

# **Chapter 27**

## **Romania**

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

### **1 Historical development of the probation service**

Romania is a country in the Eastern part of Europe with approx. 21.6 million inhabitants (National Institute of Statistics, 2006). According to the last census (2002) 52.7% of the inhabitants belong to the urban area and 47.3% live in rural area. The main minority groups in Romania are the Hungarian one estimated at about 6.6% of the national population and Roma estimated at 2.5% of the total population (NIS, 2006). The monthly average salary in Romania for year 2006 was ca. 360 Euro (bruto) and the unemployment rate at the end of the same year was 7,2% (NIS, 2006)

In terms of judiciary, Romania belongs to the Continental law, which means that the court decision is based mainly on Constitution, Codes and different special laws. The main legislation for criminal matters is the Criminal Code (Penal Code) that dates from 1969. Up to year 2007 the Code was amended and up-dated several times but the basic structure of judicial institutions is the same as in 1969. In 2004 a new Criminal Code was adopted by the Parliament; it was meant to come into force on 29 June 2005. Due to some controversial provisions of this Code the new government decided to postpone its entering into force until 1 September 2008. In the meantime the Ministry of Justice drafted a new Criminal Code that is now under public debate.

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

1936 – 1991: the first ideas regarding the offenders' rehabilitation were introduced in the Romanian legislation under the influence of the humanitarian movement striving to improve the treatment of offenders and especially the inmates' life. Ideas like educating the inmates or assisting them after release were introduced for the first time in the Romanian legislation in 1874 by the Law of prison regime. According to this law each prison had to set up a "supervision committee" ("societati de priveghere") with the explicit aim of educating the inmates and assist them after release. This idea was emphasised also in the Criminal Code from 1936. At the article 50 of this Code it was stated that each county court will co-ordinate the activity of a patronage society (NGO) ("societate de patronaj") responsible for the social reintegration of ex-inmates especially of minors ex-inmates. That was a real after care service in a modern sense meant to deal with "la crise de la liberation". Art. 65 of the same Code regulated the suspended sentence for the first time in the Romanian legislation being used mainly to suspend short-term imprisonment. In regulating this new juridical institution, the legislative body adopted the French way ("la loi de sursis", "sursis a l'execution") of suspending the execution of imprisonment and not to suspend

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\* The author of this chapter is grateful to all the contributors and especially the representatives of the Probation Department who provided advice and all the necessary information. The author is also grateful to Mr. Ian Fox, the pre-accession adviser attached to the Ministry of Justice/Probation Department within Phare 2005, for his very inspiring enthusiasm and commitment to probation.

the application of the sanction as in other countries. The idea of suspended sentence after the conviction remained in the Penal Code of 1969 and it was extended in 1992 to another form of suspended sentence – suspended sentence with supervision.

1991 – 2000: in 1991 the General Administration of Prisons came under the authority of Ministry of Justice (previously Ministry of Interior coordinated it). From 1994 to 1997 the crime rate increased significantly from 421 to 496 per 100,000 inhabitants. Due to the limited range of sentences and also to the sentence patterns the custodial rate was one of the highest in Europe. According to World Prison Population (Home Office, 2000) the average prison rate for Europe was for the same period of time about 85 per 100,000 national population whilst Romanian prison rate was 225. The immediate implication of that was that the prison system faced a lot of administrative problems, the most important one being the overcrowding. As a consequence of this situation the Ministry of Justice started in 1996 to promote a more creative way of implementing justice.

One of the first measures was to initiate an experimental centre of probation in Arad (a medium-sized city in the West part of Romania). This experiment brought together civil society, General Administration of Prisons, local courts and local authorities. The intention was to test some elements of probation (e.g. pre-sentence reports, supervision in the community) in the existing penal and social context of Romania. From the very beginning the experiment was supported by Know How Fund of UK. In 1998 the assistance of Department for International Development/Know How Fund progressed further through the 'Probation in Romania' project which had the aim of working with the Ministry of Justice to establish probation on a national level.

In its origins the locus of probation developments was rooted in the penitentiary system. It is clear however, that the NGO-based projects were community-based. Although there were ongoing important and professional links between probation and the penitentiary system, overall developments in the last years have moved probation more into the community. Also as a result of the work undertaken during the initial phase a policy decision has been taken that the probation projects will target their activities on juveniles (aged 14 – 18 years) and young adult offenders (aged 18 – 21 years), with a priority on juveniles.

## **1.2 Important developments**

The general progress of the experiments led in September 2000 to the approval of a Governmental Ordinance no. 92 / 2000 regarding the organisation and functioning of the services for social reintegration and supervision of offenders (probation services). That is the second stage of the probation development in Romania focused on the development of the infrastructure around the country. In the same year the government adopted the Government Decision no 1239 / 2000 regarding the methodological norms of the Government Ordinance 92 / 2000. This document prescribes the daily routine of the probation counsellor, terms and conditions of the probation practice.

In 2002 the Government Ordinance was approved and amended by Law no. 129/2002 and probation services were set up near all county courts of Romania

(41). According to the law probation services are organized near the county courts having an independent status and being co-ordinated directly by the Ministry of Justice – Probation Department. In 2007 probation service is a state organisation with very diverse and complex tasks dealing with offenders but also with victims and minors under the age of criminal responsibility. The management of this structure is ensured by the Probation Department within the Ministry of Justice therefore the decision is centralised rather than decentralised.

Supervision of offenders is divided into two parts: one compulsory imposed by the court which is mainly control and the other one is voluntary, provided upon the offender's request which is about assistance and support. Due to the multitude of tasks and to some practical/administrative difficulties the second part of probation work is not very well represented. In 2006 only 5,3% of the supervised convicts benefited from assistance and counselling.

### **1.3 Probation activities in the nutshell**

According to the inception document (GO no. 92 / 2000) the main role of probation service was to ensure the social reintegration of those offenders maintained in community by the court and to supervise them in order to obey the measures and obligations imposed by the court. Therefore the main probation activities provided by these documents were:

- writing evaluation reports (rom:referat de evaluare. A pre-sentence report required by the prosecution or by the court that consists mainly in a criminological analysis of the offender and his or her crime. The aim of this document is to assist the prosecutor or the court in personalising the measure or the sanction imposed on the offender);
- supervising the offenders in the community (rom: supraveghere. This is a process of monitoring the way convicts obey the supervision measures and fulfil the obligations imposed by the court. The main methods of doing that are meetings with the offender at the probation office, home visits, working with families and other institutions involved);
- providing upon request assistance and counselling (rom: asistență și consiliere. This is a process of offering support for social reintegration of offenders. The philosophy behind it is that control without care is not effective and once the criminogenic needs are covered the offender is more likely to stop offending). Assistance and counselling could be provided upon request to offenders under probation supervision and also to inmates with their consent.

The main community sanctions and measures enforced by the probation service in Romania are suspended sentence under supervision (rom: suspendarea sub supraveghere a executarii pedepsei cu inchisoarea) and supervised liberty (rom: libertatea supravegheata). The first one was introduced in the Criminal Code in 1992 (Law no. 104 /1992) and took over the French model of suspending the enforcement of the imprisonment with some measures and obligations (sursis avec à l'épreuve). The second one is provided as an educative measure imposed by the court for juveniles and consists mainly in maintaining the juvenile in the community for one year under the supervision of the parents. The court could also impose on the juvenile some obligations. One of them – community service - was introduced after some experiments in 1996 and is available only for

juveniles. Besides these core tasks of probation service a lot of other competencies were added in the last three years.

In 2004 a new law was adopted by the Parliament (Law no. 211/2004 regarding the victim protection) and provided for the probation service to offer psychological counselling for victims of some categories of crime (especially for the victims of violent crimes). Coming back to the traditional tasks of probation in 2006 Law no. 275 regarding the execution of the penal sanctions and measures was adopted and added to the tasks of probation services a new one – to participate in the sentence planning commission.

The developments described briefly above are just the main ones in terms of resources allocated and visibility of the probation activity. Apart from these tasks, probation service is expected to be in court upon request when minors are subject of criminal cases. They also have to provide reports upon court request for minors in conflict with the law but not legally responsible (under the age of 14). Probation counsellors have to participate in some cases when the first interview with victims takes place at the prosecution level. The latest development is provided by art. 482 Criminal Procedure Code which stipulates that probation service has to provide a report for all cases with minors above the age of 14 no matter if they are prosecuted or not.

