirds of the sentence has been served. At the same time a probationary period of 1 to 3 years will be specified. Deviant offenders (geistig abnorme Rechtsbrecher) who have been sentenced to custody in a special penitentiary institution are as a rule only released with a probation order and a 10-year probation period. It is the general practice in Austria that a conditional release after serving half of the sentence hardly ever occurs. Conditional release after serving two thirds of the sentence only occurs in 20% of the cases. For juveniles such a release is nearly always accompanied by a probation order, whereas probation orders for adults are usually only issued for first offenders, or particularly "dangerous" offenders. It is the objective of probation work with conditionally released persons to provide psychosocial support for leading a life free of offending and punishment.³

4.4.2 Community service to replace custody after non-payment of fines

Currently a pilot project is testing community service for persons who were sentenced to an unconditional fine that they were. Instead of being taken into custody for non-payment of the fine it is possible to work for a variety of non-profit organisations. Four hours of community service can replace one day of such a custodial measure in lieu of payment. The pilot project is carried out in 5

³ See trial phase; tasks and objectives

out of 14 agencies of NEUSTART from 2006 to February 2008 by order of the Ministry of Justice.

4.4.3 Electronic monitoring

This measure is also applied within the framework of a pilot project involving persons who are only released conditionally with close monitoring due to special prevention considerations. If they consent to electronic monitoring, which can last up to six months, they can be conditionally released by order of the court. Intensive social work and close supervision with support of GPS technology is content of the project established in two agencies in Austria under a mandate from the Ministry of Justice during the period January 2006 to September 2007. For lack of a specific legal basis, the provisions governing probation work are applied *mutatis mutandis*.

4.5 Care and aftercare outside the criminal justice system

4.5.1 Post-release aftercare

For all persons who, after serving a custodial sentence, do not have a probation worker assigned to them NEUSTART has developed counselling and support services functioning on a voluntary basis. Aftercare service can be used by persons who have served their complete sentence but also after conditional release. It is available in seven of the nine provincial capitals. On the basis of the General Contract between NEUSTART and the Ministry of Justice they aftercare is defined as an independent branch of assistance to offenders in Austria.

4.5.1.1 Tasks of post-release aftercare

Tasks of post-release aftercare are counselling and support, pre-release counselling, employment counselling and work training:

- counselling and support: counselling after release from custody starts with the assessment of the psychosocial situation of the person seeking help, determining the need for help. It includes legal counselling, developing models for problem solving, information and counselling on available resources as well as gaining access to these resources. The objectives of the counselling process are securing the basic material needs (including providing for documents and initiating debt control measures), obtaining and maintaining accommodation, as well as referral to therapy. Counselling develops into support in cases where clients experience continually recurring problem situations and permanent crises, and where the working agreements between social worker and client prove to be viable. Support is characterised by its binding character, a support plan and agreed goals. It lasts for a maximum period of one year from the date of release;
- pre-release counselling: aftercare workers offer counselling to persons who are still in custody. These counselling sessions help assess the resources, available or to be made available to the prisoner after release, in order to avoid distress and calamity. It is particularly important to initiate measures prior to release for

finding accommodation, securing income and providing for the reintegration into the employment process;

- employment counselling: aftercare workers provide assistance to search for a job and to get in contact with the Public Employment Service (AMS). The service also includes information on course programmes;

- work training: in addition to employment counselling, two agencies in Austria also run workshops where clients can participate in vocational training programmes over a period of up to six months. This type of programme aims at gradually introducing the clients to fundamental requirements of the working life such as punctuality, reliability, regularity and flexibility.

Co-operation with the Public Employment Service is governed by co-operation agreements. NEUSTART gets annual grants from the AMS for employment counselling and support as well as the work-training programme.

4.4.2 Accommodation and housing

In two big cities in Austria (Vienna and Linz) assisted housing is offered for clients of the probation and post-release aftercare services. The social workers in charge of groups living in assisted housing are in structured contact with the colleagues from workers of the probation and aftercare services to co-ordinate and share support tasks. Assisted housing groups primarily focus on developing the ability of the clients to live independently. Due to the co-operation with the municipal administrations clients, who are already prepared to stay and keep an apartment, can be proposed for communal housing. An agreement on supervision and support, which starts when the client moves into the communal housing unit, will be concluded in order to be able to assist clients during the difficult initial period and to avoid evictions.

