

# **Chapter 29**

## **Slovakia**

*Martin Lulei*  
*Ludovit Galbavy*



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

A short digression into history takes us to the first codex valid on our territory – the act of Saint Cyril from the period of Great Moravia – the so-called “Zákon sudnyj ljudem”, which is based on the philosophy of protection and retaliation with the intention to prevent for example that arson was chastised by (burning at the) stake. This philosophy of punishment as discouragement and revenge was not effective enough. Within the probation system the act of the article CVIII/108 from 1873 that was passed during the existence of Ugrian state was significant, and it enabled placing former convicts (and persons living as a homeless, suspicions etc.) for a maximum of three years under police control.<sup>1</sup> In the Ugrian legal order we can find the measure of probation also in connection with an imposition of a sentence (uloženie trestu) to juveniles. For example the legal article no. VII from 1913 on juvenile court regarded a person from 12 to 18 years as a juvenile and “against such juveniles the law allowed to use the measures of admonition, release on probation, reformatory education, imprisonment or state imprisonment”.<sup>2</sup> These fragments of historical legal aspects of probation merit a separate chapter. In the following chapters deal in particular with the application of probation in the present theory and practice in the Slovak Republic

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

The pilot projects that were carried out in 2002 and 2003 preceded the implementation of probation and mediation in criminal matters (trestné veci) in the legislation. At selected district courts (okresné sudy) the department of the Ministry of Justice of the Slovak Republic (MS SR) formed the position of probation and mediation officers (probační a mediační úradníci) whose positive results definitely approved the proposal to establish the Probation and Mediation Service (PMS) in the Slovak Republic (SR). The basis of the establishment of the Institute of Probation and Mediation in criminal matters was the approval of the legislative proposal of the Penal Code (Trestný zákon) and the Code of Criminal Procedure (Trestný poriadok), recodification by the government of the Slovak Republic in May 2000.

Since 1 August 2000, criminal prevention officials, whose job was to coordinate the preparation and realization of the pilot project of probation and mediation in criminal matters, started to work in the Ministry of Justice in the Section of Criminal Law, Department of Criminal Legislation. Their goal was to establish the Probation and Mediation Service in order to reinforce the laws pertaining to rights of the injured parties, to help actively by the re-socialization of the offender (páchateľ) and his trouble free integration into society after committing a crime (spáchanie trestného činu) and at the same time to educate the whole society”.<sup>3</sup> Consequently, in October 2001, a work team took up the

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<sup>1</sup> FÁBRY, Anton ( 2000) *Penológia*. Bratislava : PFUK, p. 49

<sup>2</sup> FÁBRY, Anton (2000) *Penológia*. Bratislava : PFUK, p. 52

<sup>3</sup> TABAČÍKOVÁ, Martina (2003) *Vyhodnotenie pilotného projektu probačnej a mediačnej služby*

development of the pilot project. This work team is composed of professionals in criminal proceedings (trestné konanie) (judges, prosecutors, members of judicial police (justičná polícia) and a presidium of the Police Cors of the Slovak Republic and the third sector. The third sector started in cooperation with the Secretariat of the Plenipotentiary of the Government of the Slovak Republic for Solving the Issues of Romany National Minority because one of the pilot districts, Spišská Nová Ves, is a large Romany community.

In the establishment of contacts with the third sector it is necessary to mention the foundation Partners for Democratic Change (PDCS) whose members belonged to the work group as well. In December 2001 the Faculty of Education at Comenius University initiated cooperation with the Department of Social Work. The first pilot project was carried out by the Probation and Mediation Service in 2002 at three district courts, in Bratislava IV (Karlova Ves), Spišská Nová Ves and Nové Zámky. The basis of the new approach of the sector of justice became the assurance of human rights (ľudské práva) and protection of liberties (ochrana slobôd), protection of health, life and property and the establishment of a democratic state. The aim of the project was the reinforcement of non-judicial participation and strengthening the position of a victim (obeť) or an injured party as well. The pilot project was carried out without revision of the Penal Code and the Code of Criminal Procedure. Therefore, it was necessary to find the legitimacy for the activities of the probation officers in these documents. Because the Slovak criminal law (trestný zákon) did not know punishment with compulsory work (povinné práce) or the so called "supervisory penalties", (according to the Probation Service in the Czech Republic,) the probation activity was carried out in cases where the convict according to § 59, section two of the Penal Code was imposed a punishment of restriction (obmedzenie) or commitment (povinnosť). A probation officer monitored the execution of punishment (výkon trestu). Formal and ineffective supervision done by a court clerk, whose work consisted of filling out forms on the stand of the convict's behaviour, employment, execution of commitment or restriction during the trial period (skúšobná doba), was removed. To promote the pilot project, the Act No. 141/1961 Coll. on criminal proceedings was amended. The Code of Criminal Procedure established the institute of reconciliation. Act No. 448/2002 Coll. on protective supervision changed and completed Act No. 140/1961 Coll. The Penal Code entrusted to the probation officers the control of execution of protective supervision. These were the first legislative steps to realize mediation in criminal procedure and probation supervision. 55 mediation files and 112 probation files were allocated to the probation and mediation officers during the realization of the pilot project of the Probation and Mediation Service in the period from 1 April to 31 December 2002. Within mediation, the criminal act of theft, the criminal act of assault and the criminal act of defalcation were the most presented acts while the claim amount ranged from 80,- Sk (Slovak Crown) to 44.353,-Sk. Within probation, the most frequent restrictions or commitments were activity prohibition and the commitment of harm compensation. On the ground of these positive results, the Ministry of Justice continued in the realization of the project in 2003 at the same three district courts. During the

realization of the pilot projects, the probation and mediation officers worked within bounds where the legal norms were not sufficient.

### **1.2 Important developments**

One of the priorities of the Ministry of Justice in 2003 was the preparation of the act about probation and mediation officers. This anticipated the government decree of the Slovak Republic No. 1328 of 11 December 2002 to prioritize tasks of the government of the Slovak Republic in order to comply with the message of the European Commission about the readiness of the Slovak Republic for membership in the European Union on 9 October 2002. The fulfilment of this requirement modified the performance of probation and mediation in matters that are disputed in the Criminal Proceedings Act No. 550/2003 Coll. on probation and mediation officers. The probation and mediation officers who work in state labour relation carry out probation and mediation in accordance with this Act and their administrative office is the court. Act No. 549/2003 Coll. on legal officers sets in §2 that probation and mediation officers are court officers like senior court officials and court assistant secretaries. The function of probation and mediation is conceptually and methodically guided by the Ministry of Justice whose consultative organ is the Council for Probation and Mediation. The Council is composed of judges, prosecutors, probation and mediation officers, agents of governmental agency bodies and professionals from theory and practice where a professional group for social work is also present. Probation and mediation in criminal matters are carried out by the probation and mediation officers who work at district courts and are incorporated into the competence of the Ministry of Justice (performance of probation can be defined as public, eventually national and centralized). Even though performance of probation in legislative conditions of the Slovak Republic is professionalized (the probation and mediation officers must fulfil concrete conditions mentioned in the following chapters), the probation and mediation officers cooperate with the institutions of the state administration and specialists from the third sector as well.

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

Probation as part of criminal justice constitutes in our country an institution that concentrates on mediation of alternative remedies (alternatívne prostriedky) for solving criminal activities. It cooperates on rehabilitation of offenders who are being motivated to undertake responsibility for their actions and resolve caused damages as well. It respects the victims' interests and offers them space to participate actively in criminal proceedings and gain expeditious moral satisfaction and acceptable compensation. The Probation and Mediation Service in Slovakia is formed as a centralized service, emerging from local concerns. Some of its goals are reinforcement of the injured parties' rights, active help in the re-socialization of the offender and his trouble free integration into society after committing a crime and at the same time educate the whole society.

