

# **Chapter 10**

## **Estonia**

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

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

In connection with the large number of persons in penal institutions and the rising crime rate there was a need to start searching for new methods to guarantee the security of society. The wish to decrease the number of prisoners became one of the main arguments in justifying the need for the creation of the probation system. Evidently also the fact that the system of punishments from the Soviet Union period was not sufficient to meet new situation caused the need for changes.

In 1991 under the leadership of the Ministry of Justice the penal law reform was started, in the framework of which there were plans for substantial amendment of legislation concerning the Criminal Code, criminal procedure and execution of criminal punishments. In 1993 at the request of the Ministry of Justice the initial visions of the possible Estonian probation service were conducted.

In 1996 the Ministry of Justice began with drafting the Probation Supervision Act, preparing in parallel all the legal acts relating to the implementation of the Act and also preparing an implementation plan and the budget. The Probation Supervision Act was completed in 1997 and entered into effect in May 1998. In drafting the Act, laws of other countries regulating similar systems were used as a basis. The probation service started to work overall in Estonia on 1 May 1998.

## **1.2 Important developments**

The first stage of implementation of the probation service in Estonia began on 1 May 1998. Throughout Estonia 13 probation departments started work at county and city courts. Counties and larger cities were divided into districts covered by probation services. 35 services employed 110 people who had been trained by the Ministry of Justice in cooperation with foreign experts. The second stage was launched in 1999 when 54 officials were hired and trained and were appointed to office on 1 October 1999. Presently there are altogether 210 probation officers in four regional probation departments throughout Estonia.

Since the creation of the probation system, there have been several changes in probation organisation and practice. The penal system of Estonia has been in continuous development during past decade, which also meant changes in the system of CSMs. Probation officers started in 1998 to conduct the pre-sentence reports and to implement court decisions about parole and probation order, in 2002 the community service was added to probation officers tasks and in 2007 the electronic monitoring started. Nowadays over 8,000 sentenced persons are under probation officers' surveillance.

Probation departments are currently in the structure of the first instance county courts. On 01.06.2008 the probation system will be united with the system of prisons and current four regional probation departments will be in the structure of three regional prisons. The organisational changes are aiming at the improvement of the management of criminal executive system and at the

implementation of penal sanctions and measures.

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

The probation practice was in the beginning years more oriented on the social work activities and support of offenders. In today's practice the risk-assessment is forming a cornerstone of probation officers work and therefore the focus is on the management of risks with aim to prevent criminal behaviour of offenders. This has shifted the focus of probation practice during the relatively short history of probation in Estonia to evidence based interventions. Probation officers everyday work has two major parts: supervision and assistance. The basis of the activities is the court's decision, which sets the framework of the probation officers work. The methods used vary from individual work with offenders to group work techniques. The cooperation with different partners at local and state level is an important part of the daily practice. Probation system is responsible for implementing all CSMs (community sanctions and measures) in Estonia that involves pre-sentence reports, community service, probation order (supervision of conduct), probation order as a measure for juveniles, parole order and electronic monitoring (combined with parole order). Although the list of CSMs implemented by probation service is relatively diverse, the inner organisation of probation is not such complex one as it seems to be in some other countries. Probation officers and senior probation officers are dealing with offenders on everyday basis. Some of them are specialized to deal with different groups of offenders or sanctions. The everyday management of staff is carried out by heads of divisions and strategic management is a responsibility of the head of regional department. Overall coordination is the task of the Ministry of Justice.

## **2 LEGISLATIVE BASIS AND MISSION**

### **2.1 Legislative basis**

The probation system deals mainly with persons with suspended sentences and persons released on parole. The age of criminal liability in Estonia begins from the age of 14, probation deals with adults and juveniles according to the applied sentence. Probation commences with the receipt of the court decision by the probation department or receipt of a request for drawing up the pre-trial report or making a prison enquiry. The fundamental principles of the operation of the probation system have been defined in the Penal Code and the Code of Criminal Procedure.

#### **2.1.1 The penal code**

The penal code (RT I 2001, 61, 364) entered into force 1 September 2002) establishes the system of alternatives implemented by the probation system, a set control of requirements and duties applicable to the probationer during the probation period; and defines the main aspects of the probation officers work during probation period.

#### **2.1.2 The code of criminal procedure**

The code of criminal procedure (RT I 2003, 27, 166) entered into force 1 July 2004), defines the role of the probation officer in pre-trial and court procedure. According to the present regulation the first role of the probation officer in pre-trial procedure is to draw up a pre-trial report on the request of a judge or prosecutor. The second task is to organize the implementation of community service in case of termination of criminal proceedings in event of lack of public interest in proceedings and in case of negligible guilt.

### **2.1.3 The probation supervision act**

The probation supervision act (RT I 1998, 4,62) regulates the organisational make-up of the probation system, requirements for probation officers, and sets forth the activities of probation officers in exercising probation supervision. The Probation Supervision Act provides in principle for all work-related functions of the probation officer and the general organisation of the probation supervision system, being thus one the most important acts of legislation in the probation supervision system. In addition to the above-mentioned laws, the Ministry of Justice has prepared several secondary legal acts in the form of orders of the Minister of Justice which regulate the activities of probation officers in more detail than laws. The most important of them are:

- rules of procedure of the probation department (approved by the Minister of Justice regulation no. 62 of 28 December of 2004) – defines the procedure for the location and structure of the probation supervision department and the functions and responsibilities of probation staff;
- rules of procedure for the preparation, implementation and supervision of community service (approved by the Minister of Justice regulation no. 49 of 25 June of 2004) – defines process of implementation of the community service;
- rules of procedure for the implementation and supervision of electronic monitoring of offenders (approved by the Minister of Justice regulation no. 15 of 22 February of 2007) – defines process of implementation of the electronic monitoring of offenders and responsibilities of the probation officers;
- rules of Procedure for the supervisory control of the county and city court (approved by the Minister of Justice regulation no. 28 of 10 April of 2003) – defines the procedure, aims and presentation of results of supervisory control exercised by the Minister of Justice.