5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION

5.1 Finances

The government generally finances support for offenders like probation service in Austria. The greatest part of the work is done by NEUSTART as private provider. The Federal Ministry of Justice is the main purchaser of NEUSTART services, accounting for about 87% of its financing. Other purchasers of services are the Provinces (3.23%) and the local authorities (0.57%) as well as the Public Employment Service AMS (2.60%). Support by the European Union is currently only made use of to a small extent for limited-duration projects. 'Step by Step' ('Schritt für Schritt') is an example for an EU-supported EQUAL project (see under chapter 7). Donations and membership fees also contribute to the budget, but they only account for an insignificant portion of the financing of NEUSTART.

Table 4: The detailed financing structure in euro's in 2006

European Social Fund	517.805,60	1,45%
Federal Ministry of Justice	31.197.401,09	87,20%
Federal government (excl. justice)	168.717,34	0,47%
Provinces (Länder)	1.154.806,66	3,23%
Public Employment Service (AMS)	928.873,18	2,60%
Communes (local authorities)	204.291,79	0,57%
Other public-sector purchasers	427.883,44	1,20%
<u>Subtotal</u>	<u>34.599.779,10</u>	<u>96,71%</u>
Income from clients	241.055,67	0,67%
<u>Subtotal</u>	<u>34.840.834,77</u>	<u>97,38%</u>
Other income	761.028,60	2,13%
<u>Subtotal</u>	<u>35.601.863,37</u>	<u>99,51%</u>
Income from retransferring reserves	50.610,04	0,14%
<u>Subtotal</u>	<u>35.652.473,41</u>	<u>99,65%</u>
Interest and similar income	124.987,94	0,35%
Total income	35.777.461,35	100,00%

Significant financing elements are subsidies and compensation for services rendered. The different fields of activities of NEUSTART have different financing structures that depend largely on the service purchasers. Public sector financing is defined in contracts with the individual service purchasers. The contracts concluded after negotiations are usually one-year subsidy contracts or longer-term service contracts. Within the framework of these contracts, and of any earmarking specified therein, NEUSTART can freely decide on the use of the

funds. The budget of NEUSTART consists basically of approximately 82% personnel costs and 16% cost of materials as well as 2% of depreciation.

Table 5: A comparison of expenses for staff and clients between probation services and prison systems

2006	Probation Service	Prison System
Total current yearly expenditure (Euro)	19,539,000	279,359,000
Average number of employed staff	246 *	3,505
Daily average number of offenders/clients dealt with	7,260	8,639
* Includes part time staff		

The data in the column marked "Probation Service" refers to the probation service only and does not include the entire range of support services to delinquents. Figures reflect the actual spending of 2006. The column "Prison System" covers the planned spending and staffing levels of the prisons according to the federal budget of 2006. The figure for daily average number of offenders is the actual figure for 2006, which is already available.

5.2 Accounting

The accounting of NEUSTART is based on Section 21 and 22 of the Act on Associations 2002 (Vereinsgesetz, VerG2002), which refers to the accounting principles of the Corporate Code of Law (Unternehmensgesetzbuch, UGB). Moreover, NEUSTART adheres to the fiscal requirements for non-profit organizations. Annual accounts including balance sheet, profit/loss accounts and notes are drawn up and audited every year. NEUSTART uses an integrated planning process (budgeted balance sheet, performance budget and financial plan) over a period of 3 years. For ongoing monitoring of budget implementation, monthly target-performance comparisons and budgetary forecasts are in place in cost accounting, which is structured according to cost types, cost centres and cost units.

Accounts and cost accounting are used for the annual settlement grants and fees for services rendered with the main purchaser of NEUSTART services, the Federal Ministry of Justice. Provinces, communes (local authorities) and the AMS have regionally differing accounting systems ranging from a voucher-based system to lump sum payments for services rendered (e.g. working hours). In parallel to income and expenditure, the performance of NEUSTART is also subjected to continuous monitoring. In a data warehouse performance data are stored in multidimensional cubes and updated monthly or daily. On this basis, standard reports are drawn up and ad hoc queries are made. Before the performance data are finally imported into the data warehouse, they are checked for plausibility against the data from previous systems and results are reported back to the agencies in a feedback stage.