## **2 LEGISLATIVE BASIS AND MISSION**

Legislative regulation of probation and mediation in criminal matters, carried out by the probation and mediation officers working at district courts, emphasizes knowledge in the field of criminal norms as a qualification according to Act No. 550/2003 Coll. on probation and mediation officers and the Act No. 549/2003 Coll. on legal officers. The new legal rules, the Criminal Statute No. 300/2005 Coll. and the application of the Act No. 301/2005 of the Code of Criminal Procedure, came into force on 1 January 2006.

## **2.1 Legislative basis**

The term probation was used while carrying out the pilot project of probation and mediation in criminal matters in 2002. The separate legal rule comes a year later appointing administrators of probation and the probation and mediation officers on district courts, and legally regulates probation as:

- organising and supervising the accused, defendant or convicted;
- supervising the execution of punishment not connected with imprisonment, including entailed commitment or restriction;
- supervising behaviour of the accused during the trial period (skúšobná doba) by parole;
- assisting the accused to lead an ordered life and satisfy conditions that were imposed upon him by the decision of the prosecutor or the court in criminal proceedings<sup>4</sup>.

The legal regulation mentioned above also elaborates target groups of clients (parolees, probationers, clients in probation supervision) representing a marginal group of society who are breaking the law and who require a specific approach to leading a life without criminal acts. The probation and mediation officer carries out, within his reference, actions under the written direction of a presiding judge, single judge or, in pre-trial, a prosecutor.<sup>5</sup> The law provides that the probation and mediation officer assists in suitable cases where a criminal matter, that could be imposed and executed a punishment not connected with imprisonment or arrest, could be replaced by another suitable remedy. For this purpose the probation and mediation officer:

- provides background papers about the accused, his family, social and working environment;
  - forms conditions for the decision about suspended arrest of criminal prosecution or compromise approval;
  - carries out activities for the purposes of agreement conclusion between the injured party and the accused about compensatory damages caused by a criminal act or for purposes of injury elimination caused by a criminal act;
  - supervises behaviour of the accused during the trial period and monitors execution of a punishment not connected with imprisonment;
  - realizes other activities,<sup>6</sup> while carrying out probation and mediation.
- Specific professional help approach to the target groups of clients of probation

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<sup>4</sup> § 2, Sec. 1, písm. a) Act No. 550/2003 Coll. on probation and mediation officers.

<sup>5</sup> § 3, Sec. 2, Act No. 550/2003 Coll. on probation and mediation officers.

<sup>6</sup> § 3, Sec. 1, chap. a) – e) Act No. 550/2003 Coll. on probation and mediation officers.

has different aspects (legal, psychological, social, and economic). The risk consists in the reduction of the probation activities as a process, dealing with legal aspects making individual professional help interdisciplinary and explicitly exceeding the legal model.

## **2.2 Mission and mission statement**

From the viewpoint of probation practice we can set some goals and tasks. For organs active in criminal proceedings, probation helps by the decision proceedings; it creates conditions for the application of alternative ways in criminal proceedings and ensures effective execution of alternative sentences (alternatívne tresty). Help to the victims of criminal acts emerges from legitimate interests and children's needs and, for that purpose, enables them to participate in solving the conflict and ensures them an adequate position.

From the viewpoint of the offender, it leads the offender to the assumption of personal responsibility for committed criminal acts, motivates him/her to an alternative approach, solving reasons and results of criminal activity and offers him/her the occasion to correct these consequences. This can help to reclaim and reintegrate him/her into society to act in a law abiding way. Probation practice ensures effective control of the accused and convicted behaviour during execution of a sentence not connected with imprisonment or eventually alternative sentence. It ensures observance of the imposed restrictions and fulfilment of commitments resulting from authoritative decisions, i.e. of the court or prosecutor and leads to the execution of precautionary objectives directed at prevention of relapse of criminal activity.

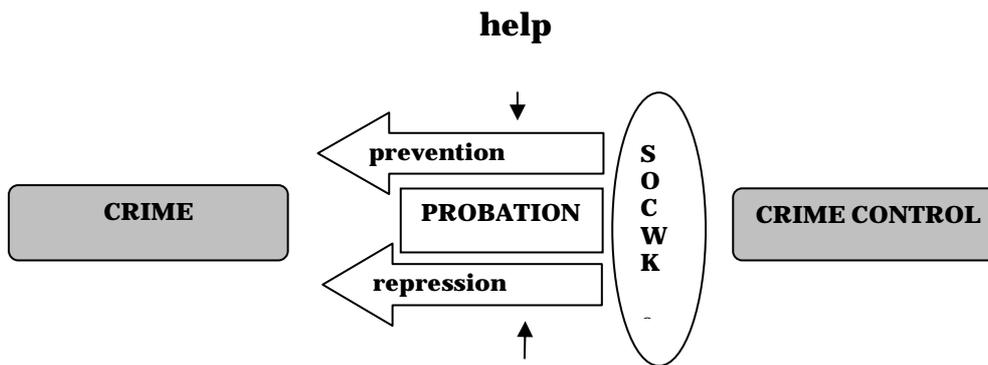
## **2.3 Crime prevention**

Within the state competence, the Government Council for Crime Prevention has an important role in crime prevention (prevencia kriminality), last but not least in various preventive activities of non-governmental organizations and the application of social work. One Slovak specialist said "there is no question that the tasks relating effective execution of sanctions and consequently resocialization cannot be separately managed neither by criminal law nor criminology".<sup>7</sup> Especially the significant influence of activities within probation for crime control (by means of targeted professional help and control the probation can be understood as one of the dominant tools of crime control).

### **Figure 1**

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<sup>7</sup> TURAYOVÁ, Yvetta et al. (1999) *Vybrané kapitoly z kriminológie*. Bratislava : Právnická fakulta UK, p. 11.



## 2.4 Victim protection

The non-governmental organisation Support for Victims of Violence (Victim Support Slovakia is member of the international forum of services for victims) works together with other organizations in Slovakia. It coordinates and covers the whole region and provides counselling to the victims of criminal acts (the listed organisation works in consulting centres in every county seat and includes social, legal and psychological counselling for victims of criminal acts). Within the legislative competence in the process of helping the crime victims have to be mentioned the Crime Victims Compensation Act.

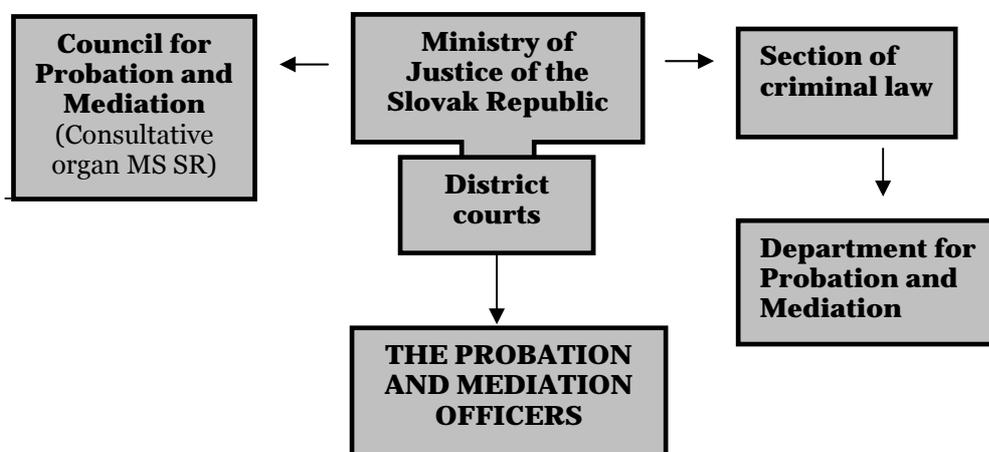
### 3 THE ORGANIZATION OF PROBATION SERVICES

The probation and mediation officers working at district courts carry out the probation in the Slovak Republic. Their competences include not only the single act of probation but also mediation in criminal matters (mediation in civil matters forms a separate legal rule which is valid in the Slovak Republic and defined as enterprise). We deal with the concrete structure of probation execution and characteristics and assumptions for the execution of the function of probation and mediation officers in the following subchapters.