## **2 LEGISLATIVE BASIS AND MISSION**

### **2.1 Legislative basis**

As mentioned before the main act underlying probation work is Law no. 129 / 2002 (approving and amending GO no. 92/2000), which is a special law defining the principles, structure, responsibilities, training of staff and some procedural issues. Therefore the main characteristic of this law is that it refers mainly to the organizational aspects. In art. 1 of the law is mentioned the role of the service: “In order to achieve the social reintegration of those persons who offended, maintained in liberty, as well as the supervision of their compliance to the obligations imposed by the court, services concerning the social reintegration of offenders and the supervision of non–custodial sentences, called further on social reintegration and supervision services, shall be set up under the authority of the Ministry of Justice, as specialised agencies that shall not be legal entities.” Art. 3 of the same law emphasize the caring role of the service: “Upon request of the persons mentioned by article 1, the social reintegration and supervision services may provide assistance and counselling towards their correction and social rehabilitation.” These two articles describe the concept of social reintegration in the light of the probation law: a mixture of surveillance and assistance. The principles underlying this aim are set as follows:

- community involvement: crime is seen as a problem of local communities therefore the solution has to come from those communities. The involvement is seen as a resource issue first of all: the community put together the relevant resources like jobs, accommodation, practical help and when needed make available this resources to probation clients. As a form of community involvement is the collaboration with local NGOs;

- confidentiality: next to the previous principle is the confidentiality condition that set the boundaries of the information access to others. The law stipulates clear procedures and persons who have access to the files;
- anti-discrimination: the probation activity is carried out without any discrimination based on: nationality, citizenship, race, ethnic origin, language, religion, sex, political opinion, fortune, social origin or any other reason;
- inter-disciplinary work: in their activities probation councillors are encouraged to involve “specialists from other fields”. This principle is limited in its action because there are not clear mechanisms of involving them and pay them accordingly. Apart from that inter-disciplinarily goes hand in hand with inter-agency work that is not mentioned in the law.

The next most important piece of legislation is the Government Decision no. 1239/2000 which was mentioned above. Providing the methodological norms for the Government Ordinance no. 92/2000 this act stipulates in great details when and where a specific probation service is competent, when and how an evaluation report should be written and delivered, how the supervision has to be conducted in dependence on the sanction imposed by the court and how assistance and counselling must be offered. In the annex of this regulation formats for the evaluation report and for the supervision plan are produced (see format probation documents).

The probation activity is coordinated by the Ministry of Justice through the Probation Department. This department is a specialised structure with specific tasks stipulated in a ministerial order. The main tasks of Probation Department are: to coordinate the activity of the local services, to assess their performances, to contribute to the legal drafting procedures, to train probation staff and so on. In order to accomplish all these tasks Probation Department put in place a monitoring system of the local services based on monthly reports. The coordination of the local services is also implemented via different regulations and instructions either approved by the director of this department or endorsed by the Minister. To give just a few examples of such regulations are the Code of Ethics by the Minister of Justice in 2004 and also the Regulation regarding the internal order, the so-called house rules. The first document mentioned describes the sort of conduct expected from the probation staff and the second one refers mainly to the hierarchy and daily schedule of probation staff. The Code of Ethics was partly included in the Law no. 123/ 2006 regarding the professional status of probation staff.

As shown in the previous chapter another important task of probation is to provide psychological counselling to the victims. This new task was adopted in the Law no 211/2004 regarding victims protection which became operational on the 1 January 2005. According to the legislation described above probation system in Romania is a nationwide service available to juveniles – especially above the age of criminal responsibility – and to adults. Furthermore probation service is dealing with offenders and also with victims of violent crimes.

## **2.2 Mission and mission statement**

In 2000, at the beginning of probation service in Romania, under the assistance of the British program “Probation in Romania ”/ DFID, the service developed its

own mission statement independent from the one adopted by the Ministry of Justice.

This was: “The Romanian Probation Service serves the courts and the public by supervising offenders in the community in order to reduce crime and the cost and consequences of unnecessary imprisonment.” There are three key messages in this mission statement:

- Probation Service is a public protection agency in the sense that it is working towards supervising offenders in order to reduce crime. Probation service is also working with the courts to identify the most suitable sentence for those who commit crimes. The accent is mostly on the control and surveillance and less on care or assistance;
- Probation Service is meant to promote community sentences when appropriate. That is mainly due to the context the new institution was created when the prisons were overcrowded. Probation has been seen and it is seen as a solution for overcrowded prisons;
- Probation Service reduces crime, costs and consequences of unnecessary imprisonment. According to some estimation the cost of probation is eight times lower than imprisonment and the economical but also the social and psychological consequences of imprisonment are cut down significantly. Regarding the effectiveness of the service it is too soon to express one view. Probation is still a new service in Romania and is not fully operational to create an important systemic impact. On the other hand the debate on how to measure effectiveness of correctional systems is an ongoing challenge for researchers and politicians therefore is even less possible to satisfy someone with a simple answer.

Important parts of this mission statement can be noticed in the art. no. 1 of Law no. 129/2002: “In order to achieve the social reintegration of those persons who offended, maintained in liberty, as well as the supervision of their compliance to the obligations imposed by the court, services concerning the social reintegration of offenders and the supervision of non–custodial sentences, called further on social reintegration and supervision services, shall be set up under the authority of the Ministry of Justice, as specialised agencies that shall not be legal entities.” Although the first mission statement mentioned above is not operational nowadays the second text could be valued as a mission statement since it covers the aims of this service in relation to its clients: “to achieve the social reintegration ...”. In my opinion this idea should be valued in a new mission statement.

In terms of strategic objectives Probation Service has a separate chapter in the Strategy for judicial reform 2005-2007 of the Ministry of Justice with distinctive objectives: to reform the service in order to cover also aftercare and victim protection and also to elaborate and implement Romanian Excellency Model in management. The Romanian Excellency Model is an adapted version of the European Excellence Model that is mainly a tool for a quality management. Within this framework almost all staff is involved in identifying and marking the proofs of different indicators and designate “areas for improvement” which could be included in the management plan of the next year. Using a marking system the progress or the regress of one organisation can be measured from one year to another. In terms of policies in place the only policy that is still operating is the

PR Policy. This policy sets the framework of defending or promoting the service when responding to media attacks or when the service builds up the public image. There are identified key messages that the service intends to get across:

- increase the citizens' safety by reducing crime;
- support the Courts in order to identify the most adequate penal measures/sanctions for the social reintegration of the offenders;
- protect the public by supervising the execution of the non-custodial penal measures and sanctions;
- reduce the costs and unintended consequences of unnecessary imprisonment.

The following target groups can be identified as the most important:

- opinion formers (journalists, political analysts etc.);
- magistrates, police and penitentiary staff;
- present and potential probation staff;
- non-governmental organisations.

The way this policy is implemented is regularly monitored via monthly reports and also via performance standards. Although they do not play an obvious role in the organisational life of probation service a set of values were stated and adopted in different regulations:

- treating all people fairly, openly and with respect;
- challenging attitudes and behaviour, which result in crime and causes distress to victims;
- working at all times to bring out the best in people and to encourage them to take responsibility for their actions;
- reconciling offenders and communities, recognising the obligations and needs of both;
- ensuring that people are not improperly discriminated against.

Not having an explicit mission statement as such and a clear vision regarding the role and scope within criminal justice system, probation service was a perfect victim of an administrative system that was struggling to cope with the pressures of the EU pre-accession process or other short-term priorities. This was the case when allocating to probation service the new task of providing psychological counselling for victims. This task has nothing to do with probation philosophy or values and the staff was completely unprepared to take over this new role. In the absence of a clear and strong organisational identity and vision it was straightforward for the policy makers to ask probation service to deliver one more task.

### **2.3 Crime prevention**

According to the Law no. 129 / 2002 Probation Service could run prevention programs on its own or in partnership with other agencies. Looking at the figures produced by the Probation Department for 2006 one can claim that prevention is not a key activity. Data regarding crime prevention could not be found in the Annual Review 2006 of the Probation Department. Having said that it must be stated that there are some local services very much involved in crime prevention programs. One example comes from Arad Probation Service that developed a manual for crime prevention based on the training of trainers' principle. Students from high school are trained as future trainers in the framework of

summer schools and are organized into teams (delta force). These teams visit high schools from the marginal areas of the city and through interactive exercises explain to the students what is an offence, when this could happen and what the consequences of it are. Other crime prevention programs are organized in partnership with police or with prison staff aiming to deter students from committing crimes. The philosophy behind this approach is mainly deterrence - once the students get to know the criminal procedure and the prison life they will keep away from offending behaviour.

## **2.4 Victim protection**

As mentioned above according to Law no. 211/2004 regarding victim protection probation service is required to provide “psychological counselling and other forms of assistance” (rom: consiliere psihologica si alte forme de asistenta). These services are available free of charge upon request for the victims of following crimes: attempted murder, bodily harm and grievous bodily harm inflicted upon a family member, rape, sexual intercourse with a child, sexual corruption of a child, bad treatment upon a child and human trafficking. At that time of implementation probation staff was not specialised in delivering these services and the capacity of the service to respond to these requests was limited in terms of number of staff with psychological or social work background. That is partly the reason for the low number of assisted victims (even in 2006 -the second year of implementation – only 98 victims benefited from this service). It is true that probation should involve victims as much as possible (likewise the other criminal justice agencies) but the way this should be done is around the idea of what probation is doing with offenders. To give just a few examples: probation services should include victim modules within the programs delivered to offenders, probation services should inform victims when an offender is about to get released (especially if there are reasons for concern) and so on. Victim centred agencies should deliver direct counselling and advocacy services to victims; not one agency is also doing those tasks among other things.

Another peculiar provision of this law is that the intervention is limited in time: up to three months for adult victims and up to 6 months for children. It is well known that sometimes the consequences of violent crimes last for a lot longer than this timeframe. Further more the posttraumatic stress disorder goes off after one month and last sometimes years. It is difficult to understand how these time limits were established and with what rationale. The law also provide for the probation service the possibility of cooperating with NGOs for offering other forms of assistance to victims. Although the procedure is not defined these NGOs could apply for grants to the state budget. Apart from this form of assistance, victims are entitled to receive information, financial compensation and free legal aid.