Strategic controlling in NEUSTART is based on a Balanced Scorecard. It is the link between strategy and operational implementation. Parameters subsumed in five perspectives serve to determine the degree to which strategic goals have been reached. Measures that contribute to (better) goal attainment are described in detail and there are regular reviews as to whether these measures have in fact been taken. The follow-up audit of financial management is a fixture for NEUSTART. This includes an audit of the annual accounts by an independent certified public accountant whose report is also part of the evidence proving that subsidies have been used in accordance with the earmarking. The internal audit unit of NEUSTART does system and organizational reviews. Public sector purchasers have the contractual right to inspect the books of NEUSTART. Activities at the federal level are also subject to audits performed by the Austrian Court of Audit (Rechnungshof).

5.3 Documentation and statistics

Since 2003 a standardised computer-based documentation system has been in place for all service areas. There is a computerised file for each client, containing personal data, data on his/her situation (delinquency, housing, finances, education and training, employment, health, psychosocial situation) and data concerning the order. The file also includes a working concept (planned goals and stages to attain them), timeline records and reasons for termination of the supervision. Each service area has binding documentation rules covering different minimum and maximum standards for each area. As the documentation about the work of the social worker with the client is part of the computerised client documentation, the following goals are achieved in one go:

- systematic monitoring and evaluating of their own work by the social workers;
- ongoing information on the support status and the goals of the work;
- performance assessment and transparency through written record of the service done.

Under the Data Protection Act (Datenschutzgesetz) 2000 data must not normally be disclosed and/or processed without the consent of the person concerned. Since the services provided by NEUSTART are based on a statutory mandate, data may be processed without the explicit consent of clients, with the clients of victim protection services being the only exception. All clients are entitled to information about their data being stored. All data are stored via a central server that enables central evaluations and analyses to be made. Decentralised evaluation options for the 14 NEUSTART agencies are included in the programme. The following performance figures from the computerised client documentation form the basis for reports to purchasers (e.g. quarterly and annual reports to the Federal Ministry of Justice) as well as for internal standard reports to the Management (some of them monthly) and to the Agency Heads:

- performance statistics (recruitment and staffing levels) to monitor the work load (comparison of actual and planned figures) in all service areas;
- case statistics with reasons for referral and duration of service (probation, mediation in penal matters, community services);
- occupancy figures to monitor the utilisation of the assisted housing;

- client statistics including numbers of attempted referrals and successful referrals, for example to a job, within aftercare service.

6 PROBATION CLIENTS' RIGHTS

With the exception of voluntary probation (Section 27a PSA), probation is ordered by the courts of public prosecutors. Clients may appeal against court orders. Public prosecutors can only issue an order for probation on condition that the client consents. In any event, the probation officer is appointed by NEUSTART. The client is not entitled to any legal remedy against the appointment. There are no regulations concerning special rights of the client vis-à-vis the probation officer. All diversion measures (payments, community service, probationary periods and mediation in penal matters) require the client's consent. Until charges are finally dropped, the client has the right to ask for criminal proceedings to be instituted or resumed. In this case diversion measures cannot be applied or continued. The public prosecutors or courts may only revoke the offer of diversion for specific reasons set forth by law. The client has to be informed about his/her rights when offered diversion. He/she has a right to appeal against all court orders issued in the framework of diversion proceedings.

7 NEW DEVELOPMENTS

7.1 Reduction of prisoner numbers

'New record high in prisoner numbers', said the title page headline of the Austrian daily 'Die Presse' on 22 March 2006. Indeed, 9,004 persons were in custody as at 1 March 2006. 6,073 were serving a prison sentence, 2,931 were in pre-trial custody. Thus it comes as no surprise that the Ministry of Justice is looking at new ways to reduce the number of persons in custody. Custody is expensive, overcrowded prisons cause conditions to deteriorate and eventually lead to a mere "warehousing" of prisoners with a risk of even higher recidivism rates. In view of related spending, this is an unsatisfactory result. It is a situation that not only concerns Austria but almost all European states. Therefore, many countries are looking for new ways of reversing this development with its dramatic financial and human implications. However, the societal climate is such that those calling for stricter measures with a presumed to result of more security prevail without proof. Any attempt to straddle the fence has to involve new services to replace custody whilst offering the same or an even higher degree of security. Moreover, existing alternatives to custodial measures should be used to a greater extent.