## **2.2 Mission and mission statement**

Probation system in Estonia is under the area of administration of the Ministry of Justice. On the basis of priorities given by the Ministry of Justice the development plan of the whole justice sphere is drawn up and at the end of each calendar year it is extended and renewed. In the development plan the Minister of Justice establishes the priorities for the relevant period and the priorities serve as a basis for short-term and long-term goals of the administrative areas (incl. probation system). In the case of every priority a sub-list of principles is determined which has to be observed in planning activities.

In the current strategy of development of the justice sphere until 2011 the

development priorities have been divided into four major areas; the probation system belongs to the criminal policy section. The main challenge associated with probation service in the criminal policy field is responding to the problem of high number of offenders. The Estonian imprisonment rate is one of the highest ones among European countries and this problem is addressed by different measures including wider use of probation through the better use of alternatives and parole. The major strategic objectives concerning probation service are the development of the system of risk assessment of offenders and probation and prison rehabilitation programmes aimed at the prevention of reoffending. The strategy foresees that prisons and probation will be united up to the year of 2009, which will improve the administrative capability of criminal justice system. On the basis of the development strategy, the Ministry of Justice will draw up an annual work plan that establishes concrete actions and criteria's of evaluation of success for achieving the aims that have been set. Probation departments have a possibility to be involved in planning the development strategy and drawing up work plans. Drawing up of probation departments work plans is guided and coordinated by the Ministry of Justice.

### **2.3 Crime prevention**

Crime prevention on the national level in Estonia has been organised through the cooperation of four ministries – the Ministries of Justice, Education and Research, Interior and Social Affairs. The Ministry of Justice plays the coordinating role. The responsible structural unit in the Ministry of Justice is the Criminal Policy Department. With the aim to bring together different interest groups to establish priorities for crime prevention the Government has convened the Crime Prevention Council (CPC) the aim of which is to increase the security of the population through organisation of crime prevention on national, local and grassroots level. The CPC meets four times a year and at its meetings it discusses topical problems in connection with crime and passes decisions to solve the problems.

The Crime Prevention Council acts as an advisory committee to the Government of the Republic since 1993. During its existence the Council has functioned as a committee of experts, involving all levels of society related to crime prevention: the state (relevant ministries), the local level (representatives of local authorities, representatives of associations), and the population (non-profit sector, private sector, representatives of stakeholders).

If various ministries in their crime prevention activities have focused mainly on primary level prevention, the mission of the probation supervision system includes prevention of repeated offences, according to which probation supervision departments through their daily work deal mainly with the prevention of reoccurring crime, i.e. secondary prevention. In addition to direct work with clients the probation supervision system carries out various preventive projects for different risk groups of crime. However, the success of such projects depends first of all on finding of financing sources and therefore the proportion of the projects within the probation supervision system has remained insignificant.

The outlet of the activities of probation officers is active local level cooperation which is expressed in organising and attending seminars on local level, organising information days and lectures at schools, participation in local committees, etc. The main cooperation partners of the probation supervision system in crime prevention are the police, local governments and education establishments. There is also close cooperation with the non-profit sector.

## **2.4 Victim protection**

Probation is not responsible for applying mediation or dealing with victim support, which is under the area of administration of the Ministry of Social Affairs. The mediation is organized through the system of professional mediators and victim support has been organised through the involvement of church organisations and the non-profit sector. However, in their work probation officers cannot ignore the victims of crimes; in some cases a probation officer needs to cooperate with the victim, approach of mediation can be used as the part of probation work.

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

### **3.1 Main characteristics**

The Estonian probation system is a uniform centralised national structure which has been created under county and city courts and the coordination and development of whose activities belongs under the competence of the Ministry of Justice. In the Ministry of Justice the structure is made up of different departments that are divided into divisions. The tasks of the divisions include coordination and development of the relevant fields of administration. Responsible for the activities of probation until 2008 was the Probation Division of the Courts Department.