The police officers, prosecutors and judges provide information regarding their rights and the criminal procedure. Free legal aid is provided for the victims of an even more restricted category of violent crimes (attempted murder, bodily and grievous bodily harm, rape and sexual intercourse with a child) and depends upon the income of the victim.

Financial compensation is available for the victims of the same categories of violent crimes and can consist of up to ten times the minimum salary per economy. Free legal aid and financial compensation are approved by a special commission of the county court and are available also to the dependents and relatives of the victim whose death is caused by a violent crime.

In order to encourage victims to report crimes the last two services are available only if the victims report the crime within 60 days from the crime date. Apart from this law there are other laws regulating different services available for different categories of victims (ex. domestic violence, human trafficking etc.). All these services are delivered by independent government agencies and among them there is little cooperation. In the end victims are entitled by the law to benefit from a number of services but there is not one single agency or organisation to represent their rights and there is no coherent approach to the victims difficulties. In this institutional context victims could easily slip through the support net and ultimately the only real support could come from family or friends.

### **3 THE ORGANIZATION OF PROBATION SERVICE**

All the responsibilities of probation service collected from a large variety of laws and codes could be summarised as follows:

- supervise the compliance with the supervision measures provided for under the suspended sentence under supervision (art. 86<sup>3</sup> paragraph 1 subparagraphs a) – d) of the Romanian Penal Code;
- supervise the execution of the obligations (a. to meet periodically the judge or another official person, b. to announce any change of address, c. to communicate and justify any change of jobs, d. to inform about the means of getting the income) provided for under art. 86<sup>3</sup> paragraph 3 subparagraphs a) – f) of the Romanian Penal Code, imposed by the court in the charge of the convicted person;
- supervise the execution of the obligations provided for under supervised freedom (art. 103 Penal Code) imposed by the court in the charge of juvenile offender;
- elaborate evaluation reports (pre-sentence report) concerning the defendants, upon request of the court;
- collaborate with public institutions with regards to the execution of the obligation imposed to juvenile offenders to carry out unpaid work within an institution of public interest (community service);
- develop individual counselling activities of the offenders concerning their social, group and individual behaviour, upon request;
- initiate and develop specialised programmes of protection, as well as social and legal assistance of the juveniles and youngsters who offended;
- initiate and develop together with volunteers and representatives of civil society, with governmental and non-governmental organisations from the country and from abroad reintegration programmes for the persons under supervision, upon their request, in order to support such persons in obeying the conditions imposed by the court as well as in their social reintegration;

- co-operate with the public and private institutions as well as with physical persons and legal entities within its territorial competence, in order to identify, if necessary, the available workplaces, school classes, as well as qualification or vocational classes;
- assist and supervise the pardoned people,
- provide psychological counselling and other forms of assistance to victims,
- write evaluation report for all juveniles in conflict with the law,
- participate to the first interview with a victim in special circumstances,
- any other attributes stipulated by law.

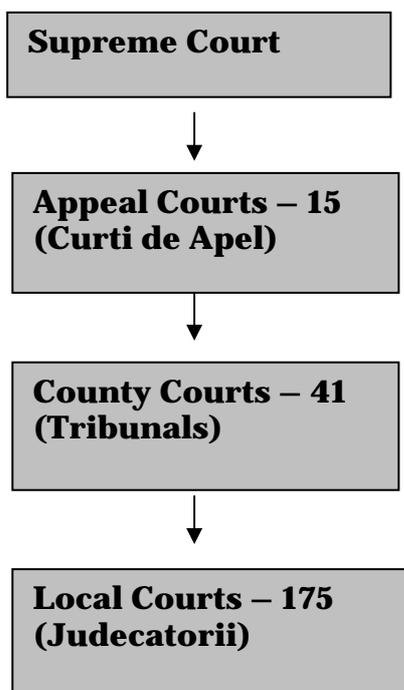
### **3.1 Main characteristics**

According to the Probation Law (Law no 129/2002) probation service is a national service under the authority of the Ministry of Justice. The overall management responsibilities belong to the Probation Department within the Ministry of Justice. A director appointed by the Minister coordinates this department. Probation services are created near each county court (rom: tribunal) and are expected to serve all the inferior courts (rom: judecatorii). The average number of local courts under one tribunal is 4,5. In 2007 a number of 300 probation staff are employed. That means that the average number of staff per service is 7,3 probation counsellors per service.

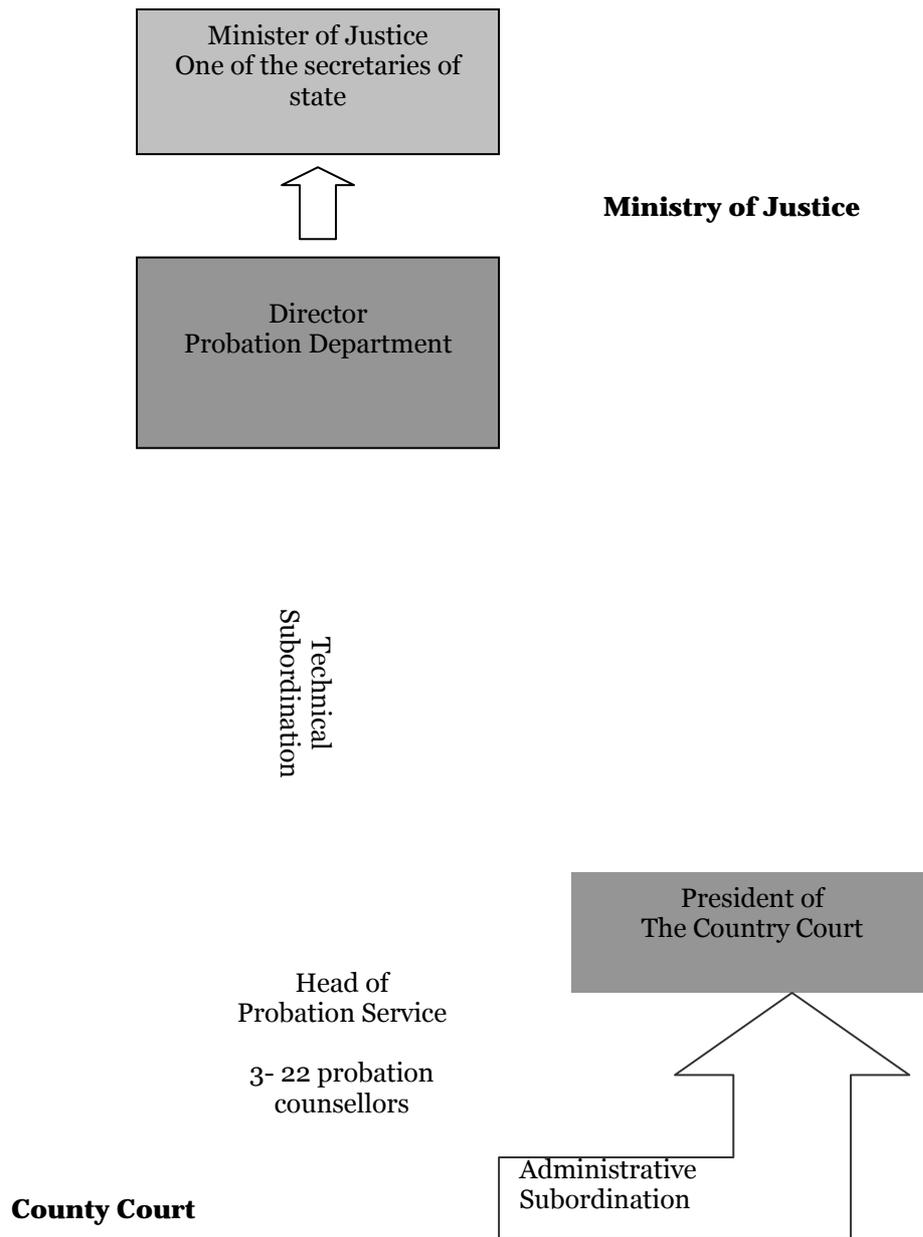
### 3.2 Internal organization

The probation services are subordinated to the presidents of the courts from the administrative point of view (e.g. salaries, legal holidays) and to the Ministry of Justice – Probation Department from the professional viewpoint. That means that this department sets up policies for development, standards of practice, methodologies and so on and also has the power to grade workers. Therefore even though probation services are created within the county courts structure they are independent in their daily practice.

**Figure 1: the ordinary judicial structure**



**Figure 2: the probation services subordination**



The services are coordinated by a head of service that is appointed by the Minister of Justice at the proposal of the director of Probation Department. The name put forward by the director results after an open competition. To become head of service one should have at least one year experience in the field he or she

is specialized in and prove to have managerial skills. Each service employs around 3 to 22 probation counsellors. The coordination and control of the probation service is provided by the Probation Department. These attributes are implemented mainly by monthly reports, issuing methodologies, policies and by conducting inspections. Another effective way of monitoring probation activities is by organizing a national information system. This information management would be based on computerized system of collecting and analysing information about clients so that at the end of each month the data basis of the Ministry of Justice is updated ready to inform management and policy decision. In some large cities probation services cooperate with NGOs in order to provide social work type of services. Unfortunately NGOs are not active in all counties of Romania.