7.2 Community service as an alternative to custody in lieu of fines

Every year, between 1,100 and 1,300 persons sentenced to a fine, which they are unable or unwilling to pay, serve custodial sentences in an average duration of 25 days (27,507 days of custody in the calendar year 2005). As these custodial

measures were not intended by the judge and have negative implications (risk of further disintegration from society) whilst also causing very high costs, a pilot project was launched in 2006. It provides for an option to do community service instead of paying the fine. The pilot project aims at:

- avoiding custody in lieu of fines;
- making clear the rule of law to the perpetrator by confronting him/her with the crime committed and its consequences;
- compensation to society by work for the community.

The interim research results were very positive, so a legal basis is to be created in 2007. This way, it will be possible to apply community service as an alternative to custody in lieu of a fine throughout Austria.

7.3 Electronic monitoring

Just like numerous other states, Austria is also testing electronic monitoring. It is used in a pilot project involving offenders conditionally released from custody. The court ordering their release also orders electronic monitoring for a period of up to six months. The client has to consent to the order. Electronic monitoring is carried out by NEUSTART social workers that check adherence to the weekly schedule by means of GPS technology. First experiences have shown that social work is successful and effective in this context. Another result is that there is a need to improve on the GPS technology or use an alternative. The question as to if and where electronic monitoring will be used in Austria in the future is outstanding and will require a political decision. NEUSTART thinks that, in view of the number of prisoners, the human impact of custody and related costs, electronic monitoring is an interesting alternative for short-term imprisonment (up to one year, as e. g. in Switzerland) and as a form of prison service before conditional release. Moreover, it should be reviewed for the possibility of using it as “electronically monitored house arrest” instead of pre-trial custody.

7.4 Increase in the number of conditional release cases

Compared with other European states Austria has a very low rate of conditional releases. Currently the proportion is only 20% of all releases. The goal is to increase the rate by using probation work to a greater extent. Moreover, it is being considered to change the composition of the court panels currently in charge to decide on conditional releases. The panels presently consist of judges only, and it is contemplated to add social work and psychological competence as well as the know-how of prison directors.

7.5 Qualification measures and employment for persons in custody and post-release

‘Step by Step’ (‘Schritt für Schritt’) is the name of an EU-supported EQUAL project to develop new ways by offering them support, work training, education and qualification to persons in custody that will be released in the near future. The special feature of the project is that courses and training start during custody and are continued after release. This way, clients acquire know-how by courses in close co-operation with the prison system. At the same time, support helps to avoid post-release crises and the high risk of recidivism, which is especially present for ex-prisoners with a precarious social environment and little chances at the labour market. After the conclusion of ‘Step by Step’ in June 2007, NEUSTART would like to apply the measures successfully developed and tested in the framework of the project throughout Austria, provided that the Ministry of Justice is able to secure funding. Furthermore, NEUSTART is seeking to co-operate with major employers with a view to the placement of orders for prisons and to the employment of ex-prisoners after their release.

7.6 Victim orientation in criminal law

In keeping with the European trend, victim orientation in criminal law is expected to continue in Austria, too. The important thing is that the delicate balance between the right to a fair trial and the consideration for the interest of the victim must be upheld in criminal proceedings. It seems possible to do so. However, if the scales are tipped to one side, this will be to the detriment of protecting fundamental rights and thus the rule of law, which in turn is a pillar of our democratic systems. NEUSTART is committed, to offer assistance or support to victims so that they can cope with their situation as good as possible and to develop ways to leave behind being a victim.

7.7 NEUSTART in the German Land Baden-Württemberg

As per 1 January 2007 the Land Baden-Württemberg entrusted NEUSTART gGmbH Baden-Württemberg, a subsidiary of NEUSTART, with the tasks of probation work and court assistance (Gerichtshilfe). This is an important development: firstly, it marks the first time in its 50 years of history that NEUSTART is working outside of Austria. Secondly, this is the first time that a non-profit association is mandated to fulfil the tasks of probation work and court assistance in Germany. The decision was preceded by a two-year regional pilot project in Stuttgart and Tübingen and a Europe-wide invitation to tender under the competitive dialogue regime. The relations with NEUSTART are governed by a general contract entered into with the Land Baden-Württemberg for a period of ten years. The services agreed upon mainly serve to improve the efficiency and transparency of probation work and court assistance:

- uniform quality standards for probation services and court assistance as well as mediation in penal matters. These standards are set forth in a quality manual. Ongoing quality development and quality assurance will play an important role in this context;
- introduction of a concept of support levels in probation work which are geared to needs and resources;
- introduction of a management structure in professional and organizational respects: responsibility for the practical execution of tasks with clients lies within social work staff, the organization is structured according to economic aspects, based on modern methods of personnel management, such as the EFQM model;
- integration of court assistance into the overall organization;
- expansion of mediation in penal matters for adults;
- establishment of a volunteer probation service system in addition to professionals;
- introduction of a concept of regional agencies, with nine centres each headed by a regional manager in the land;
- installation of a computer-based system to document social work;
- establishment of a uniform personnel development and continuing education system;
- cooperation agreements with partner organizations, such as associations supporting offenders and independent welfare organizations, for more effective networking.