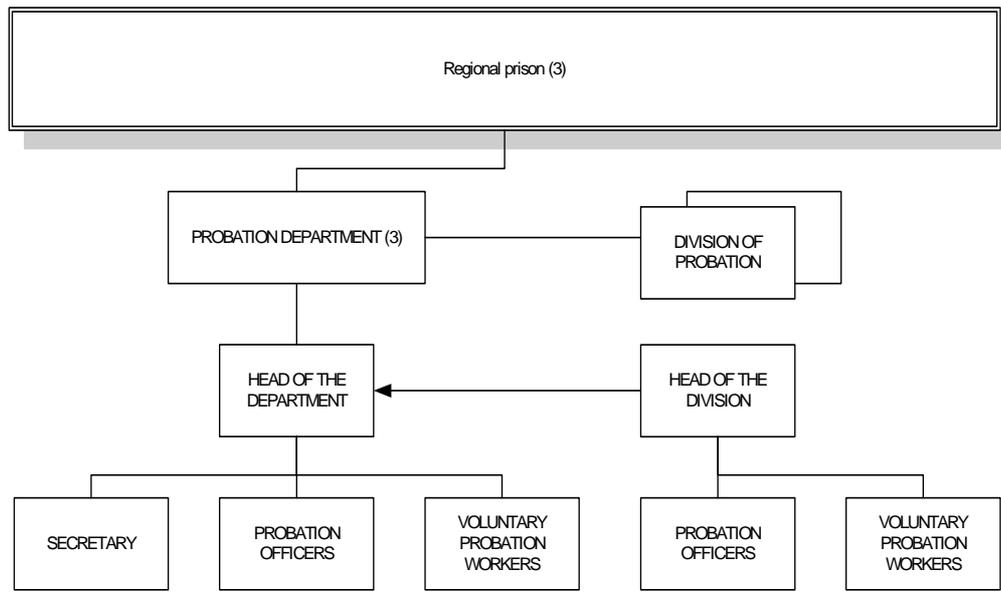
The Probation Division had a staff of four people together with the head of the division. The tasks of the division with regard to probation system were providing methodological guidance for daily work of probation departments, exercising supervision and organising in-service training, assessing the efficiency of the activities of probation departments, development and representation of the probation system. The Minister of Justice also exercises supervisory control over probation departments.

According to the fact that probation system will be united with prisons, the changes in organisational structure were planned for the year of 2008. At the ministerial level the Probation division has been united into the structure of Prisons Department. Since 01.01.2008 instead of Probation division and social Welfare division of prisons the Social Rehabilitation division is created in the structure of the Prison department. The new structure deals with CSMS implementation and with case management and interventions throughout criminal executive process including imprisonment and probation phase as well.

### **3.2 Internal organization**

Four regional probation departments have been formed under the first instance County and City Courts, employing a staff of 210 probation officers who supervise over 8,000 clients. Probation departments also have voluntary probation workers; currently there are around 20 volunteers all over Estonia. A probation department is administered by a head that manages the work of probation officers and a secretary. Departments are divided into smaller services and reception points that are necessary for guaranteeing the availability of service throughout the country.

**Figure 1: Organogram of Probation System as of 01.06.2008**



The probation departments will be separated from the court system and united with regional prisons on the 1<sup>st</sup> of June 2008. The inner structure of probation department and its locations will remain as described.

### 3.2.1 Probation workers

Probation staff is divided into following categories:

- Secretary - 12
- Probation officer - 155
- Senior probation officer - 31
- Head of the Probation Division - 20
- Head of the Probation Department - 4

Such categories are providing possibilities for personal career in probation service, which is important for motivation. The task of administrative workers is

to assist probation officers with services paperwork, registration of documents etc. Probation officers are working directly with probationers, they can be specialized to some category of probationers or programmes, but it's not compulsory. Senior probation officers are more experienced workers who are able to develop probation practice and programmes and advice others. For example to become a senior probation officer one has to meet supplementary educational requirements, has to have a working career in probation at least two years and has to be specialized to certain group of clients. Head of the probation division is responsible for administration of smaller structural units of probation department. By their definition from The Probation Supervision Act, they are probation officers who are also having some responsibilities of administration and coordination in certain area or regional district. The Head of the Probation Department is responsible for coordination and supervision of probation department and officers work in relevant region.

### **3.2.2 Case loads**

The normal caseload of probation officers is considered to be 45-50, which is stressed in the standards of probation work<sup>1</sup>. This number can vary in different regions depending on geographical areas or organisational matters. The pre-sentence and parole reports have to be added to the caseload of probation officer. In general dividing principles of Probation department into smaller units takes into account regional caseloads and its changes. The community sanction imposed most often is the supervision of conduct, which means that probationer has to obey certain rules under supervision of probation staff. The second largest client group are parolees, which is currently increasing due the changes in the legal framework of parole and introduction of electronic monitoring. Since its introduction in autumn of 2002 the use of community service has increased. At the beginning of the year, 153 probationers were fulfilling their hours. According to the statistics of the Ministry of Justice there were 8,397 probationers (as of 01.04.2007) under the supervision, the average caseload of the probation officers was 44 probationers per probation officer. Probation officers prepared approximately two pre-sentence or advisory parole reports additionally per month. According to the statistics of the Estonian Ministry of Justice during first seven months of 2007 179 probationers were released on parole with obligation of electronic monitoring. Currently there are round 100 probationers with EM on everyday basis.

### **3.2.3 Education, training requirements and opportunities**

At the creation of probation in 1998 and 1999 probation officers were appointed to office on the basis of the implementing provisions of the Probation Supervision Act, which gave a possibility to hire people with secondary education. Such implementing period was necessary as in the given time period

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<sup>1</sup> Probation standards are general guidelines for probation officers describing expectations and quality marks of their performance (adopted by the Minister at 04.03.2003 as an in-house rule).

Estonia lacked the possibility to find immediately a large number of suitable social educators or social welfare workers with higher education. All officers hired in 1998 and 1999 received basic training that lasted for two months and that was the first introduction to the topic of probation and helped to unify knowledge in the field of law, social pedagogy and psychology. Since 2000 persons with higher education in social work, social pedagogy or psychology are hired. The relevant education institutions have included subjects that are taught specially to probation officers into their curriculum. To apply for the post of senior probation officer specialisation to deal with certain groups of offenders and at least 2 years professional experience is required.