### **3.2.1 Probation counsellors**

In order to become a probation counsellor one should meet the following requirements:

- to have the Romanian citizenship and the domicile in Romania;
- to have a complete capacity of exercise;
- to be able to read and write in Romanian language;
- to be medically and psychologically able to carry out their responsibilities, as certified by a specialised medical and psychological expertise;
- to not have been convicted for an offence that will make them incompatible to the exercise of any probation positions and to have a good reputation;
- to have an academic degree in Social Work, Psychology, Sociology, Pedagogy, Law;
- to win the contest for the position he or she applied for.

Therefore in terms of educational background all the graduates of those five faculties could apply for the job. The contest for fulfilling the vacancies takes place anytime a vacancy occurs and is organized by the Probation Department. Most of the time in the selection commission sits representatives of this department and academics.

Some 300 probation counsellors are employed in 41 services (about 7,3 probation counsellors per service) on the 1<sup>st</sup> of June 2007. In 2006 a number of 180 probation counsellors were employed and at the beginning of 2007 another 120 probation staff joined the service. They usually have to cover the work provided by one county court and an average of 4,5 local courts that are spread around 8,000 square kilometres. There are no provisions in the official documents about the caseload. Looking at the statistics of 2006 the main two activities of probation counsellors were writing evaluation reports and supervising offenders in the community. *Grosso modo* the average number of evaluation reports per one probation counsellor in 2006 was 42,5 and the number of supervised offenders in the same year was 36,6 convicts. Having said that one should bear in mind that there are big statistical differences among different services and also there are months of the year busier than others. In terms of the educational background probation counsellors graduated: 38,8% law, 34,3 % social work, 16 % psychology and so on.

The status of the personnel is formulated in a special law (Law no. 123 / 2006 regarding the status of probation staff). Together with the law on payment and other rights this law sets the basis of the probation staff's rights and obligations. Probation staff is divided into four main categories: probation counsellor, head of service, probation inspector and director. According to their experience probation counsellors are also divided into four grades: debutants, grade three (between one to four years of experience), grade two (between four to six years of experience) and grade one (over six years of experience). The status provides for the debutants that they have to undertake a supervised practice during one year under the authority of the head of service or another probation counsellor with minimum three years experience in probation practice. The experience of one probation counsellor is considered as experience in psychology, social work, law, pedagogy or sociology and not necessarily in probation service. In order to become probation inspector one has to be at least probation counsellor grade two. The status is also dealing with staff mobility, initial selection, continuing training, yearly evaluation rights and duties of probation personnel, role conflict and incompatibilities and the disciplinary procedure. Regarding incompatibilities it is worth mentioning that the only explicit restriction is for commercial activities.

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

Between 2000 and 2006 besides the requirements provided by the law for the candidates that were mentioned above, a potential candidate had to graduate from a probation module or a postgraduate course organized by one university. Alternatively Ministry of Justice had the mandate to organize intensive induction training for those intending to become probation counsellors. That system of initial training had a few advantages. To begin with, probation service didn't have to pay and organize basic training for the new comers. In the second place that kind of training was delivered within the educational system with special mechanisms for quality insurance. In this environment students are usually introduced in programmes that combine education and training, theory and practice. An important limit of this strategy was that Probation Department had little or no control at all on the way probation curricula was delivered to the students and also on the number of graduates on the market at one time.

After 2006 this precondition was abolished and all the graduates from those five specialities (psychology, social work, pedagogy, sociology and law) are free to become candidates for the positions. Nowadays initial training is organized in two or three week's intensive training for the new comers. Complementary specialized training on different topics is organized every year. For example for the new comers in 2007 an intensive training was organized and other training sessions are to follow on: one to one work with offenders, group work programme, and work with victims of crime, using an evaluation tool and so on. Most of these will be supported financially and technically by a PHARE and a MATRA program. All the probation staffs have personnel files and all these trainings they attend are recorded into these files.

Regarding the specialization inside the probation service there are probation counsellors with psychology background in charge of providing psychological

counselling to victims. There is no specialization inside probation service in terms of evaluation reports, supervision or assistance. One probation counsellor is expected to write the evaluation report and if the court decides probation then the same probation counsellor will take over the supervision and assistance of that convict. The relationship with the client is seen as crucial in the reintegration process.

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

### **4.1 General**

All the responsibilities of probation service are based on the provisions of the current Penal Code, which dates from 1969 and it is as seen above not very friendly to community measures and sanctions. The main judicial provisions provided by the Penal Code which fall under the implementation authority of probation service are supervised liberty and suspended sentence under supervision. In order to create a bigger impact on prison population the Penal Code should include among others more options for community measures and sanctions, restorative justice, penal mediation and so on. The Penal Code adopted by Parliament but not in power and the new Penal Code under public debate are more generous in this respect. Among other provisions these penal codes include community measures like deferred sentence and postponed sentence. The one adopted by the Parliament includes community service as a main punishment to replace imprisonment up to five years. The second one under public debate preserves community service as an obligation attached to different community measures and sanctions.

The Penal Code and the Penal Procedure Code include some offences the police or prosecution could press charges only if there is an official complaint from the victim or victim representatives. Such offences are bodily harm, threatening, calumny and so forth. These provisions open the gate for some out of court arrangements but this does not involve the State at all. If the victim is content with the reparation done by the offender then he or she could withdraw the complaint. The range of situations when the official complaint is needed is very limited and not fully explored. As an EU member Romania will have to consider now mediation in penal matters as provided in Council Framework Decision no. 220/2001 on standing of victims in criminal proceedings. Some steps have been done towards this end by promoting a law regulating the professional status of the mediator.

Another important piece of legislation relevant to probation service is the already mentioned the Government Ordinance no. 92 / 2000 regarding the organization and functioning of probation service approved and amended by the Law no. 129/ 2002. Apart from the provisions regulating the way the system is organized there are provisions prescribing what probation service is expected to provide: ex. evaluation reports, supervision, assistance and counselling etc. All these responsibilities are detailed in the Government Decision no. 1239/2000. Law no. 211 / 2004 is also very important regarding some measures for victim protection. According to this law probation service is expected to provide psychological assistance to victims of some violent crimes. Other laws (ex. Law no. 275/2006 and Law no. 272 / 2005) add to the probation service's responsibilities to participate to the sentence planning commission in the prison and to provide evaluation reports upon court request for children under the age of criminal responsibility. The last provision has been extended in the new Criminal Procedure Code for all minors in conflict with the law. The following

table is meant to better illustrate the probation activities during different stages of criminal procedure.

**Table 1: Activities of probation during the different stages of criminal procedure**

	Pre-Trial Phase See: 4.2	Trial and Enforcement Phase See: 4.4	Post Release Phase See: 4.4
Preparing a social inquiry report (for all juveniles in conflict with the law)	x		
Mediation/victim support	x		
Supervising / organizing etc. community service		x	
Supervising / organizing training or learning projects		x	
Supervising etc. drug/alcohol treatment programs		x	
Supervising the educative measure of supervised liberty for juveniles		x	
Pre - sentence report		x	
Supervising suspended sentence under supervision		x	
Assistance / support to probationers and prisoners in prison		x	
Supervising paroled offenders			x
Providing psychological counselling to victims	x		
Participating to the first interview of the victim	x		
Crime prevention	x		

## **4.2 Pre-trial phase**

### **4.2.1 General**

The Romanian criminal justice system has a lot of similarities with the French one. The Criminal Procedure is based on due process principles including rights like: assumptions of innocence, right to defence, guarantee of freedom and so on.

Broadly speaking, the criminal procedure comprises three main stages: pre-trial, trial and post-trial stage.

The pre-trial stage is divided into the preliminary phase and the investigation phase. The police under the prosecution supervision conduct the preliminary phase. In Romania police has the right to retain someone up to 24 hours for investigations. After 24 hours prosecution could ask for a remand order (preventive arrest) from the court. After the police end the preliminary inquiry

and decide that there is a case the file goes to the prosecution. That is the moment when the investigation phase starts. At this stage prosecution deals with suspects and could ask the court to take the following preventive measures: obligation not to leave town and preventive arrest. In order to avoid preventive arrest one could ask for temporary release under judicial control, when he or she has to comply with some obligations and for temporary release on bail. The measure of preventive arrest could last up to 30 days and after that the court could prolong that period of time if the prosecution could prove that there is a case and some specific conditions are met. During the pre-trial and trial stage there are some other measures available to the prosecution or to the court. Such measures are: protection measure (if one is on remand and has in his or her care children or others the judicial institution which took the remand measure has to inform the competent institutions), safety measures (medical treatment or hospital treatment), assurance measures (distrain of movables and seizure of real estate), return of objects and rehabilitation of the situation anterior to crime.

After the prosecution service finishes the investigation phase one of the following main decisions are available: cessation of criminal investigation (for procedural reasons like there no the complaint from the victim and that is required by the law), exemption from criminal investigation (for reasons like there is no defined offence by the law or offender is someone else or the offence is not serious enough to be considered an offence) and to submit the file to the court. At this stage mediation or other forms of restorative justice could diminish the number of cases going to the court and save a lot of people from the labelling process of being a convict.