#### 3.1 Main characteristics

With the concrete aspect of the structure of separate organs within the probation, we deal with the whole contribution (starting with the development of the pilot projects). We introduce the following schema for well-defined orientation.

**Figure 2: The organizational structure of probation in Slovakia**



#### 3.2 Internal organization

The internal organization of the individual probation and mediation offices working at district courts emerges from the legislation. It is important to introduce the tasks and competences of the Department for Probation and Mediation of the Ministry of Justice. It

- fulfils the tasks relating the probation and mediation service at district courts;
- shares the creation of legal printed matters and forms for the probation and mediation officers, within the range of the objective competence;
- evaluates statistics of the branch, reports in the area of probation and mediation and, on the basis of its analysis, proposes related measures;
- monitors and evaluates the working load of the probation and mediation officers and cooperates with the Department or shares human sources by the

- proposals for the determination of the number of places for the probation and mediation officers, within the range of the objective competence;
- develops proposals for practice unification in the area of probation and mediation for the application within the central informatory system in cooperation with the Section of Judicial Informatics and Statistics, elaborates methods, provides consultations and trainings in the field of methodology;
  - prepares background papers for the education of probation and mediation officers, in cooperation with the Judicial Academy;
  - elaborates conceptual and methodical materials in the field of probation and mediation;
  - participates in the development of generally binding legal rules from the viewpoint of the objective competence.

### **3.2.1 Probation workers**

In March 2002, the first selection procedures at district courts for the position of probation and mediation officer were performed. Within the pilot project and filling the first posts, the primary requirement of the Ministry of Justice was that the candidate had finished a master's study in the field of arts. The law describes the assumptions for the function of probation and mediation officer saying that to the post of probation and mediation officer can be appointed the citizen of the Slovak Republic who:

- fulfils the assumptions according to the special order;
- has received higher education of the second level graduating with a master's degree in legal, teaching, theological or other socioscientific study programmes or possesses a certified paper of higher education received in this fields at a university abroad".<sup>8</sup>

Act No. 549/2003 Coll. on court officials regulates the position and activities of court officials in § 2 and constitutes that "court officials are public servants" and are:

- senior court officials;
- court secretaries;
- probation and mediation officers.

This Act enacts in § 13 vocational preparations for court officials that are realized by the adaptation of introductory education and the adaptation of preliminary education. Following § 14, the objective of the adaptation of introductory education is to receive knowledge about:

- regional and administrative disposal of the Slovak Republic;
- organization and structure of state bodies;
- courts, their competence, organization and management;
- judges, their posts and performance of jurisdiction;
- court agenda;
- labour schedule;
- working regulations;
- administering regulation;
- legal protection of classified materials;

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<sup>8</sup> § 5 Act No. 550/2003 Coll. on probation and mediation officers

- public access to information“ (§ 14 Act No. 549/2003 Coll. on court officials).
- § 17 enacts that the objective of adaptation introductory education is to gain detailed knowledge from the area of:
- criminal law;
  - constitutional law and essential rights and liberties;
  - social law and sociology;
  - work organization at the court and the way of performing the actions according special order;
  - service instructions (§ 17 Act No. 549/2003 Coll. on court officials).

According to the available statistics of the Ministry of Justice on 1 February 2006, there were 116 probation and mediation officers at district courts. But according to the most actual figures about the number of probation and mediation officers at district courts there are 115 on 30 April 2007. For comparison we can mention that on 1 May 2007 there were 5 492 employees working in institutes for execution of custody and institutes for execution of imprisonment.

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

The primary task of the first pilot project of probation and mediation in criminal matters was the adequate special preparation of probation officers. Information of the Probation and Mediation Service in the Czech Republic was used. Cooperation with the Open Society Foundation started and the Foundation participated in the organization of educational seminars in the area of probation e.g. the International Seminary on probation service (9-11 October 2002, Trenčianske Teplice), the Alternative sentences (21 Mai 2001, Bratislava), the Alternative sentences and probation service in candidate countries EU (24-28 February 2002, Praha, Czech Republic) a.o. According to the law, further training is provided by the Judicial Academy.

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

Probation and mediation officers cooperate with the non-governmental organization (the third sector) EDUKOS in the area of penal and post-penal care. It is not possible to specify the wide spectrum of state and non-state subjects within probation that are involved in cooperation with probation and mediation officers (offices of employment, social matters and family, organs of Police forces, investigators, re-socialization institutions, etc.).

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

### **4.1 General**

The practical application of the forms of an alternative solving in criminal matters and its implication into practice is set by the legal framework of the Slovak Republic. The development in the Slovak Republic is realized in two

levels. One level is within the system of valid criminal law and the other level is beyond this system. It concerns the surrounding system which is not regulated by the law. However, due to valid legal regulation it is possible to reach a solution that has some effect in the criminal area. These two levels differ considerably from each other but they both have a social response to committed crime and both have to respect our legal order. We have to mention that in literature there are alternative sentences in shorter and wider concept. The shorter concept distinguishes sentences and measures that include professional intervention of a special social service. The wider concept has alternatives to standard legal proceedings. In practice we distinguish two alternatives: the substantive criminal law and procedural criminal law. These alternatives are understood as an internal structuring of the criminal law system:

- substantive criminal alternatives are alternative sentences, alternatives to punishment;
- procedural criminal alternatives are deviations in criminal proceedings;
- alternative ways carried out in the system of criminal law are mediation, and guilt and sentence agreement.

To substantive criminal alternatives belong: alternative sentences such as compulsory work (povinná práca), house arrest (domáce väzenie) or conditional suspension of imprisonment with probation supervision (probačný dohľad). Alternatives to punishments can be extraordinary punishment restriction, withheld sentence or cancelling or mitigation of punishment. To procedural criminal alternatives belong deviations in criminal proceedings such as conditional arrest of criminal prosecution or reconciliation (zmier). These alternatives assume engagement of both parties (the accused and the injured) on resolving the case and are not connected with an imposition of a sentence. In such cases, a sentence is not imposed; it is about a specific response to a criminal act with penalties. These alternative sentences can be combined with protective measures (ochranné opatrenia).

**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
Mediation/victim support	x		
Supervising/organizing etc. community service			x
Pre - sentence report			x
Supervising etc. sanction of probation			x
Supervising etc. suspended sentence			x
Assistance/support to offenders in home			x

detention			
Supervising etc. conditional release/parole			x

The following sentences impose probation supervision:

- imprisonment substitution by probation supervision;
- conditional suspension of imprisonment with probation supervision;
- keeping conditional sentence in force with actual execution of probation supervision;
- conditionally withheld sentence of a juvenile with actual execution of probation supervision;
- conditionally withheld protective education of a juvenile with actual execution of probation supervision;
- conditional suspension of imprisonment of a juvenile with an additional execution of probation supervision;
- conditional suspension of imprisonment of a juvenile with probation supervision,
- fine substitution by generally beneficial activity within probation supervision according to § 114 sec. 3 Penal Code;
- conditional release from imprisonment with actual execution of probation supervision.

Other sentences connecting with probation are:

- conditional sentence with adequate commitments and restrictions,;
- compulsory work;
- home detention;
- protective supervision;
- conditional release without probation supervision;
- prohibition of activities;
- conditional arrest of criminal prosecution.

#### **4.2 Pre-trial phase**

Criminal proceedings start with the police body, the investigator and the prosecutor who conduct an official investigation procedure. The Penal Code describes in four parts the whole process of criminal proceedings and names all institutions and persons participating in this. Criminal proceedings have two time phases: the pre-trial phase and the trial phase.

The pre-trial phase involves:

- the process preceding the commencement of criminal prosecution;
- pre-trial.