At present NEUSTART gGmbH Baden-Württemberg has a staff of about 350 professionals, mainly in probation work. Probation officers supervise an average 22,000 clients per year. NEUSTART in Austria as parent organization is in charge of organizing and implementing the computer infrastructure, accounting, controlling and statistics for the entire group. It provides intra-group assistance for its subsidiary in the fields of management, product development, personnel, marketing, legal matters and communication. Know-how existing in the group and the fact that certain administrative processes are not required in the subsidiary (computer help desk, accounting, costing) lead to synergies in product and process development as well as cost savings. Individual processes (documentation, accounting, marketing, controlling, and communication) applied in the Austrian association NEUSTART were transferred to NEUSTART gGmbH without requiring major development or adjustment. The accounting system of NEUSTART gGmbH is based on German commercial law (Handelsrecht, HGB) and provisions of fiscal law pertaining to non-profit organizations. Annual accounts including balance sheet, profit/loss accounts and notes are drawn up and audited every year. Group accounting is based on international standards (OECD transfer price principles). The CEOs of NEUSTART gGmbH are Georg Zwinger (social work) and Mag. (FJ) Wolfgang Hermann (business administration). The head office is located in Stuttgart. Contact: NEUSTART gGmbH Baden-Württemberg, Rosenbergstrasse 122, 70193 Stuttgart. Tel. 0049-711-627669-0, www.neustart.org

8 IMPORTANT PUBLICATIONS

M. Eder-Rieder, *Opferrecht* (Victims' Rights), Vienna: Neuer Wissenschaftlicher Verlag 2005.

This book deals with legislation to protect victims of crime in Austria. Apart from preventive measures to be taken by police in case of domestic violence, the position of the victim in the context of diversion prior to criminal proceedings and the respectful treatment of victims appearing as witnesses in criminal proceedings are described.

C. Grafl, W. Gratz, F. Höpfel e.a., *Kriminalpolitische Initiative: Mehr Sicherheit durch weniger Haft!* (Crime-Policy Initiative: Less Custody, More Security!) in: JRP-Journal für Rechtspolitik, 2004, No. 2, p.61-69.

Overcrowded Austrian prisons have a negative bearing on the effectiveness of prison services. There is a massive risk that many years of difficult developments in the prison system and its endeavours to re-integrate offenders into society are undermined by current trends. Thus prisons could become crisis-prone locations of "prisoner warehousing". Quick counteraction is urgently required so that the prison system is able to continue making positive contributions to public security.

C. Grafl, J. Stummer-Kolonovits, *Reichweitenstudie - Gemeinnützige Leistungen* (Coverage Survey for community service), 2006, Vienna, Neuer Wissenschaftlicher Verlag.

Community service as a diversion measure still has a large potential to grow...It should be possible to implement community service as an alternative to custody for persons who are not paying their fines at short notice and without major problems. Examples from other countries have shown that this is an alternative meeting with general political acceptance.

R. Miklau, H.V. Schroll (ed.), *Diversion: Ein anderer Umgang mit Straftaten. Analysen zur Strafprozeßnovelle* (Diversion: A Different Way of Dealing with Offences. Analyses on the Amended Criminal Code), 1999, Vienna: Verlag Österreich

A. Pilgram, *Die bedingte Entlassung im Strafvollzug im europäischen Vergleich* (Conditional Release from Prison – A European Comparison), 2005, in: Bundesministerium für Justiz; BMJ (ed.): *Moderner Strafvollzug - Sicherheit und Resozialisierung* [Modern prison service – Security and Re-Socialization]

Schindler, Sepp; Sluga, Willibald, (*Methoden und Indikation der Bewährungshilfe*, 1957, Nachdruck - Serie: Fachlichkeit. in: sub / Sozialarbeit und Bewährungshilfe, No. 1c. [Methods and Indications of Probation] 1997/1957, p. 28 –37: probation work, methods of social work, indications.