#### **4.2.2 Pre trial report**

At this level in the light of the new Criminal Code Procedure probation services has to provide an evaluation report for all juveniles above the age of criminal responsibility (over 14). This legal requirement is a compulsory one and the absence of this document from the judicial file leads to the sentence nullification. According to the Law no 272/2005 regarding child protection the court could ask for an evaluation report in cases of children under the age of 14. Looking to the structure of this document and the way it is used by judiciary this evaluation report is de facto a social inquiry report. In the light of Law no. 129/2002 probation service could be asked by the prosecution to make an evaluation of the defendant. During the experimental phase, this kind of report was called risk report because it was used for assessing the risk of re-offending during the pre-trial and trial stage. For the time being there is no methodology for this type report and it is barely used by prosecution because of the short time available between the decision of prosecuting and actually sending the case to the court.

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

#### **4.3.1 General**

When the president of the competent court receives the file from the prosecution the trial stage begins. In order “to find the truth “the court must have an active

role having the power to call for witnesses, experts and so on. According to art. 52 of the Penal Code “penalty is a measure of constraint and means of re-educating the convict. The purpose of the penalty consists in prevention of other crimes”.

#### **4.3.1.1. Categories of penalties**

There are three categories of penalties: main penalties, complementary penalties and accessory penalties (art. 53 Penal Code).

- main penalties: life sentence, 15 days-30 years imprisonment, 100 lei (33 EURO)-50.000 lei (16,666 EURO) fine;
- complementary penalties: 1 year - 10 years interdiction of certain rights (the right of elect and being elected in public authority or public elective positions; the right of filling a position involving the exercise of the state authority; the right of filling a position or of practising a profession which holds the nature of the one by means of which the convict committed the crime; parental rights; the right of being a tutor or guardian) and military degradation;
- accessory penalties: Interdiction of all the rights presented above.

In individualizing the penalties the court has to consider the penalty limits provided in the law, the seriousness of the offence, the offender and the circumstances that mitigate or aggravate the criminal responsibility. In case of fine or imprisonment the court could suspend the penalty's execution. There are two forms of suspension: the conditional suspension and the suspension under supervision. According to art. 81 Penal Code the courts could request conditional suspension of the penalty's execution over a certain period of time if the following conditions are met:

- the applied penalty is up to 3 years imprisonment or fine;
- the criminal has not been previously convicted to more than 6 months imprisonment, except for when the previous convictions are from the childhood or are pardoned or the offences done and convicted for are not included in the law any more or were not done with intention;
- the purpose of the penalty can be reached without its execution.

The duration of the conditioned suspension of the penalty's execution constitutes a test for the convicted and it is made up of the applied imprisonment penalty plus 2 years adjoined to that. If the penalty which execution was suspended is a fine, the test term is one year. The suspended sentence under supervision was introduced in the Criminal Code in 1992 and is regulated by art. 86 Penal Code. The application of this article is possible if the following conditions are met:

- the applied penalty is up to four years imprisonment;
- the criminal has not been previously convicted to imprisonment more than one year, except for the cases in which the conviction makes the object of one of the cases provided above at letter b from the conditioned suspension;
- considering the convicted, his or her behaviour after the perpetration of the crime, the pronouncement of the sentence may constitute a warning and, even without the execution of the penalty, the convicted will never perpetrate a crime.

The probation period in the case of suspension of the penalty's execution under supervision is made up of the applied imprisonment penalty, to which an interval

between 2 and 5 years are added, according to the court's decision. During the probation period the court must impose upon the convict the following supervision measures (art. 86 ind.3 Penal Code):

- to come, at the fixed dates, to the judge appointed with the supervision or to other bodies established by the court;
- to announce, in advance, any residence change and any travel which exceeds 8 days, as well as the date of coming back;
- to notify and justify the change of the job;
- to communicate information which could enable the supervision of the means of existence.

The court could also impose upon the convict one or more of the following obligations:

- to perform an activity or to attend a training or academic course;
- to not change the address or residence or not exceed the established territorial limits but under the terms fixed by the court;
- to not attend certain established places;
- to not contact certain persons;
- to not drive any vehicles or certain vehicles;
- to comply with the observation rules, treatment or assistance, especially in the case of detoxification.

Regarding the first obligation in line some judges interpret it as a community service. Although in some circumstances that is useful and serve the scope of justice and rehabilitation technically speaking this is not correct. First there is no minimum and maximum hours that can be imposed. Secondly the obligation is not called like that and convicts could complain for the breach of the "sine poena sine lege" principle. The condition that must be obeyed before imposing one or the other form of suspended sentence are:

- the applied penalty is up to 3 or 4 year imprisonment or fine;
- the criminal has not been previously convicted to more than 6 month or 1 year imprisonment, except for when the previous conviction are from the childhood or are pardoned or the offences done and convicted for are not included in the law any more or were not done with intention;
- the purpose of the penalty can be reached without its execution.

Once the suspended sentence is imposed the convicted person must follow the following measures:

- to come, at the fixed dates, to the judge appointed with the supervision or to other bodies established by the court;
- to announce, in advance, any residence change and any travel which exceeds 8 days, as well as the date of coming back;
- to notify and justify the change of the job;
- to communicate information which could enable the supervision of the means of existence

Beside these measures the court could also apply the following obligations: suspended sentence under supervision:

- to perform an activity or to attend a training or academic course;
- to not change the address or residence or not exceed the established territorial limits but under the terms fixed by the court;

- to not attend certain established places;
- to not contact certain persons;
- to not drive any vehicles or certain vehicles;
- to comply with the observation rules, treatment or assistance, especially in the case of detoxification.

supervised liberty:

- not to attend certain places;
- not to get in touch with certain persons;
- to perform community service, with a duration between 50 and 200 hours, 3 hours per day at most, after the school, during weekends and holidays.

According to the Romanian Criminal Procedure Code the investigation and the trial when the minors are suspects or defendants is the ordinary one with some exceptions. According to art. 99 Criminal Code “any juvenile who is under 14 years old is not subject to penal responsibility. Any juvenile who is between 14 and 16 years old is subject to penal responsibility only if his action proved to have been committed with discrimination. Any juvenile who is 16 years old at least is subject to penal responsibility. “If the minor is under 16 and whether the investigative body considers necessary for all the hearing or confrontations the tutelary authority or the parents could be summoned. The trial is not public and there are special judges nominated by the president of the court who deal with these cases. In Brasov county there is also a Family County Court that deals with all civil or penal cases when juveniles are involved. In this court is not only the judge specialised in juvenile cases but all the procedure is juvenile centred (ex. cctv, specialised prosecutor, specialised police officers, special room etc.).

The sanctions available for minors are punishments and educative measures. The punishments are imprisonment and fine. The only difference is that the minimum and the maximum term for that offence perpetrated by the child is half. Those two forms of suspension on imprisonment are also available to juveniles. The educative measures are: warning, supervised liberty, confinement (or internment) to a re-educational centre and confinement to a medico-disciplinary institute.

Supervised liberty consists in leaving the child one year of freedom, under special supervision. The supervision can be given, depending on the case, to the child’s parents, to the foster parents or to the tutor. If they cannot ensure satisfactory supervision, the court may request temporary appointment to a reliable person, preferably to a close relative, upon this relative’s request, or to an institution legally appointed for child supervision. The court may order the child to comply with one or more of the following obligations:

- not to attend certain places;
- not to get in touch with certain persons;
- to perform community service, with a duration between 50 and 200 hours, 3 hours per day at most, after the school, during weekends and holidays.

The educative measure of confinement into a re-educational centre is taken for the child’s re-education. The juvenile is provided with study opportunities and with professional training in accordance with his aptitudes. The confinement into such a centre applies in case the other educative measures are not enough. The Penal Code under public debate gives up the imprisonment for juveniles and replaces it with confinement in special unit as an educative measure. Other

educative measures are also included for juveniles like intensive day-to-day supervision.

Working with minors the probation services are responsible for writing evaluation reports and for supervising minors sentenced under supervised liberty with different requirements. Another important part of the work with children is the assistance one. In terms of implementing the obligations imposed by the court, probation service has a special procedure for enforcing community service for juveniles. In this respect the judicial practice is not unified. Some judges decide only the number of hours some others decide also the place and the nature of the work. The last option put probation service in a difficult position because it is not always possible to enforce the sentence in that particular place, or the place is not suitable and so on. The work could be delivered only in a public interest institution. That limits in a very severe way the range of activities available for juveniles sentenced under supervised liberty with community service.

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

When the prosecution or the court needs more information about the defendant an evaluation report is asked from the probation service. Therefore the evaluation report is a tool for individualising the sanction and not a vehicle for promoting community measures and sanctions as in other countries. The report could be required for all kind of offenders and offences. Within 14 working days that report has to be delivered in order to assist the court in making an informed decision about the most effective sentence. The main parts of this report are: introduction, the sources of information about the defendant, factors which influence upon the defendant's behaviour and an evaluation of reintegration perspectives (see Annex 2). Basically the evaluation report is an objective (as far as it could be!) criminological evaluation of the defendant, his/her social and psychological circumstances and circumstances of the offence.

In the chapter referring to the defendant the report is expected to provide information about: criminal history, family and social environment, the level of education and professional qualification, the offender's behaviour before and after the offence, trigger factors and how he or she responded to previous sanctions. In juvenile cases, the report should also include issues regarding parenting. When necessary, a probation counsellor could consult specialists to assess the mental and physical health and the intelligence level.