The trial phase involves:

- preliminary defence discussion;
- main trial;
- appellate procedure;
- execution procedure.

Pre-trial is carried out in the form of investigation; police bodies participate in it

and in this phase defence is provided. It has a closed character and the prosecutor holds supervision. If, according to the investigation results, there is evidence that a criminal act was committed and a concrete person had committed it, the investigator starts prosecution and issues a resolution presenting the charge against this concrete person. This decision must be delivered to the prosecutor and the offender will be prosecuted as accused. During the investigation, the investigator can pass the case on to another organ or can arrest the proceedings or interrupt it under the conditions appointed in the law. When the investigator deems that the investigation is finished and its results are sufficient to file an indictment, a proposal to file the indictment is submitted to the prosecutor.

If the investigation justifies bringing the accused to court, only a prosecutor can deliver the accusation to court and at the same time argue or present the case. The accused has to be protected against unreasonable and unprepared hearing of the case on the public main trial. The preliminary discussion of the accusation is the next phase of the trial. The court concentrates on checking if the pre-trial process is provided legally, if its results justify bringing the accused to court or if grounds for continued imprisonment exist. The court concentrates on the legality of the methods used by the bodies participating in it. After examining the charge, the court carries out appropriate measurements, e.g. accepts the charge or orders a preliminary hearing of the charge. If the court finds out imperfections in the criminal proceedings, it can arrest criminal prosecution, adjourn or return the case to the prosecutor. The most important part of criminal proceedings is the stage of the trial presided by the judge. The decisive body is the court that is independent and bound by legal order. The prosecutor that supervised the pre-trial process and presented the charge submission is a party in the trial. The court executes the trial in public and on the day of the trial the presiding judge will open it by notice about the case that will be heard. The presiding judge finds out if the persons who were summoned appeared in court and verifies their identities. The prosecutor delivers the charge. The court can only decide about the act mentioned in the charge.

During the trial, the injured party has the right to give his view, to read the proposal (only if he exercised it before) on the commitment and to compensate what the defendant is subjected to, the damage caused by the criminal act and extent of the compensation. The court examines the charge that is included in the indictment and carries out evidences with participation of both parties. Within the searching for evidence, the presiding judge interrogates the defendant regarding the act stated in the indictment. The other evidence such as interrogating witnesses, expert and state bodies' opinions, different documents etc. belong to the next part of probation. The defendant and the injured have the possibility to give their view after each evidencedelivered.

Then the delivering of the final speech follows. The order, in which the speech is delivered by, is: the prosecutor, the injured, the defence lawyer and the defendant. The presiding judge recognizes the defendant to deliver the final speech. During his/her speech neither the court nor anybody else can put questions. The main trial ends with the sentencing or releasing verdict or e.g. with the arresting of the criminal prosecution, returning to the prosecutor or remitting to another court, arresting eventually interrupting the criminal

prosecution. The verdict can be contested by means of an appeal. The Superior court decides about the appeal. The function of such an appeal proceeding is to examine the proceedings and the verdict. We know several correcting means: complaint, appeal, protest and exceptional – complaint about breach of the law and restoration of the proceedings. Against the verdict of the court that did not become valid, the correcting means can be an appeal against the verdict and a complaint against the decision. The correcting means are also protests against the criminal order. A prosecutor, the defendant and the injured or other concerned persons can file the ordinary correcting means for appeal. An appeal is acceptable against all verdicts of the first degree. The matter of appeal can be any judicial dicta proceedings of previous verdicts. The appeal has to be brought within 8 days.

With the validity of judgment of conviction, the proceedings are in its last phase, i.e. the phase of execution of the verdict. Within this phase, principles for execution of punishment and correcting measures are applied. Their execution is supervised. The prosecutor supervises at places where imprisonment, protective care and protective education is executed. The mentioned process of criminal does not have to follow in such a fixed way because sometimes the proceedings can be finished before the initiation of criminal prosecution in the pre-trial or in the phase of preliminary hearing of indictment. The psychological burden of criminal proceedings has a negative influence on the defendant. Juvenile offenders are burdened more; they lose respect for the legislation and commit crimes. To some of them, appearing in court means no caution.

#### **4.2.1 General**

In criminal matters suitable for the use of alternatives of punishment, it is useful to discuss the probation and mediation service. The idea of this service is to contribute to the solution of the conflict states in society that concern criminal activity with the goal to achieve the balance between the protection of society and the needs of individuals who are in conflict with the law. In the phase of data collection, it is necessary for the mediator or the probation officer to use all the data sources that are available and significant for mediation or probation activity. The essential sources of this data are the consultations with the accused, the injured party and the persons from their social environment. These consultations should be focused not only on finding out how those individuals perceived the criminal activity and what their ideas of possible solutions are, but also on the behaviour of the accused before and after the act, and all other important facts to set the prognosis of their behaviour after the criminal proceedings are finished.

The main part of the mediation activity itself is mediation of the alternative solution of the dispute between the accused and the injured party while satisfying lawful interests of the other subjects affected by the criminal act and to the activity which would lead to the settlement of the conflict status connected with the criminal act. The probation activity is mainly the set of activities and services focused on provision of the execution of the court's ruling. The significant outputs of the activity of the probation and mediation service are the complex reports on the social status of the accused. The mediation officer should prepare this report. The report should include mainly the result of the proceedings with

the accused or with his/her parents, the results of the proceedings with the injured party, information from the social environment of the accused and the injured party, the mutual relationships between the persons affected by the criminal act, and information about the causes and consequences of the criminal act.

The probation and mediation service cooperating with the civil associations and the persons who implement the probation programmes should cooperate to strengthen the educational influence of the criminal proceedings and to create the conditions to individualize solving of the individual criminal matters, to react sensitively to the needs and the interests of the accused and the injured parties and all other subjects affected by the criminal activity, and to prevent the criminal activity this way. The guarantee to reform the accused from the side of the civil association should always be carefully evaluated to determine if it can objectively fulfil its function as required by law in case suspension of the sentence is accepted by the court. The written offer of the guarantee to reform the offender should include the name of the civil association and its bodies, information about the group who has discussed the offer, the activities of this group, in which ways it can influence the offender, if it has received the information about the offender and about the character of the criminal activity. The court assesses if there is a possibility of re-education of the offender. If the court accepts the offered guarantee to reform the offender then the association that undertakes the guarantee takes care of the re-education and reformation of the offender.

In the case of criminal acts of juvenile delinquents, the court that has suspended their sentence can deepen the educational influence and help create the conditions for the proper life of the juveniles. Authorities with delegated authority to care of the youth, play an irreplaceable role in the process of dealing with acts of the juvenile delinquents. Their mission is protection of the lawful interests of the juveniles who are prosecuted, creation of the suitable conditions for their useful social implementation and proper education.

#### **4.2.1.1 Conditional suspension of the execution of the sentence of imprisonment with probation supervision**

The conditional suspension of the prison sentence is found in § 51 of the Criminal Code. According to that, the court, under the conditions stated in § 49, section 1, can conditionally suspend the execution of the sentence of imprisonment not exceeding three years, if at the same time it delegates the probation supervision of the offender over his behaviour in the probation period. When setting the probation supervision, the court sets a probation period of one to five years. The probation period starts on the day after the validity of the verdict takes effect. At the same time, the court sets the restrictions or duties that are the part of the probation supervision. These restrictions include mainly the prohibition of:

- visits to sports events or other mass events;
- the use of the alcoholic drinks and other addictive substances;
- meeting persons who influence the offender negatively or who were his or her accomplices or persons involved in the criminal act;
- entering restricted areas or the areas where he/she committed the criminal act;
- participating in gambling games, playing on fruit machines and betting.