The Ministry of Justice allocates funds for in-service training for probation officers. In addition to budgetary means allocated to every department the Ministry of Justice organises joint training events on the topics that are necessary for all probation supervision departments and that contributes to achieving the aims of probation work. Probation departments are involved in drawing up the annual training plan. They will be able to make proposals concerning the topic of training and will be required to draw up the training plan of their respective departments. As part of in-service training, since 1999 the Ministry of Justice has organised job counselling of probation officers. As the work of a probation officer contains great responsibility, which apart from the supervision work also includes taking into account of the client's interests and wishes, the counselling service is necessary to avoid burnout of the officials. The aim of job counselling is to improve cooperation between probation officers and their work with probationers through analysis of difficult client cases.

### **3.2.4 Other organizations involved in probation work**

Probation officers will not be able to carry out their duties without cooperation. Other state agencies and local municipalities are responsible for providing relevant services to offenders on the same grounds as services are available for other target groups. For example the accommodation has to be provided from local municipality, dealing with the problems of unemployment is the task of labour board. Probation officer has a responsibility to consult the offender about resources available and to motivate the person for using them. Several NGOs are active in the field of crime prevention and social welfare. Probation officers organize cooperation with the NGO sector regionally. NGOs usually work on a project basis and therefore the cooperation depends on mutual interests, needs and resources.

## **4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS**

### **4.1 General**

The Penal Code distinguishes between crimes and misdemeanours as offences and provides for the punishments for their commission. At the same time the general part of the Penal Code is common for both crimes and misdemeanours.

For a crime the principal punishment can be a pecuniary punishment, imprisonment, or in the case of a legal person mandatory dissolution. For a misdemeanour a possible principal punishment is a fine or detention. For one crime one principal punishment and one or several supplementary punishments can be imposed. In the case of natural persons a supplementary punishment imposed for a crime can be a prohibition to engage in an activity, deprivation of driving rights, deprivation of the right to own weapons and ammunition, deprivation of hunting and fishing rights, expulsion and fine to the extent of assets. According to the Penal Code it is also possible to serve a sentence in parts pursuant to the conditions and procedure provided by the court.

**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	x	
Supervision of conduct as a sanction applicable for minors		x	
Pre – sentence report	x	x	
Supervision of conduct (Supervising sanction of probation)		x	
Supervising conditional release (parole)			x
Electronic monitoring (combined with parole)			x
Advisory report with respect to conditional release		x	

## **4.2 Pre-trial phase**

### **4.2.1 General**

Legislative base–Code of Criminal Procedure provides the rules for the pre-trial procedure and court procedure for criminal offences and the procedure for enforcement of the decisions made in criminal matters.<sup>2</sup> The involvement of the probation officer is mainly through pre-sentence report, but probation service has the role also in case of termination of criminal proceedings.

### **4.2.2 Termination of criminal proceedings**

Minors are under special attention in the Estonian criminal Justice system. The Code of Criminal procedure (§ 201) is allowing in case of juveniles the referral of materials to juvenile committee (situated at the local municipalities) if:

- commencement of criminal proceedings is refused or a criminal proceeding is terminated for the reason that the unlawful act was committed by a minor who was incapable of guilt on the grounds of his or her age;

<sup>2</sup> Code of Criminal Procedure, Passed 12 February 2003, (RT<sup>1</sup> I 2003, 27, 166; consolidated text RT I 2004, 65, 456), entered into force 1 July 2004, <http://www.legaltext.ee/et/andmebaas/paraframe.asp?loc=text&lk=et&sk=en&dok=X60027K4.htm&query=kriminaalmenetus&tyyp=X&ptyyp=RT&pg=1&fr=no>

- a Prosecutor's Office finds that a minor who has committed a criminal offence in the age of 14 to 18 can be influenced without imposition of a punishment or a sanction prescribed in § 87 of the Penal Code.

Prior to referral of materials to a juvenile committee, the nature of the act with the elements of a criminal offence and the grounds for termination of the criminal proceeding shall be explained to the minor and his or her legal representative. If the case is referred to juvenile committee, then appropriate educational measures will be considered and implemented. The idea of this possibility is to avoid stigmatisation of juveniles through criminalisation in so called "minor cases" which can be dealt with in a more flexible manner than concrete punishment would allow. Usually, the decision is made after completing pre-trial report from the probation officer.

The Code of Criminal procedure (§ 202) contains the possibility of termination of criminal proceedings in the event of lack of public interest in proceedings and in case of negligible guilt if the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to the criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the criminal proceedings. In the event of termination of criminal proceedings, the court may impose the following obligations on the suspect or accused at the request of the Prosecutor's Office and with the consent of the suspect or the accused within the specified term:

- to pay the expenses relating to the criminal proceedings or compensate for the damage caused by the criminal offence;
- to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public;
- to perform 10 to 240 hours of community service. The provisions of subsections 69 (2) and (5) of the Penal Code apply to community service.