In the chapter referring to the factors influencing the offender's behaviour, the probation counsellor has to present the ones supporting the criminal behaviour and also the ones inhibiting it. In the last chapter – an evaluation of the reintegration perspectives – probation counsellors are expected to summarise all the information comprised in the report and estimate the reintegration perspectives. This mission is an impossible one in the absence of a risk assessment. That is the reason more and more services are introducing in this chapter some considerations on the risk of re-offending. Some services are using old risk assessment tools from abroad and some are working on validating a Romanian risk assessment protocol that has been created in 2006. Although in the last chapter of the report probation counsellors are not allowed by the law to make recommendations to the court, a lot of judges explicitly ask for this.

The evaluation report is submitted without the defendant even seeing it and even if the defendant did not cooperate. In this case the report includes the available data collected from the secondary sources. If the offender does not agree with the content of the report he or she could address the court in writing. As a house rule if the defendant is not accessible usually the report is not submitted. Although the evaluation report should be confidential once it is submitted to the court it goes to the court file and become accessible for all parties involved in the case.

### **4.3.3 Probation procedure and processes**

Once a suspended sentence under supervision or supervised liberty has been made probation service receives a letter from the court showing the name and the address of the convicted person and the sentence. Within five days the service decides the place and the date of the first interview with the client. This first meeting must take place within ten days from the date when the letter reached probation service. In practice the head of the service allocates the client to a certain probation counsellor according to the average caseload in that particular service. The only exception to this rule is when an evaluation report has been submitted for that client. In this case the same probation counsellor will take over the case.

The first interview with the client usually takes place at the probation service office and has as a main objective to hand over the supervision plan to the client. This plan has to be written within five days and this is sometimes before the first interview. Among the name, the obligations, the probation term, the frequency of the meetings with the probation counsellor and so on this supervision plan comprises also the criminogenic needs of the client and a risk assessment. Without seeing the client at least once it is impossible to fulfil these last two chapters. That is why this plan is usually revised after the first and the second meeting with the client. Some services included in this supervision plan a new chapter referring to the rights and the obligations of the client during supervision.

After the supervising plan is signed by the client the supervision process takes the shape of regular meetings and home visits. Usually in the first three months the meetings are twice a month and afterwards they are set according to the risk of re-offending. If the risk is high, then the frequency of meetings is intensive. There are still judges who decide this frequency of meetings (ex. every last Friday of the month). Once or twice a year the probation counsellor is expected to do unexpected home visits and if necessary visits to the client working place. All these visits are not meant to worsen the situation of the client or to attract the attention of the community on the client. During the meetings the probation counsellor responsible for that client checks upon the sources of income and other potential problems the client might have which could lead him to crime. If a potential criminogenic problem is identified the probation counsellor uses motivational interviewing to convince the client to ask for assistance and counselling.

If the client asks for this service then a new file is opened and an assistance plan is developed. Most of the probation interventions are to do with getting a job, an accommodation, continuing education or other forms of practical help. In order to be effective probation services have local partnership with other agencies or NGOs able to cover these aspects. In the past few years probation services developed their own group work programs according to the needs of their clients. Most of the programs belong to the cognitive behavioural paradigm and target offending behaviour, anger management or social skills. Within two EU PHARE programs these group work programs have been further developed and now are on their way to accreditation. Assistance and counselling could be also delivered to prisoners with their consent. Most of the local services organize

group work programs for prisoners or deliver pre-release interventions. According to the new exceptional law the presence of probation service inside prison is more visible. A representative of probation service sits in the sentence planning commission. This commission decides about the regime of the prisoner, the main intervention objectives and also makes proposals regarding parole. In delivering these programs inside prisons probation counsellors cooperate with the psychologists, social workers etc. who are working inside prison as treatment staff. The head of service checks upon both files –supervision and assistance – and meetings between probation counsellor and head of service take place in order to measure the work quality. Some services developed a system of intervision where by all colleagues are expected to present their most difficult cases. This process involves a special procedure (when to talk, who talks first etc.) and some very clear rules regarding the feedback.

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

Every court has a department for supervising the way that the criminal sanctions are implemented co-ordinated by a nominated judge. After the sentences are definite this department co-ordinates all the work in order to put them into practice. If one is not content with the sentence he or she got than it is possible to appeal or review the sentence. Regarding the imprisonment there is a judge supervising the way the prisoner's regime and rights are respected and also receives the complaints of the inmates. After a specific period of time spent in prison (depending on the offence, usually 2/3 for the whole period) the inmates could ask for a conditional release. It is the court's responsibility to decide based on the prisoner's conduct if one could be conditionally released or not. About 90 % of all prisoners are released on conditional release. Although the Criminal Code provides that when deciding the conditional release the judge could also impose some obligation on the ex-inmate this has never happened in practice. The time between the conditional release and the imprisonment time decided in the sentence is called probation period. During this period the only obligation of the ex-inmate is not to re-offend. According to art. 120 Penal Code pardon totally or partially cancels the execution of the penalty or commutes this penalty to another one that is milder. The President of the country applies either by a special law or pardon. In the light of Law 129/2002 probation services are responsible upon request for the social reintegration of pardoned ones. In order to do that probation services have a net of collaboration protocols with different agencies and NGOs to make resources available to those pardoned.

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

In the light of the law probation service has no responsibilities in relation to ex-inmates. Although some services deliver pre-release programs they are not responsible for following up the ex-prisoner after release either in terms of assistance or in terms of supervision. Sometimes when an ex-prisoner asks for the probation service's support he or she is referred to other social work agencies or to NGOs.



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

### **5.1 Finances**

The Government almost exclusively finances probation service in Romania. Apart from the state finances some private funds are currently available to support the development of probation in Romania. These extra-budgetary sources are mainly:

- EU funds – through PHARE supporting also training and institutional development.
- MATRA Programme – financed by the Nederland's Ministry of Foreign Affairs– which supports probation service for developing procedures and a diagnostic tool.

The core financial source is the state budget that covers the costs for personnel, travel, equipment and ongoing expenditure. The responsibility for budget distribution belongs to the Ministry of Justice that allocates funds every year to all the courts of appeal. A part of the budget allocated to these courts is spent by the probation service. Therefore probation service does not have an independent budget to work on. That creates some confusion regarding the status of probation service (is it independent from the court or not?) and also leads to a not very unified practice. For instance the president of the court sees the probation service as a priority that probation service gets good offices and support for promotional activities. The Ministry of Justice has the power to employ as many probation staff as necessary in each county court and to allocate the budget accordingly but has no direct authority over the ongoing expenditure like travel, equipment, offices and so forth. This is the attribute of the president of the county court who approves all these expenditures. The head of probation service in each county court could just ask or propose some budgetary assistance but the final decision regarding the ongoing costs belong to the president of the court. Having such a budget administration is difficult to imagine a strategy for cost-benefits analysis for probation system. However such experiments could be conducted on the basis of rough estimations. For example the probation budget for year 2006 could be estimated as follows:

- Staff costs – 600 euro's x 12 months x 180 staff = 1,296,000 euro's
- Offices, equipment, communications etc. – 600 euro's x 41 services = 24,600 euro's
- Travel – 500 euro's x 12 months x 41 services = 246,000 euro's.

The probation total budget could be estimated at 1,566,600 euro's for year 2006. On the basis of the existing statistics for this year the probation service had about 6,600 clients under supervision. That means that one probation client cost about 237 euro's per annum. This figure is even smaller bearing in mind that apart from supervision probation service provides a lot of other services. The budget of the NGOs involved in probation activities is directly accountable to the financial body which finances the specific project. In order to check out if the NGOs obey the accounting law the state could also inspect the bookkeeping system of each NGO. So far there is no NGO financed by the state for probation activities. Ministry of Justice could recommend an NGO or a specific NGO project to

different founders in order get the necessary funds. In 2006 the General Administration of Prisons coordinated the activity of 45 units: 36 prisons, 6 prison hospitals and 3 re-education centres. At the end of 2006 there were 34,038 inmates on 36,909 legal capacity units (National Administration of Prisons, 2006). The staff employed by the National Administration of Prisons was 15,411 which represents 1 staff member to 2,2 inmates. The total budget for year 2006 was 5 .773 billion lei (177,652,868 euro's). That means about 5,219 euro's per year per inmate. As it can be noticed the cost of one probation client is about 22 times lower than one prison inmate.

**Table 2: Comparative figures prison/probation**

	Probation Service	Prison System
Total current yearly expenditure	1 566 600	177 652 868
Average number of employed staff	180	15 411
Daily average number of offenders dealt with	6 600 (only supervision)	34 038

## 5.2 Accounting

The budget is allocated by the Ministry of Justice to the courts of appeal. The presidents of the courts of appeal allocate then the budget to the county courts. The presidents of the county courts allocate the budget to the local courts and to the probation services. The presidents of the courts of appeal are responsible for the budget administration in front of the internal audit of the Ministry of Justice and also to the Romanian Court of Audit (rom: Curtea de Conturi). For funding the ongoing costs of the probation services Ministry of Justice could only recommend a certain level of funding for probation activities. The financial department of each court of appeal and county court holds bookkeeping and cost accounting for budgeting purposes. There is no correlation between performances and the budget allocation. The budget system is still based on financing institutions (e.g. staff, activities, investments etc.) and not on results or outcomes. In order to prepare the budget for next year each court of appeal makes an estimation and afterwards negotiations take place with the Ministry of Justice. The final budget is a product of the budget approved by the Parliament for the Ministry of Justice, the priorities set in multi-annual plans and these negotiations.