The duties include mainly the order

- not to approach the injured party within a distance shorter than five meters and not to stay near the residence of the injured party;
- to move away from the flat or the house where he/she stays illegitimately or which he/she occupies illegally;
- to compensate the caused damage in the probation period;
- to pay the debt or missed maintenance in the probation period;
- to apologize to the injured party in private or in public;
- to obtain some qualification or to participate in the re-qualification courses in the probation period;
- to undergo social training or other educational programmes in collaboration with the probation and mediation officer or other professionals;
- to undergo therapy for the addiction of addictive substances, if protective therapy is imposed;
- to undergo psychotherapy or to participate in psychotherapeutic counselling in the probation period;
- to find a job or to have proof of applying for a job

The offender with a probation order is obliged to tolerate the supervision of the probation and mediation officer.

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

Pre-trial report does not concern probation but only mediation in criminal procedures, when the pre-trial report about possible mediation is delivered to the prosecutor. It means that pre-trial report is done by the probation and mediation officer only in procedures in connection with mediation in criminal procedure (not probation). The probation supervision includes long-term work with the convict who is obliged to be in regular contact with the probation officer. The aim of the probation supervision includes:

- to provide help to the offenders, their professional guidance, to motivate them to integrate into society and to create the suitable social background and work application;
- control of the behaviour of offenders in the probation period and the protection of society against potential harm from them;
- to decrease the risk of recurrent crime perpetration.

The main condition for effective probation supervision is the qualified activity of the probation officers. The supervision carried out by the probation officers should have two functions:

- to allow, for those suitable, to waive the institutionalised influence (imprisonment or execution of the sentence in the prison institution) and to replace it by the supervision carried out at liberty;
- to help the convicts with solving their current life situation and give them professional guidance towards life without conflicts with legal norms.

The work of the probation officers should not only lead to monitoring the offenders' behaviour and collecting information about them, but also care and help with their problems in order to adopt a conflict-free way of life in society and a positive relationship with the environment. Supervision over the convict should be carried out on the basis of a supervisory probation plan prepared by probation officers with, if possible, the cooperation of the convict. The supervisory probation plan should include:

- explaining the reasons and conditions of the activity leading to committing a criminal act and the level of the risk of the recurrent crime perpetration;
- work methods with the convicts to make them understand the negative influence of the criminal act on the injured parties, other persons, society and the sentenced themselves;
- scheduling planned personal appointments of the probation workers with the convict;
- a way to control the continual fulfilling of the conditions and restrictions set by the court;
- an individual probation re-socialization programme;
- the description of the goals of supervision, changes in behaviour leading towards the strengthening of consciousness of the responsibility of the convict, their relationship to work and decreasing the risk of recidivism;
- a time schedule for the planned fulfilling of each of the goals;

The supervisory probation plan should be a concrete summary of steps to ensure that offenders lead a proper life during the probation period, to realize the whole scale of consequences of their acts and to compensate at least a part of them.

## **4.3 Trial and enforcement phase**

### **4.3.1 General**

The alternative sentences, which are the components of the material-legal means, include the sentence of compulsory work.<sup>9</sup> It can be imposed by the court with the agreement of the offenders with a length from 40 to 300 hours if they are sentenced for the offence in which the upper limit of the sentence of imprisonment does not exceed five years. The sentence of compulsory work must be served personally by the convict, in their free time and without any right to reward, at the latest one year from imposing that sentence. The work must be done in favour of the municipalities, state or other generally beneficial institutions. For this period, the court can also submit adequate restrictions or duties to the offenders allowing them to lead a proper life and, according to their abilities, compensate the damage that they have caused by their criminal acts.

The court can submit the sentence of home detention<sup>7</sup> up to one year. In the time that is set by the court, the convict is obliged to stay in his or her residence including the outer areas belonging to it, to lead a proper life and to undergo the control by the technical means if such a control has been submitted. In conditional suspended sentence of imprisonment with probation supervision<sup>8</sup> - the court can conditionally suspend the execution of the sentence of imprisonment that does not exceed three years while it submits the probation supervision over the offender's behaviour in the probation period. The court sets the probation period from one to five years. It also submits the restrictions or duties that are part of the probation supervision.

An alternative to the sentence can be the exceptional sentence modification<sup>9</sup> which is possible according to the law in exceptional cases in accordance with the principle of the sentence individualization. In practice this means submission of the sentence under the lower limit of the sentence to those offenders for whom the submission of the sentence, in the limit set by law, does not fit the concrete circumstances of the case or the situation of the offenders. Such circumstances include mainly the mitigating circumstances where the severity outweigh the limits, common for the recognition of the status of the mitigating circumstances, e.g. the personal situation of the offenders, strong emotional disturbance, incurable disease of the offenders, etc. The exceptional sentence modification in which the law assigns the minimal (lower) limit is carried out for a period of time and applies to the sentence of imprisonment, the sentence of compulsory work, the sentence of activity restriction, residence restriction and expulsion. The personal situation of the offender and the circumstances are directly associated with the person of the offender and are not associated with the criminal act and exist in the time of decision making on the sentence. These can include, e.g. the fact that the offender takes care of people who are reliant upon him/her, incurable disease of the offender, etc. The law also allows the exceptional sentence modification in the

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<sup>9</sup> Act No. 300/2005 Coll. Criminal Code, the sentence of the compulsory work § 54 - § 55.

<sup>7</sup> Act No. 300/2005 Coll. Criminal Code, the sentence of the home detention § 53.

<sup>8</sup> Act No. 300/2005 Coll. Criminal Code, the conditional suspended sentence of imprisonment with the probation supervision § 51 - § 52.

<sup>9</sup> Act No. 300/2005 Coll. Criminal Code, the exceptional sentence modification § 39.

proceedings on guilt and sentence, which in a way motivates the offenders to proceed to such a way of solving the criminal matters.

Waiving the sentence <sup>10</sup> is possible only in those cases where the offenders did not cause death or serious bodily harm by the criminal act. The offenders are found guilty but no sentence is assigned. In practice, waiving the sentence means that the legal proceedings and the discussion of the matter are sufficient for the reformation of the offenders and also for the protection of society. When considering waiving of the sentence, important facts are the offenders' inner attitude to the committed delinquency as well as their behaviour after it. Their attitude can be manifested by, for example, remorse for committing the criminal act, an effort to reform, damage compensation, etc. There is also the condition that the present life of the offender gives reason for the conclusion about the reformation (incorruptibility and proper way of life) without the sentence assignment. An important circumstance can be the acceptance of the guarantee for reformation of the offender. This assumes that the person who offers the guarantee has such an educational influence over the offender to provide the possibility of their reformation. Mainly civil associations <sup>11</sup> and trustworthy persons can offer the guarantee. When accepting the guarantee, the court must investigate if the person who offers the guarantee has the possibility to affect the offender educationally. While offering the guarantee, that person should provide concrete methods that he/she will use to influence the offender. The fact that the offender has committed the criminal act in a state of decreased sanity is a condition to waive the sentence. The court assigns him/her protective treatment that will provide better protection of society and reformation of the offender than a possible sentence. The exceptional sentence modification is not possible if the offender was in a state of the decreased sanity as a result of the use of an addictive substance.

The sentence waiving or modification <sup>12</sup> modifies aggraciation <sup>13</sup> (one of the ways of granting pardon) – the way of claiming the constitutional right by the president to waive or modify the sentence in the form of pardon or amnesty in the law proceedings. By the aggraciation, the president can waive the whole sentence or a part assigned by the legal verdict, or can waive only one of the verdicts assigned at the same time or gradually, or modify (reduce) the whole assigned sentence or only one of the sentences assigned at the same time or gradually to the milder type of the sentence.

The process–legal alternatives include the proceedings on the conditional suspension of criminal prosecution<sup>14</sup> - only the prosecutor can decide about the

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<sup>10</sup> Act No. 300/2005 Coll. Criminal Code, waiving the sentence § 40..

<sup>11</sup> Civil associations for the purposes of the criminal law §4 s. 2 are mainly the civil associations, trade union organizations, collectives of the co-workers and churches approved by the state and religious associations; political parties and movements are not civil associations.