The Probation service is responsible for the enforcement if the person has to complete community service for a certain amount of hours. There is a strong recommendation for prosecutors for analysing each person's suitability before ordering community service. In this case it can be made through ordering the pre-trial report from Probation Service or after completing short suitability test together with consultation of probation officer. The fulfilment of community service order will be under same rules as applicable in case of replacement of imprisonment with community service hours pursuant to the Penal Code. When the work is completed positively then a report from probation service to prosecutor is sent and the prosecution will be not continued. In case of violations the criminal proceeding is continuing.

#### **4.2.3 Pre-trial report**

A prosecutor or judge can order the pre-trial report. The system of involving a probation officer is regulated in the Code of criminal Procedure. In accordance with the Code of Criminal Procedure (§ 213) upon the prosecution of an accused the prosecutor will adjudicate the issue of appointment of a probation officer. At

the request of a prosecutor, a probation officer will ascertain the facts relevant to the assignation of duties and submit a pre-trial report to the prosecutor that will be included in the materials of the file. Appointment of a probation officer and ordering of a pre-trial report is compulsory in the case of criminal cases involving minors. In accordance with the Code of Criminal Procedure (§ 264) also the Judge has a possibility to involve probation officer during the phase of judicial pre-proceeding. If necessary, a judge shall assign the head of the probation supervision department with the duty to appoint a probation officer. Also the judge shall verify whether a pre-trial report has been prepared in the criminal matter of the accused who is a minor. At the order of a judge, a probation officer shall amend a pre-trial report and submit to the court a pre-trial report that shall be included in the materials of the criminal matter.

The head of the probation department shall appoint on the application of a court or prosecutor a probation officer to whom he or she assigns the task of preparation of a pre-trial report and submit it to the court or prosecutor within the period specified by them. A probation officer shall prepare a pre-trial report, which is basically the assessment of risk of recidivism and dangerousness of person. In the process of completing the report a probation officer shall meet the suspect, accused or accused at trial, persons close to him or her, and other persons to collect information necessary for the preparation of a pre-trial report. When drawing up the pre-trial report, the probation officer must meet the defendant or accused; in the case of a wish of a defendant or accused who is less than 18 years old a legal representative of the minor can be present during the meeting.

A probation officer must guarantee that the data used for drawing up the pre-trial report are relevant and based on verified facts. If possible the probation officer will meet with the family members, friends, close ones, colleagues, school mates and legal representative of the defendant or accused and will familiarise himself or herself with the data held by local government agencies about the defendant or accused and gather information from the educational institution or workplace. The pre-sentence report itself contains also the overview of the person, his or her characteristics and social circumstances. Taking into account the results of risk-assessment, the probation officer will form an opinion about possibility for using some from the existing alternatives and will also point out necessary obligations to be applied with regard to the person. If the probation officer, on the basis of his or her proposals, finds that it is not expedient to use probation with regard to the defendant or accused, he or she will explain it and submit recommendations for further action. When drawing up the pre-trial report the probation officer is in essence already planning the probation time. Drawing up of the pre-trial report is therefore in essence the preparation of probation supervision that after the convicting sentence will continue in cooperation of the probation officer and the offender.

### **4.3 Trial and enforcement phase**

#### **4.3.1 General**

The basis for the application of probation supervision period is a court decision

that has entered into force. The probation officers are enforcing following alternatives:

- Community Service;
- supervision of conduct;
- supervision of conduct as a sanction applicable for minors;
- release on parole;
- electronic monitoring combined with the release on parole.

#### **4.3.1.1 Probation and subsection of convicted offender to supervision of conduct**

Section 74 of the Penal Code regulates probation and subsection of convicted offenders to supervision of conduct: The court may order suspension of the sentence on probation, if the court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that the service of the imposed imprisonment for a specified term by the convicted offender is unreasonable. In such case, the court will order that the imprisonment imposed will not be enforced in full or in part if the convicted offender does not commit a new intentional criminal offence within the period of probation of eighteen months to three years and complies with the supervisory requirements and obligations imposed on him or her for the term of supervision of conduct provided for in s. 75 of this Code. Section 75 provides for the following requirements for the probationer for the term of supervision of conduct (obligatory for all persons under probation supervision):

- to reside in a permanent place of residence;
- to report at intervals determined by the probation department;
- to submit, in his or her place of residence, to the supervision of the probation officer and provide the probation officer with information relating to the performance of the offender's obligations and his or her means of subsistence;
- to obtain the permission of the probation officer before leaving the place of residence for longer than fifteen days;
- to obtain the permission of the probation officer before changing residence, employment or place of study.

In addition to such control requirements the court may impose additional duties on the probationer for the term of probation supervision.

#### **4.3.1.2 Substituting the punishment with community service**

Section 69 of the Penal Code creates a possibility for substituting the imprisonment with community service: The court may substitute the imprisonment of a convicted offender who is sentenced to up to two years of imprisonment by community service. One day of imprisonment corresponds with two hours of community service.

Imprisonment is substituted by community service only with the consent of the convicted offender. The term of performance of community service may not exceed twenty-four months and during the time of performing community service the person is subjected to supervision of conduct (see above). In addition to the substitution of imprisonment, pursuant to the Penal Code it is possible to substitute a fine by community service in accordance with the procedure indicated above. Subjecting to supervision of conduct in essence means the role of a probation officer as an organiser of community service and exercising of supervision over the work performed by the client at different locations.