R. Schiestl, *Probezeit. Geschichte des Verein für Bewährungshilfe und Soziale Arbeit 1957-1989* (Probation. A History of the Association for Probation Services and Social Work), 1997, Vienna: produced in-house.

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ANNEX 1

Criminal statistics

The sources of these figures are the Security Report of the federal government (Sicherheitsbericht) and the crime statistics issued by the courts. Both are published annually. In 2005 8,17 million inhabitants lived in Austria. Criminal responsibility starts at the age of 14. The number of convicted offenders per 1000 persons who have reached the age of criminal responsibility was 5,6. This was slightly above the figure for 2004. In the years before 2000 the lowest rate was 9,9 per 1000 persons. It dropped massively after diversion was introduced in 2000. 2005 it was 43% lower than the rates before 2000. If we add the number of convictions and diversion measures, the total number of sanctions under criminal law was 90,356 (not including unsuccessful diversion). On the whole, fewer persons are convicted in Austria but the number of criminal-law sanctions has gone up (11,06 sanctions per 1000 inhabitants). The number of persons serving a prison sentence between 2003 and 2005 is based on an average within one year. The sources of the figures are the Security Reports from 2003 to 2005. Since 2000 the number of prisoners has risen sharply from 6,861 in the year 2000 to an average figure of 8,863 in 2005. The reason for this is the massive increase in the number of non-Austrian prisoners in Austrian prisons.

Table 1: Ratio between fines, custodial sentences and other measures

	2003		2004		2005	
	absolute figures	% *)	absolute figures	% *)	absolute figures	% *)
Penalties						
Sum total	41,749	100	45,185	100	45.691	100
<i>thereof Fines</i>	17,19	41,0	17,951	39,7	17,756	40,4
Conditional	3,683	8,8	4.028	8,9	3,893	8,5
Unconditional	12,349	29,6	12,818	28,4	12,767	27,9
Partly conditional	1,087	2,6	1,105	2,4	1,096	2,4
<i>thereof Custodial sentences</i>	23,075	55,3	25,625	56,7	26,187	59,6
Conditional	13,706	32,8	14,739	32,6	15,306	33,5
Unconditional	6,253	15	6,850	15,2	7,136	15,6
Partly conditional	3,116	7,5	4,036	8,9	3,745	8,2
<i>thereof Partly conditional sentences and partly unconditional fine</i>	657	1,6	721	1,6	746	1,6
Other Measures	898	2,1	888	2,1	1.002	2,2

Table 2: Diversion (offers by prosecutors)

	2003	2004	2005
Payment	27.435	27.847	26.183
Temporary suspension of prosecution without interventions	12.623	16.317	14.350
Temporary suspension of prosecution without probation	1.683	1.855	1.979
Temporary suspension of prosecution with probation	257	199	222
Community service	1.652	2.167	2.568
Mediation in penal matters (ATA)	8.276	9.854	10.016
TOTAL SUM	51.926	58.239	55.318
without success	9.569	10.042	10.650

Table 3: Prison population (Average population per year)

	Prisoners	Prisoners on remand	Others	TOTAL SUM
2003	5.079	2.062	683	7.824
2004	5.285	2.305	853	8.443
2005	5.865	2.197	801	8.863

Table 4: Nationality of prison population (per 1 January)

	Austrian citizen	Foreign citizen
01.01.2003	4.352	2.370
01.01.2004	4.442	2.971
01.01.2005	4.219	3.652
01.01.2006	4.138	3.740

Table 5: Penalties for juveniles (14 - 18 years)

	2003	2004	2005
Penalties	3.178	3.336	2.953
Fines			
Conditional	287	326	326
Unconditional or partly conditional	607	568	530
TOTAL SUM	894	894	856
Custodial sentences			
Conditional	1.216	1.267	1.064
Unconditional or partly conditional	566	693	514
TOTAL SUM	1.782	1.960	1.578
Others	502	482	519

Table 6: Staffing statistics 2004 - 2006 (per 31 December)

	2004	2005	2006
Total sum employees	603	611	606
thereof social workers and management	447	461	456
thereof administrative staff	114	112	115
thereof cleaning staff	42	38	35
male	222	224	225
female	381	387	381
full time	300	321	318
part time	303	290	288
Total sum volunteers	782	763	775
TOTAL SUM employees and volunteers	1.385	1.374	1.381