<sup>12</sup> Act No. 300/2005 Coll. Criminal Code, the sentence waiving or modification § 89.

<sup>13</sup> Aggraciation – waiver or modification of the sentence; one of the ways of granting pardon. In SR it is approved by the president of SR according to the Art. 102 s. 1 letter j) of the Act No. 460/1992 Coll.- Constitution of SR . Aggraciation does not have the effects of rehabilitation (expungement of record).

<sup>14</sup> Act No. 301/2005 Coll. Code of Criminal Procedure, The proceedings on the conditional suspension of the criminal prosecution § 216 - § 217.

conditional suspension of criminal prosecution. This alternative way of terminating the matters can be applied any time from filing the charge to entering the lawsuit that allows solving the suitable cases in the shortest period from filing the charges without carrying out the whole preparation proceedings. It is the optional <sup>15</sup> decision. If the criminal prosecution is not suspended, the negative statement is not produced. With conditional waiving of the criminal prosecution, the accused is assigned a probation period of one to five years. The conditional suspension of the criminal prosecution is not possible if the criminal act has caused the death of a person, if the criminal proceedings are carried out for corruption or if the criminal proceedings are carried out against a public agent or a foreign public agent. The conditional suspension of the criminal prosecution is used if the nature of the criminal act or other facts does not allow making a conclusion.

<sup>16</sup>The institution of the consent decree allows, on the basis of the agreement between the state and the injured party on one side and the offender on the other side, termination of the criminal matters and issuing a resolution without the proper, formalized and financially demanding legal proceedings so that the consequences of the criminal act are similar to the accused as if judgement of conviction was decided during the legal proceedings. The purpose of the consent decree is the rigorous elimination of all the harmful consequences caused by the delinquency to the directly injured party as well as to the society. Only the prosecutor can decide about the approval of the consent decree and waive the criminal prosecution. The prosecutor, with the consent of the accused, and the injured party can decide about the approval of the consent decree and waive the criminal prosecution in the proceedings on the delinquency for which the law submits the sentence of imprisonment whose upper limit does not exceed five years if the accused declares that he/she has committed the criminal act he/she is prosecuted for and if there is no reasonable doubt that his/her statement has been done willingly, seriously and specifically. Also he/she must have compensated the damage if it was caused by the criminal act or has made other measures to compensate the damage, or eliminated the loss caused by the criminal act and deposited the financial sum for the concrete receiver or generally beneficial purposes to the court account and in the preparation proceedings to the public prosecution account. The consent decree cannot be approved if

- the criminal act caused the death of a person;
- the criminal proceedings are carried out for corruption;
- the criminal proceedings are carried out against a public agent or a foreign public agent.

The consent decree means terminating the criminal proceedings by its suspension. Both of these alternatives assume integration of the parties in the process of solving the criminal matters and are not related to the sentence submission, even if they obtain a certain form of sanction. The alternative practices include also the agreement on guilt, sentence and mediation.

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<sup>15</sup> Optional – not obligatory, voluntary, left for the willingness of an individual, possible.

<sup>16</sup> Act No. 301/2005 Coll. Code of Criminal Procedure, the consent decree §§ 220 – 227.

The agreement on guilt and sentence <sup>17</sup> is a new institution of Slovak criminal law. It can be defined as a process in criminal law in which the accused, generally represented by the barrister and the prosecutor, proposes a scheme of the decision that must be approved and submitted by the court that, however, does not participate in the negotiations leading to the agreement. The agreement on guilt extends the possibilities of implementation of so-called deviations in the criminal proceedings. However, contrary to the application of other deviations, the proceedings on guilt and sentence are not limited by the person of the accused or by the legal qualification of the committed criminal act, nor by the type of the sentence, nor the level of the criminal rate stated by the law. The institution of the proceedings on the agreement on guilt and sentence contributes to simplification, increasing the effectiveness and reducing the length of the proceedings as well as freeing the court from the proceedings at the main hearing. The proceedings on the agreement about guilt and sentence are optional and can be initiated by the prosecutor or by the accused. The proceedings on the agreement on guilt and sentence can be carried out in the proceedings on the delinquency as well as the proceedings on the criminal act. The proceedings or the agreement about guilt and sentence are particularly useful for the prosecutors in cases involving organized crime in which the conditions for the conditional waive of the criminal prosecution of the cooperating accused are not met, because they can lead to cooperation with the accused during investigation and the following criminal prosecution of the members of the organized criminal or terrorist group or their accomplices.

The moral justification of this type of practice by the authorities active in the criminal proceedings, consists of the fact that the agreement about guilt and sentence on the one hand is the manifestation of the offender's willingness to assume the responsibility for his/her act that can be the first step towards his/her re-socialization. On the other hand, it allows the provision of certain leniencies for the accused that offers cooperation or has cooperated during the proceedings in his/her case. The prosecution of other offenders as a counter value for such an attitude leads to faster criminal proceedings. Approval of the agreement about guilt and sentence is confirmed by the verdict of the court and it is publicly announced. There is no possibility to appeal against it, therefore it acquires the validity by its announcement.

#### **4.3.1.1 The mediation in the general terms**

If the parties want to avoid the proceedings in court in the cases of civil law, family law, business, employment law and criminal fields, they can use the services of the impartial person, a mediator. The mediator in civil law is registered in the register of mediators and agreed on by the parties, or one of the parties contacts the mediator and he/she mediates the meeting with the other party of the dispute. The mediators in criminal law are the probation and mediation officers <sup>18</sup> who work in the courts.

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<sup>17</sup> Act No. 301/2005 Coll. Code of Criminal Procedure, the agreement on the guilt and the sentence § 232 - § 233.

<sup>18</sup> The register of the mediators is on the Internet MS SR pages in the section Civil Law at <http://www.justice.gov.sk>

In Slovakia, the mediation has been incorporated in the legal system by passing the Act No. 420/2004 Coll. on mediation. The basis was passing the Act No. 550/2003 Coll. on probation and mediation. The changes relating with the introduction of the terms of the probation and mediation officer, the mediation, etc, have been projected into the Act No. 301/2005 that is the Code of Criminal Procedure. One of the alternative sentences, the sentence of compulsory work, is in the Slovak judiciary introduced by the Act No. 528/2005 on the execution of the sentence of compulsory work and on the amendment of the Act No. 5/2004 on employment (the act on the execution of the sentence of the compulsory work). Mediation as a way of solving conflict situations is a non-judicial activity in which the persons participating in the mediation, through the mediator, solve the conflict that arose from their contractual or other legal relationships. The process - when compared with solving the conflict through court - is more flexible, less formal, faster, less expensive and mainly, it moves the main part of the decision-making control from another subject to the parties of the conflict that makes the parties directly responsible for the outcome that is reached by the mediation. The mediation is the situation in which the mediator serves as a communication bridge between the parties of the dispute. As a result, the task of the mediator is not to solve the dispute between the parties, but he/she helps create and maintain the atmosphere during the conflict solving to enable the parties to communicate, to understand each other and reach an acceptable agreement. The mediator does not formulate the final version of the agreement as a result of the dispute, but as a result of the creative process of the disputing parties which results from the socio-psychological knowledge and skills of the mediator and who enables the parties to express clearly what their problem is and what solution would be the most acceptable for them. Both parties, however, should perceive the final agreement, as acceptable. In case of the successful termination of the dispute by the agreement without the need of the court or another authority, there is the possibility of stabilization of the mutual relationships with the possibility of their further development. Mediation as a form of solving disputes (conflicts) by a non-judicial way, is suitable particularly for civil law, family law, business law and employment law disputes (e.g. proprietary matters relating to divorce, neighbourly disputes, modification of the parents' rights and duties, etc.). The first condition for the mediation activity is willingness of the parties to try the process of mediation. If there are insurmountable communication barriers between the parties resulting from the negative emotions, the possibility of negotiations is minimal. The mediation process is voluntary without the option to force any of the parties to the agreement.