Community service is usually performed at local government institutions or in partnership with the non-profit sector. Probation service has the list of partners (NGOs, Local governments etc) where community service can be made. Offender's skills and wishes are considered if possible. The plan for completing

hours has to be agreed among 3 parties: client, probation officer and partner. Probation service is responsible for controlling the fulfilment of CS, reporting to prosecutor and reacting to any violations from the client. Working place has to provide agreed work and information about progress at any time. The client is obliged to follow agreed plan and to complete work as required.

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

#### **4.3.3.1 Exercise of probation supervision**

The process of exercise of probation supervision period is similar in case of all probationers. A file is opened for a probationer after the receipt of the court decision or order by the probation department, and the enforcement of the decision begins. A probation officer is appointed personally by the head of the probation supervision department for each individual case. Distribution of cases takes place on the spot by the head of a probation supervision department in accordance with the existing conditions. Cases are distributed speedily, securely and reliably after receipt of the court decision/order or request for reports. Immediate feedback has to be ensured (notification to the court, police, and probationer) about the commencement of the enforcement of the court decision/order.

The first meeting between the probation officer and the probationer must take place within five working days of the registration of the probationer in the register. During the first conversation it is important to communicate with the probationer in the way that creates a basis for trustworthy cooperation. This requires, in addition to undisturbed environment that the probation officer be accepting and open for dialogue. During the first meeting with the client the probation officer gives an overview of the probationer's rights and duties, consequences of violation of the conditions during the probation period, reception times and planning of future work, discusses the personal and social situation of the probationer, agrees on the required time of contact in the future and ascertains the need for future assistance and guidance. Further probation supervision is a dynamic process the course and substance of which has to be defined again and again. The frequency of contacts must be determined according to the mode of life of the probationer and subjective and objective needs and risks. Due to the control function of the probation officer at least one conversation has to be held every month. The rule is that in the first months of probation supervision period the meetings are more often. The risks will be re-assessed after a period of six months.

If the probationer discontinues contact the probation officer has to make several attempts to re-establish contact (e.g. invitations to appear for reception, home visits with or without advance notice). If all these fail a special report is drawn up for the court in which the probation officer makes a justified application for changing the conditions of probation period or for the enforcement of the actual imprisonment.

#### **4.3.3.2 Planning of the probation period**

This is done in cooperation with the probationer, and as a result a supervision plan (please see Annex 1) is prepared which is an action plan between the client and the probation officer containing concrete aims for the period of probation. The risk-assessment tool is used for identifying risks related with probationer's behaviour and overall life situation<sup>3</sup>. Risk-assessment starts with the first meeting and will be completed within first 1.5 months of signing the supervision plan. The precondition for drawing up the supervision plan is holding of several meetings with the client and mapping and analysing of the actual situation of the client. The probation officer cooperates with state or local government agencies and legal persons in private law in order to find resources to guarantee successful re-socialisation of the client. The supervision plan drawn up by the probation officer has to be concrete and clear and it must not excessively restrict the freedom of the probationer. When drawing up the supervision plan the probation officer takes into account the results of risk-assessment. The supervision plan contains the plan of actions for compliance with the control requirements and duties imposed on the probationer, longer-term goals of probation supervision and the timetable for achieving them, actions for solving problems and the need and possibility to involve a relevant specialist and persons close to the probationer. The plan also outlines work that is done in order to explain to the probationer the effect that the crime committed by him or her has on the victim, on himself or herself and on society, also explaining cooperation with state agencies to guarantee availability of education or employment to the probationer, frequency of meetings between the probation officer and the probationer, frequency of home visits and the form of probation supervision (individual or group work).

The probation officer in fulfilling the functions of probation supervision must make a judgement whether the probationer is likely to commit a new crime. Making a judgement means explaining the probability of committing a new crime and anticipating the type of crime. If the behaviour of the probationer manifests criminal tendencies or if there are other problems there must be immediate reaction and action must be taken according to the situation. Reacting to a violation during the probation period is regulated in the Penal Code. The Penal Code requires reaction in the case of commission of a crime or violation of conditions of the probation period, which leaves the probation officer quite extensive freedom to decide on further steps. If it has appeared that the probationer has violated the conditions of the probation period the probation officer will obtain a written explanation about it from the probationer. If the violation of the conditions of the probation period was significant the probation officer will draw up a special report making a proposal for changing the conditions of the probation period or applying the actual imprisonment to the person. The court is required to review the special report within ten working days of its receipt. The judge can pass the following decisions: enforce the actual imprisonment, impose additional duties on the probationer or refuse the probation officer's request. After receiving the additional court ruling the probation officer will react in accordance with the ruling. Probation supervision

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<sup>3</sup> The risk-assessment tool is developed by the Ministry of Justice and is used also in the prison service.

ends with enforcement of the court decision or termination of the probation period. In the case of termination of the probation supervision in connection with the passing of the term the probation officer will carry out a final interview with the client in order to make a conclusion of the probation supervision and receive feedback from the client about the progress of the probation period.