## 5.3 Registration system and evaluation procedures

Each probation client has his or her own file. There are files for supervision or files for assistance. The main components of the files are: the sentence, the evaluation report, the needs assessment, a supervision/assistance plan and a daily record keeping. They also include the correspondence between the client and the service and also the periodical reports to the court. The roles of these files are to help the probation counsellor to organise his or her work and to prove that the supervision is effective and the provisions of the law are taken into consideration.

At the level of the Ministry of Justice an application (ECRIS) was developed in order to manage the files of the justice users. Judges, prosecutors, prison staff and probation counsellors have access to this application in order to get the basic information regarding the cases registered in criminal justice system. In parallel with this system a special computerized system is about to come in place for the probation clients. The intention is for this software to be similar to SPSS (statistic software) and to include items about the clients. Every month each probation service will post to the Ministry of Justice via email the databases with the clients and their progress. Regarding the clients the database could comprise the following information: name, gender, age, ethnic origin, offence, number of previous offences, court sentence, obligations and measures, main needs, type of services provided and so on. A broad range of statistic analysis could be made available through this software – frequencies, correlations, regressions and so on. The client's progress could be recorded and the file could be classified but accessible even after the end of statutory supervision. For the time being the Probation Department collects data regarding the clients twice a year for statistical and policy reasons. Most of these statistics are on paper or on electronic format. The access rules to the probation files are clearly defined in the Probation Law 129 / 2002: “Art. 14. (1) – The client and their appointed or public defenders, with the persons' consent, shall have access to the assistance file. (2) The file may also be consulted in the advising room by the court, by the judge in charge of execution of sentences and by the prosecutor. (3) The individual file may be consulted, if approved by the head of the probation service, by the representatives of legal entities that develop activities in the field of human rights observance or of convicted persons' protection, if there is a written agreement of the person for whom a file has been drafted”. Therefore the access to the probation files is very restricted and only in certain conditions someone could have access to this data.

The main tool of the Probation Department/Ministry of Justice to assess the quality of probation work is via inspections. Nowadays the department has five inspectors who visit periodically the local services. After each inspection an inspection report is produced and the difficulties of the inspected service are met with recommendations. The local services have to comply with the recommendations only after they are discussed and agreed. Unfortunately for the time being there are no studies regarding effectiveness or confirmation rates at the national level. Some local services did this kind of studies for the local level and the conclusions are encouraging.

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

The inspection reports and a recent survey of the presidents of the courts opinion (Durnescu, I et al, 2003) show that the judge's favourability is significant and encouraging for this stage. For instance this survey shows that:

- over 90% of respondents indicated that they thought probation services should be providing evaluation reports;
- nearly all senior judges indicated that probation services should supervise offenders in the community;

- over 80% indicated that probation services should be providing alternatives to custodial remands and over 40% said that NGOs should provide this service also;
- over 80% of judges indicating that probation services should be providing specialist services (such as drug and alcohol services) for working with offenders;
- 85% of judges thought that evaluation reports were either quite useful or very useful in the sentencing process;
- 94% of court presidents indicated that they believed the law should be changed to provide more opportunities for community sentences.

The promotional activities of probation services could be summarised as such: press conferences, brochures, and presentations in different conferences, different articles and books. Despite the existing of a PR policy at the central level there is little room for manoeuvre for a proactive approach.

### **5.4.1 Clients' rights**

The basic rights of suspects or convicts are contained in the Romanian Constitution. Such rights like right to fair trial or presumption of innocent are included also in the Penal Code. Some other rights are contained in other laws or regulations according to the situation in which the convicted people are. The rights of inmates are mentioned in the Law no. 275 / 2006 regarding the execution of punishment and the rights of probationers are described mainly in Probation Ordinance no. 92 / 2000 approved by Law 129 / 2002 and in the Government Decision no. 1239 / 2000 which is as it was mentioned above the methodological norms describing how the Government Ordinance 92 / 2000 is enforced.

One of the main rights of probation clients is the right to be informed about their rights and also about their obligations during the supervision period. At the first supervision meeting with the probation counsellor every client receives a supervision plan which most of the time comprises also written instructions on how to behave and what he or she is expected to do. If the client cannot read then the probation counsellor has to read the instructions for him. If the client does not speak Romanian language then the probation counsellor has to provide an interpreter. These instructions include also a presentation of the complaint procedure. If a client is unsatisfied with the way the probation counsellor enforces the sentence then he or she could complain to the chief of the local service. If this is an unsatisfactory course of action the complaint could be followed up with the director of the Probation Department or with the Minister of Justice. The Probation Department has inspectors who could respond to these complaints. In extreme cases the clients could also complain to the judge from the exceptional department.

According to the law prosecution is responsible to make sure that the "legality of the punishment" is followed in practice. On this basis some services have been visited by prosecutors verifying the way probation service enforces the sentences. The prosecution reports after these visits were very appreciative towards probation activity. Alternatively the probation clients could complain to the Romanian Ombudsman. The Ombudsman is entitled to verify the way clients rights are observed upon complaint or on his or her own initiative. In order to make sure that the rights of convicts are well protected there are some NGOs responsible with the monitoring the observance and protection of human rights within prisons and probation services.

## **7 NEW DEVELOPMENTS**

To describe the new developments in probation is a rather difficult task especially because the decisions regarding probation are influenced and informed by too many forces that are not always willing to communicate with each other. However some of the main trends in the field in the way they look like right now could be mentioned here. The Law no. 129 / 2002 responded to the conditions of year 2000/2002. It is time to change this law and turn the probation service into an independent agency under the authority of the Minister of Justice. In this way

important issues like independent budget and autonomy will be solved. Another important development is expected in relation to a new Criminal Code. No matter if this new code will be the adopted one or the one under public debate it is clear that the number of community measures and sanctions will be increased and probation service will be more visible in the judicial practice. Although the number of probation staff increased from 182 in 2006 to 300 in 2007, this number is still very small for the expected new criminal provisions.

Since 2005 probation service has been going through an intensive professionalization process. This is more obvious in terms of developing standards, accredited programs and standardised tools. This constant concern for best practices, training and research-based programs leads the service towards performance. Hopefully the long expected changes regarding the Ministry of Labour taking over the victim's assistance and the limitation of situations when an evaluation report is required will take place to give probation service more space for improving practices and focus on traditional tasks of probation.

## **8. IMPORTANT PUBLICATIONS**

P. Abraham, V. Nicolaescu, Ș.B. Iașnic, *Introduction to probation*, 2001. Edit Național. Bucharest.

The book is a collection of chapters dealing with different aspects of probation: probation in the world, probation law and so on.

D. Balahur, *Socio-Juridical Basis of Probation*, 2001, Editura Bet. Iași.

The book covers the international and the national legislative framework of probation activity.

D. Balahur, *Probation and Community Reintegration, 2004*, Edit. Didactica și Pedagogica Bucharest.

This research report presents the conclusions of the research done in Iasi county measuring the costs and the benefits of introducing probation especially for juveniles. One of the conclusions is that probation is three times less expensive than imprisonment. The report is available also in English.

I. Durnescu *Probation Counsellor's Manual*. ed. 2001, Editura Themis. Craiova.

This manual is a collection of articles dedicated to the most important aspects of probation practice. It also includes articles about the theory of probation and criminology.

I. Durnescu, K. Haines, C. Lazar, A. Willie, *Probation in Romania* (available in Romanian and English), 2002, Editura Didactica și Pedagogica. Bucharest.

This book is mainly about the initial stage of probation service between 1997-2000.

I. Durnescu, K. Haines, C. Lazar, A. Willie, Survey of the courts opinion regarding probation services, 2003, Edit Didactica și Pegagogica. Bucharest.

This booklet presents the conclusions of a research on judges' opinions regarding probation practice and community measures and sanctions. Some of these conclusions are introduced in section 5.4

S. Poledna, *Probation in Romania. Policies, Legislation, Procedure*, 2001, Presa Universitara Clujeana. Cluj.

S. Poledna, *Modalities of psychosocial intervention in probation activit*, 2002, Presa Universitara Clujeana. Cluj

The last two books from above synthesise the main policies, legislation, and procedures of working with offenders specific to that stage of probation development. Most of interventions described here are developed and implemented in the experimental phase of probation in Romania.

S. Poledna, L. Bujan, *Delinquent Behaviour. Risk and Protective Factors*, 2004, Edit. Didactica si Pedagogica. Bucharest

The book is a research report on what are the risks and the protective factors of offending behaviour among teenagers. The report is translated into English and has important policy implications.

XXX (2005). *Probation practice manual*. Edit. Didactica si Pedagogica. Bucharest.