The mediator can be any natural person registered in the list of the mediators kept by the Ministry of Justice. The persons in charge of the mediation registration agree to register the mediator and he/she accepts the function. The mediator must meet the conditions set by the law. These are:

- incorruptibility;
- competence in legal acts in the full extent;
- achieved higher education of the second degree;
- the certificate of successful completion of the professional preparation of the mediator.

The mediator cannot be the punished person; his/her impartiality and independence are the inevitable attributes of the mediation. In case of prejudice of the mediator, he/she must be excluded from the mediation. Another condition of successful proceedings is maintaining confidentiality of all the facts that are discussed during the mediation process.

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

The reports relating to the clients in probation and the submitted alternative sanctions and supervision are processed by the probation and mediation officer. There is no specific form of probation report. It is done by the probation and mediation officer only after the sentence but not before or in the pre-trial phase.

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

The concrete practice in supervising the execution of alternative sanctions is shown in the previous chapters (target groups of probation according to Slovak criminal law, intervention etc.).

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

According to the law, in the post-release phase the client under probation is obliged to obey the supervision by the probation and mediation officer in the probation period if such supervision has been assigned by the verdict of the court.

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

After the execution of the prison, clients fall under the competence of social curators working at the Offices for Labour, Social Matters and Families; it applies to those who are conditionally released and conditionally sentenced. With the return of liberty they get a so-called re-socialization allowance. When the client is in a probation period, the probation and mediation officer carries out the supervision. Another aspect is help from the various private organizations (civil associations, charities, etc.).

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

#### **5.1 Finances**

Since probation officers fall under state employment and their official authority is the court, they are subjected to the financial provision from the state budget, specifically from the Ministry of Justice. The complete review of the use of the budget funds in the department of the Ministry of Justice in 2005 is shown in the following table.

**Table 2: Revenue expenditures of the state budget for the Probation and Mediation Service (numeral data in thousands Sk)**

Indicator	Modified budget to 31 Dec 2005	Status to 31 Dec 2005
Salaries, service incomes	17 520	17 504
Insurance and fees to the insurance companies	6 378	6 289
Goods and services	1 280	1 185
Revenue expenditures	25 178	24 978

(Source the Ministry of Justice:, 2006)

The annual financial expenditures related to probation and mediation services for 2006 were as follows:

- wage funds: 26 637 000 Sk;
- insurance fees: 9 233 000 Sk;
- goods and services: 8 066 000 Sk
- capital expenditure: 1 492 000 Sk.

As comparison, we can show that the annual financial expenditures related to the maintenance of the institutions for the execution of imprisonment were 3 535 866 000 Sk/year. The individual items are as follows:

- all-in costs: 3 304 204 000 Sk;
- capital costs: 231 662 000 Sk.

The shown expenditures were published in the Yearbook of the Public and Judicial Patrol Body in 2006. Other data shows that the current number of the convicts to 23 May 2007 was 6 342 and the number of the accused upto 23 May 2007 was 2 108, i. e. 8 450 persons.

## **5.2 Accounting**

Financing and other specific operations related to the financial expenditures for probation and mediation are based, as shown above, on the state budget, specifically from the Ministry of Justice.

## **5.3 Registration systems and evaluation procedures**

In its work, the Probation and Mediation Service in the Slovak Republic uses specialized statistic programmes to provide the quality processing of the data and the outcomes of the probation and mediation activity implementation. There is a record on each of the clients concerning the probation and mediation activity with summarized data. For example, the data resulting from the probation and mediation evaluation for 2006, specifically from the analysis of the investigated data, shows that the number of the assigned probations for 2006 was 7 151.

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

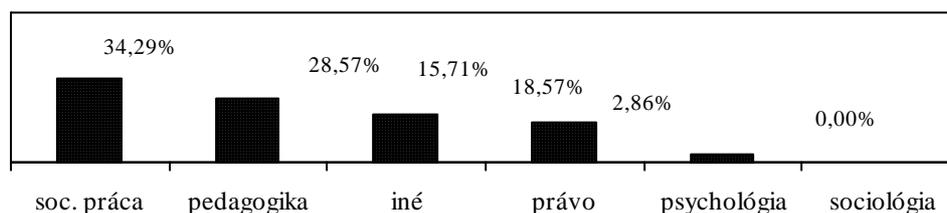
At the present, there is no concrete representative research related to the attitude of society to alternative sanctions and to probation (it applies also to the clients in the probation). However, partial surveys carried out by students as a part of their bachelor, graduate studies and post-graduate thesis show the insufficient knowledge of the public about probation and mediation. From our point of view, it is inevitable to emphasize the professional eligibility for the execution of the probation. The probation practice in relation to persons conditionally suspended, conditionally sentenced and persons with probationary supervision or alternative sentence suggests the purpose of not only control of the assigned duties and restrictions, but also professional help in the various areas. Reduction of probation to the administrative processing of the client's records with the minimal effective interventions leading to the management of the client towards life without the criminal acts is a dangerous risk. As for the study programmes, researches carried out in 2005 and 2006<sup>19</sup> show the dominant position of

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<sup>19</sup> The survey tool was the questionnaire distributed to the probation and mediation workers to all the district courts in the Slovak Republic. In 2005, 70 out of 78 probation and mediation workers took part in the survey (the return of the questionnaire was 89, 74%). In 2006, 75 out of 110 probation and mediation workers took part (the return of the questionnaire was 68, 18%).

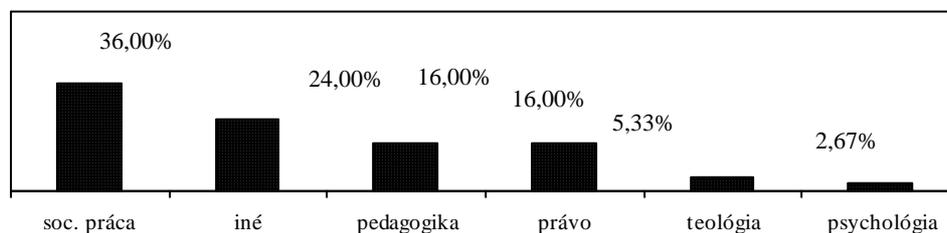
higher education of the probation and mediation officers from the social work study field that makes us closer to the Danish model of the probation in which the education in this study field is legally modified condition to execute the probation (Graph 1 and Graph 2).

**Table 3: The respondents by the higher education achievement (2005)**  
*(soc. práca – social work, pedagogika – pedagogy, iné – others, právo – law, psychológia – psychology, sociológia – sociology).*



**Table 4: The respondents by the higher education achievement (2006)**

*soc. práca – social work, iné – others, pedagogika – pedagogy, právo – law, teológia – theology, psychológia – psychology.*



## 6 PROBATION CLIENTS' RIGHTS

The probation clients' rights are not specifically registered in one document issued by any of the state authorities or institutions. Besides the rights that are guaranteed to every person by the Constitution of the Slovak Republic and the conventions that have been accepted and ratified by the Slovak Republic, there have been some rights specified that are specific for the activities of the probation service with the clients.

The main principle is that the cooperation of the client with the probation service is based on voluntariness and willingness of the client. This applies only to the part of providing mediation services and the part of the probation, up until the validity of the verdict of the organ active in the criminal proceedings (prosecution). After the validity of the verdict that assigns the restrictions and the duties to the offender, he/she is obliged to accept the conditions. The cooperation of such a client with the probation service changes to "obligatory cooperation". If the convict does not follow the assigned duties and does not cooperate with the probation officer, the conditional sentence and the non-imprisonment of the offender can be changed into an unconditional sentence and the offender will go to the institution for the execution of

the sentence of imprisonment. Another principle is that all the information that the client tells the probation officer is confidential and the probation officer has the duty not to talk about the facts that are discussed during the mediation process.