## **4.4 Post-release phase**

### **4.4.1 Release on parole (with and without electronic monitoring)**

Section 76 of the Penal Code stipulates that if a person has been convicted of commission of a criminal offence in the second degree or a criminal offence in the first degree through negligence, the court may release the convicted offender on parole if he or she has actually served at least half but not less than six months of the term of the imposed punishment. In case of applying for electronic monitoring the minimum period of served imprisonment is 1/3. If a person has been convicted of intentional commission of a criminal offence in the first degree, the court may release the person on parole if the convicted person has actually served at least two-thirds of the term of the imposed punishment. In case of applying for electronic monitoring the minimum period of served imprisonment is 1/2. A period of probation will be determined to the extent of the unserved part of the term of the imprisonment but for not less than one year. During the period of probation, the person will be subject to supervision of conduct provided for in s. 75 of this Code (see above). The maximum time for electronic monitoring is one year, after EM period probation supervision period will continue according to the rules of supervision of conduct until the initial prison sentence is served. If a person has been sentenced to life imprisonment, the court may release the person on parole if the convicted offender has actually served at least thirty years of the term of the punishment, the term of probation period in that case is five to ten years.

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

The role of probation service is to deal with criminogenic risks and prevention of re-offending of offenders without duplicating the services of the social welfare system. The local municipalities are responsible for providing general social welfare services like housing, counselling etc. The grounds for granting such services are the same as for the general population. Their activities cover also those who have been released from prisons or serving their sentence in the society. However, in case of some services (for example unemployment issues) the social welfare agencies define ex-prisoners or offenders as a special target group. This means that by dealing with their problems the social workers are able to approach them more individually, and if needed, in close contact with supervising probation officer. There are some NGOs active in the field of rehabilitation of ex-prisoners or offenders, some of them are cooperating with probation officers. Neither probation system nor Ministry of Justice are currently funding aftercare services. There are some project funds available, but it's more oriented on crime prevention activities outside the criminal justice system. The Ministry of Social Affairs is funding housing and counselling for ex-prisoners, but the main emphasis is on services provided by local municipalities. NGOs are also actively using different project funds and EU means.

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

### **5.1 Finances**

To justify punishments it is also necessary to look, in addition to the efficiency of the punishment, at the cost of enforcement of the punishment for society. The probation system is financed by the state; the Ministry of Justice in the budgets of county courts plans the necessary budgetary resources. Apart from this, the Ministry of Justice disposes of the training budget for probation officers, part of which is appropriated to probation departments for designated purposes and part is used for organising national training seminars depending on the general development trends. The use of the training budget of the probation supervision department at the level of the department is decided by the head of the department considering the particular needs of officials. Currently the court director of the relevant court is responsible for designated use of the budget of the probation department. In addition, the right to control the use of funds is also exercised by the Ministry of Justice and the State Audit Office. The Ministry of Justice has applied an accounting system for expenses that enables to get an objective overview of the expenditure. Comparing the cost of enforcement of two main punishments – imprisonment and suspended sentence – we can see big differences which show that the maintaining of one prisoner is several times more expensive for the state than is the cost of supervising probationers. The expenses shown for the maintenance of the prison system do not include investments in new prisons that significantly increase the maintenance cost per one prisoner.

**Table 2**

	<b>Probation Service</b>	<b>Prison System</b>
Total current yearly expenditure (million kroon, data as at 31.12.2007)	55	466
Average number of employed staff (data as at 31.12.2007)	225	1881
Daily average number of offenders/ clients dealt with	8100	3500

Despite the successful launching of a system of alternatives and the fact that the number of prisoners is currently decreasing, the improvement of prison conditions will increase prison costs during the forthcoming decade much more than the budget for probation service. Building new prisons and closing old ones inevitably need much more resources than probation.

### **5.2 Registration systems and evaluation procedures**

Since its creation the Estonian Probation system has used electronic database for keeping records of offenders performances and information about probation

officers activities. The database consists of all information about each offender; the electronic dossier is opened for each client case and the process and progress of the probation period is kept.

The database of probation system supplements an environment for completing and processing risk assessment forms and technical solutions necessary for the work of larger departments resulting from the merger of smaller probation departments in 2006. The database is used by probation staff and is not accessible for others. Information or statistics that is needed for management or scientific purposes is collected via special requests from database administrators or probation workers. All relevant information concerning the implementation of the probation period is collected into database. The information from the database is mainly used for two purposes: management and research. The information is accessible for probation staff, for example the caseload of each individual probation officer can be seen in the database etc. The Ministry of Justice receives regular statistics from the database and at some extent publishes it regularly on the official web page of the Ministry of Justice. The information of the database is also used for scientific purposes. However in that case the justified request to the Ministry of Justice has to be made. Currently, the main researches using the database are ordered from the Ministry of Justice.

The measurement of effectiveness of implementation of probation officers work is under development. The Probation database provides necessary data to evaluate how many probationers serving certain sanctions were completing their probation period successfully and how many were not fulfilling their obligations. The overall success rate is evaluated on a regular basis. However, it is not possible to evaluate the period after probation supervision at the present time. This is due to the differences in the data collection and quality of different state databases.

### **5.3 Societal support and client's views**

Various interest groups have only expressed occasional statements concerning their views on the alternatives. Usually the society is interested more actively about the activities of probation officers in case of problematic cases like severe crimes committed by probationer. Considering the short history of the probation system in Estonia it is a relatively little studied field. However, students of social work have shown interest in these alternatives. There are several studies concerning criminal policy (incl. alternatives) completed in various universities. The Ministry of Justice is also ordering academic studies about relevancy and effectiveness of prison and probation rehabilitation programmes. The idea of alternative punishments is more accepted in society than it was ten years ago. On the local level the heads of probation supervision departments communicate with the media and on the national level it is the Ministry of Justice. One of the priorities of the Ministry of Justice PR division is to inform about the activities of the probation system and shape a positive attitude towards it among the population. The most recent public awareness campaign helped to launch successfully the electronic monitoring of offenders.