The book is an updated manual regarding the main aspects of probation practice: evaluation report, supervision, assistance and counselling, working with drug addicts and so on.

xxx. (2006). Romanian Statistical Yearbook. National Institute of Statistics. Bucharest

[www.anp-just.ro](http://www.anp-just.ro)

[www.insse.ro/cms/rw/pages/rpl2002.ro.do](http://www.insse.ro/cms/rw/pages/rpl2002.ro.do)

## **9 CONTACT DETAILS**

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## ANNEX 1

### Criminal Statistics

#### 1. Input offender statistic

##### 1.1 Adults

	2004	2005	2006
Total number of convicts	63 056	58 886	50 560
Imprisonment	23 618	20 798	17 044
Fine	12 003	11 514	9 564
Conditional suspension of imprisonment	25 822	24 860	22 644
Suspension of imprisonment under supervision	1 538	1 658	1 278

(source: Superior Council of Magistracy and Romanian Statistical Yearbook, 2006)

##### 1.2 Juveniles

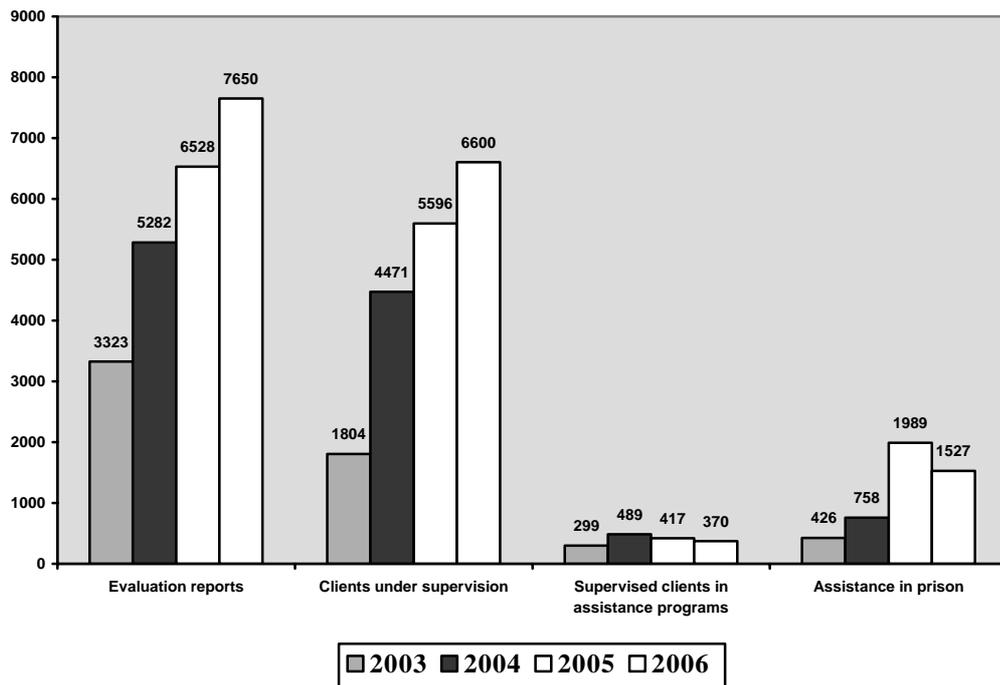
	2004	2005	2006
Total convicts	6 341	6 796	6 145
Fine	234	237	269
Imprisonment	1 794	1 860	1 638
Conditional suspension of imprisonment	2 516	2 610	2 429
Suspension of imprisonment under supervision	388	511	462
Warning	453	491	436
Supervised liberty	537	702	557
Internment in a re-education centre	235	298	344

(source: Superior Council of Magistracy and Romanian Statistical Yearbook, 2006)

**Note:** In terms of adults the general trend is to decrease the number of convicted persons. After several years of increasing, in 2006 it was also noticed a decrease of the number of convicted juveniles.

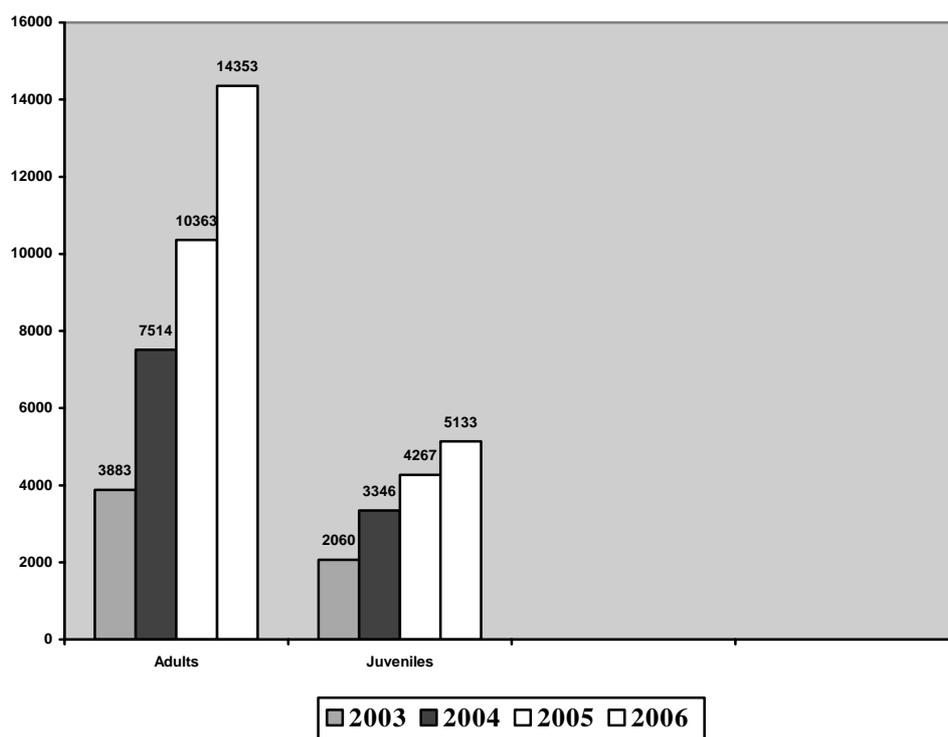
## 2. Average offender population statistics on probation

### 2.1 Main probation activities between 2004-2006



*(source: Probation Department/Ministry of Justice/Romania)*

## 2.2 Gender distribution of the probation population



*(source: Probation Department/Ministry of Justice Romania)*

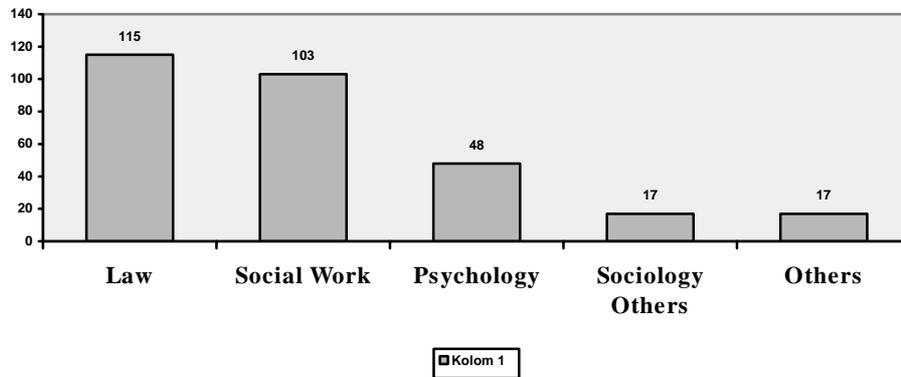
**Note:** From the charts above the conclusion is that there are two distinct trends defining probation system in Romania:

1. A systematic increase of the evaluation reports provided to the judiciary and also of the number of supervised people. The increase of the evaluation reports could be explained by an increase of judiciary confidence in probation service. The explanation for the increase in number of supervised people could be also attributed to the length of the probation period (this could be sometimes up to 9 years).
2. There is a decrease in the number of supervised people involved in assistance programs. If the trend will remain constant than probation service will turn into a controlling agency exclusively.

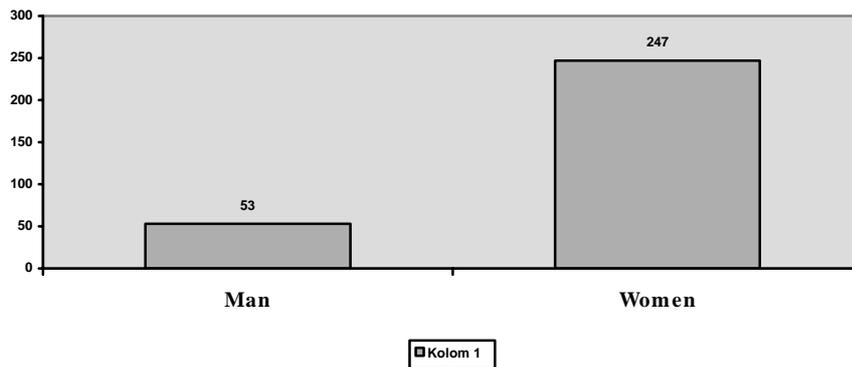
### 3. Staffing statistics

The only figure available regarding staff is the educational background and gender distribution.

#### 3.1 Educational background



#### 3.2 Gender distribution of staff:



**Note:** In terms of educational background the staff structure is rather well balanced. Maybe a higher proportion of social workers and psychologists would consolidate the caring side of probation work. It would also be useful to have a distribution of staff based on the ethnic origin bearing in mind that probation clients are sometimes recruited from a variety of ethnic groups.