## **6 PROBATION CLIENTS' RIGHTS**

As the activities of probation officers are directly related to the exercise of public

power and the control over enforcement of court decisions, protection of the rights of probationers is an important issue. However, it should also be considered that the rights of probationers must be in compliance with the rights of victims of crimes. In general according to the present legislation the convicted person has three different possibilities to challenge a decision or act of an official enforcing the punishment: 1) appeal to a higher official or body; 2) complaint to the Legal Chancellor (ombudsman); 3) complaint to the court. Thus there is possibility of both internal and external control over the official (e.g. probation officer) enforcing the punishment. If the complaint is submitted to a higher official or body (Head of the department; Ministry of Justice) automatically the mechanism of internal control is launched by the relevant institution by way of special supervisory control. The complaint is verified and if violation by the official is ascertained relevant disciplinary measures are applied. Apart from this, the Ministry of Justice in accordance with the currently effective procedures carries out regular annual supervisory control over the probation departments, the aim of which is to control the activities and efficiency of work of probation officers.

The Legal Chancellor (i.e. ombudsman) is an independent official who has two functions: 1) exercise control over the constitutionality of legal acts of the legislative and executive power and of local governments; 2) exercise control over the activities of state agencies. Everyone has the right to submit a complaint to the Legal Chancellor, incl. prisoners and other persons with restricted rights. The Legal Chancellor has free access to the necessary information and official premises (incl. prison territory). The decision of the Legal Chancellor is advisory in nature but considering the authority of the Legal Chancellor the recommendations are always complied with.

The third possibility for probationers is to file a complaint to the administrative court concerning an administrative act or measure of the probation officer. As a result of administrative court procedure the complaint may be rejected, the administrative act or measure may be declared either fully or partially invalid or illegal, a precept may be issued or compensation may be awarded for the damage caused. In the case of not consenting with the decision the parties have the right to file an appeal to the court of appeal. During the first meeting of the probation officer and the probationer the probation officer will introduce to the client his or her rights during the probation period and will obtain the client's signature about the introduction of the rights and duties. The client has the right to request from the head of the probation supervision department that the probation officer be replaced with another one or the client can submit a complaint to the head of the probation supervision department or other abovementioned institution against the activities of the officer. Upon the receipt of a complaint the abovementioned control mechanisms are initiated depending on the body receiving the complaint.

Setting up and developing the system of alternatives follow all international standards and rules. Probation officers and social workers proceed in their work first of all from the wishes of the probationers and the available possibilities. For example, making of a home visit is agreed beforehand if possible, enquiries at the place of employment are not made without informing the client or without obvious need, etc. These principles are informal rather than formal, but they are

recognised by probation officers, for example: as little interference as possible in the client's private life etc. Also some alternatives or its elements like community service, electronic monitoring, are requiring offenders consent before it's imposed. The client's consent for certain measures is acceptable only if the relevant data are accessible by other means (e.g. the client submits necessary documents) and if there are no problems in cooperation with the client or unless otherwise stated in the court decision or law.

## **7 NEW DEVELOPMENTS**

The Estonian Probation system has been in continuous development since its creation in 1998. The changes can be divided into two main categories: those, which are dealing with administrative capability and inner quality of the system and those, which are dealing with the system of alternatives in the criminal policy arena. The organisational structure of probation is changing. The probation service was created as a part of the 1<sup>st</sup> instance courts. Due to the regional reform in 2004 smaller departments were united into 4 districts. Currently, the project of uniting probation service with prisons is under preparation. The probation departments will be part of the regional prisons on 1 June 2008. This change follows the idea of better implementation of punishments. One of the successes has been the wider use of computers and database development. In the year of 2010 the Ministry of Justice will develop the united database with prisons. This aims at better sharing of information and provides more possibilities for unifying processes.

The development of working methodology is an important issue. The risk-assessment tool is used for assessment of offender's risks of re-offending and dangerousness. The same system is used by the prison staff. To deal with the risks, several rehabilitation programmes are in use. The palette of alternatives and its use has been widening. Probation officers started to work with pre-sentence reports, and offenders released under parole and sentenced to supervision of conduct. In 2002 the implementation of community service was added into the list. Since 2004 the community service is applicable also as a measure of termination of proceedings. In 2007 probation officers implement electronic monitoring of offenders, which is combined with parole. Therefore the role of the probation system has increased in the criminal justice system continuously and on an everyday basis, around 8,200 offenders are dealt with, which is twice as much as prison service is currently dealing with.

Currently the system of aftercare to prisoners and possible interventions from the side of probation system is under discussion. In the situation where more and more persons are released from prisons on parole, the probation service has to be able to deal with higher risk offenders. Therefore probation has to be capable to provide more services and to involve more partners. The Ministry of Justice is currently exploring the possibilities to strengthen the probation system in dealing with ex-prisoners.

## **8 IMPORTANT PUBLICATIONS**

The Estonian Ministry of Justice (2008), "Estonian Prison System and Probation Supervision Yearbook 2007" <http://www.vangla.ee/36154>

J. Sootak, P. Pikamäe (2002), "Karistusseadustik, kommenteeritud väljaanne." Justiitsministeerium, kirjastus Juura (Tallinn). (Penal Code with comments)

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Official State Web Centre etc. <http://www.riik.ee/en/>