The report that the probation officer provides to the file, the court or the prosecution, only contains information concerning the cooperation of the client with the service, if he/she is active in this cooperation and, if the probation officer's activity focuses on the mediation, if the client agrees with the mediation. If they have come to an agreement then he/she attaches this agreement to the report. When a client considers the probation officer to be abusive, he can ask for another probation officer (this depends on the verdict of the involved district court, where the probation and mediation officer is working). No standard procedures can be followed if a client is not satisfied with the work of his probation and mediation officer: a verdict on this matter is upon the court or probation and mediation officers can exchange the case (on motion of the client). The principles and standards of providing probation activity are gradually developed within the group that works in the Ministry of Justice. The members are judges, prosecutors, investigators, members of the Slovak Republic Police Department, and representatives of the Ministry of Labour, Social Matters and Family. As the probation service in Slovakia is not fully constituted, there are no organs or offices that will supervise respecting the rights of the clients in the execution of the social work.

According to the re-codification, there are types of sentences in which it is possible to assign probation supervision. It would not consist only in the control of the probation officer, but the Probation and Mediation Service officer should also provide the social service for the client. As it is a sentence, the dominant principle will be the repressive one. Until now, clerks of justice have controlled those with a conditional sentence. That control was very formal and it included asking for an opinion from the offenders' place of residence and for an extract from the police records to see if the convict has or has not committed the criminal act in their probation period.

After the constitution of the Probation and Mediation Service, the ineffective and formal supervision of the offender should be replaced by the supervision that will be carried out by the probation officer. He/she should supervise whether the convict follows the assigned restrictions and duties and also make re-socialization of the offender possible with the help of the offender's family and the community in which he/she lives. At the same time, it is suggested to initiate the parole, that is, the supervision of the persons conditionally released from the execution of the sentence of imprisonment. At the present time, there is no effective supervision or help for these persons. The probation officer, in cooperation with the institutions for the execution of the sentences of imprisonment, the social section, other state and private subjects, prepare the offender for his/her return to life and make his/her re-socialization possible.

## **7 NEW DEVELOPMENTS**

An important role of incorporating social work in probation activity is played by the community social work. Research on social supervision in the community show the importance of the processes at community level to reduce local crime

(Ondrejko, 2000, p. 123). Community planning within local autonomies and probation activities make the new cooperation important for the community as well as the target groups of the probation. The international experiences, for example from the USA, confirm that it is important for the probation officers to have the knowledge and skills relating to community integration. If the probation agencies want to contribute significantly to public safety, they will have to introduce themselves to the local communities and integrate the communities to their activities (Evans, 2005, p.119.) Activation of the communities related to the probation is an important stimulus for the community social work. As Pavelová and Tvrdón (2006, p.50) state, the social needs and problems are uncovered through the social work with the community. Together with the community, they are processed and quantified; they look for ways and resources of reformation or help and they activate the social activity of the citizens. Activation of the community to help the re-socialization of the offenders together with the use of community work for community benefit are dominant tasks for the future.

Lubelcová (2000, p.100) states that the new position of social work and the activity of the social officer are real alternatives to the repressive sanctions in retraction from the criminal proceedings. The institute of probation has been exercised since 2004 after the implementation of the pilot projects and approval of the respective legal norms. At the present, the probation and mediation officers are confronted with many practical problems that were in July 2006, thanks to the activity of the professional group, characterised by the document "Probation and Mediation in the Slovak Republic – the Viewpoint of the Probation and Mediation Worker" (Trembecký et al., 2006). This document has also been provided to the competent authorities. We met with the specific conditions of the probation and mediation officers within the conference "the Rights of the Injured Party in the Criminal Proceedings" that was organised in February 2006. In chapter 1, "the Activity of Probation and Mediation Showing the Failings and Shortcomings", Trembecký and the team of the probation and mediation officers (2006, p. 4 – 18) discuss

- the low use of probation and mediation in some districts;
- the methodical management of probation and mediation workers, and education;
- the structural incorporation;
- the practical problems (legislation shortcomings, working conditions).

At the same time, they state that the most important task, purpose and global mission of the probation and mediation officer's activity should be providing help leading to the decriminalisation of the society. The fact that the probation and mediation officer helps judges and prosecutors, which accelerates the criminal proceedings, should be understood as a significant advantage, not as a priority purpose. Talking about the decriminalisation of society, we mean particularly

- the motivation of the offenders not to relapse into crime;
- reducing the number of primary criminal acts;
- the elimination of negative consequences of criminal acts, etc. (Trembecký et al., 2006, p. 17).

In the last part of the document, they state that there is no ideal status in probation and mediation in the Slovak Republic. However, it is important to know how the competent persons deal with this problem and whether they show

an interest in solving the given situation. The interest of the probation and mediation officers is evident. As the competent sector of the Ministry of Justice has permanently been failing in relation to probation and mediation, maybe it would be useful to start thinking more bravely and to reassess the potential separation of the Probation and Mediation Office from the courts and to create an independent structure to make the Probation and Mediation Office an adequate component of the restorative judiciary in our society to meet the required goals (Trembecký et al., 2006, p. 18). As can be seen, there is an effort to solve not only the legislation shortcomings, but also the various specific practical problems, which shows the importance of the document that should be noticed by the relevant authorities.

Doubtless, there are many other challenges for the implementation of probation to practice. From our point of view, the significant weakness is also the absence of an association that would represent the interests and needs of the professional group of probation and mediation officers in relation to the authorities of the Ministry of Justice and to private subjects as well. The probation officer, from our point of view, should actively participate in the re-socialization process of the client and mediate his/her contact with the responsible professionals from the various fields within the state or private subjects. Another challenge is the fact that, at the present, there is no definition of the minimal level or the standards of providing the probation (as a service) that contributes to the risk of the benevolence and lax approach to the offenders. One group of probation officers have chosen to work professionally. They control, supervise, provide help and promote a life without criminal acts in relation to the offenders and they cooperate actively with the private subjects. Another group reduces the work of the probation officer to commanding and meetings with the offenders and they only want a signature in a file. This is not acceptable. It is important to realize that the probation practice also has a preventive dimension that should be effectively used and adequately funded.

## **8 IMPORTANT PUBLICATIONS**

Bubeliní, Ján. 2001. *Crime prevention*. Bratislava: MV SR, 2001. p. 209.

W. D. Burrell, *Trends in Probation and Parole in the States*. 2005, 10 pp. [www.appa-net.org/ccheadlines/docs/Trends\\_Probation\\_Parole.pdf](http://www.appa-net.org/ccheadlines/docs/Trends_Probation_Parole.pdf) (2006-6-1)

V. Čecot, *Youth Crime – a view to future*. In: *Otázky kriminality mládeže* (Zborník z medzinárodnej konferencie o kriminalite mládeže). Bratislava: Rada vlády pre prevenciu kriminality, Pedagogická fakulta UK, Iuventa, 2000. pp. 74 – 80. EVANS, Donald G. 2005. A Challenge for Probation/Parole. In: *Corrections Today Lanham*, roč. 67, 2005, č. 6, pp. 117 – 119.

A. Kasanová, *Social aspects of alternative sanctions*. In: *Otázky kriminality mládeže* (Zborník z medzinárodnej konferencie o kriminalite mládeže). Bratislava: Rada vlády pre prevenciu kriminality, Pedagogická fakulta UK, Iuventa, 2000. pp. 156 – 159.

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ACT No. 549/2003 Coll. *on the court's clerks*

ACT No. 420/2004 Coll. *on the mediation*

## **9 CONTACT DETAILS**

Ministerstvo spravodlivosti Slovak Republic

Zupne namestie 13

823 11 Bratislava

Slovak Republic

<http://www.justice.gov.sk/>

Katedra socialnej prace a socialnych vied UKF

Kraskova 1

949 01 Nitra  
Slovak Republic  
<http://www.ukf.sk/>

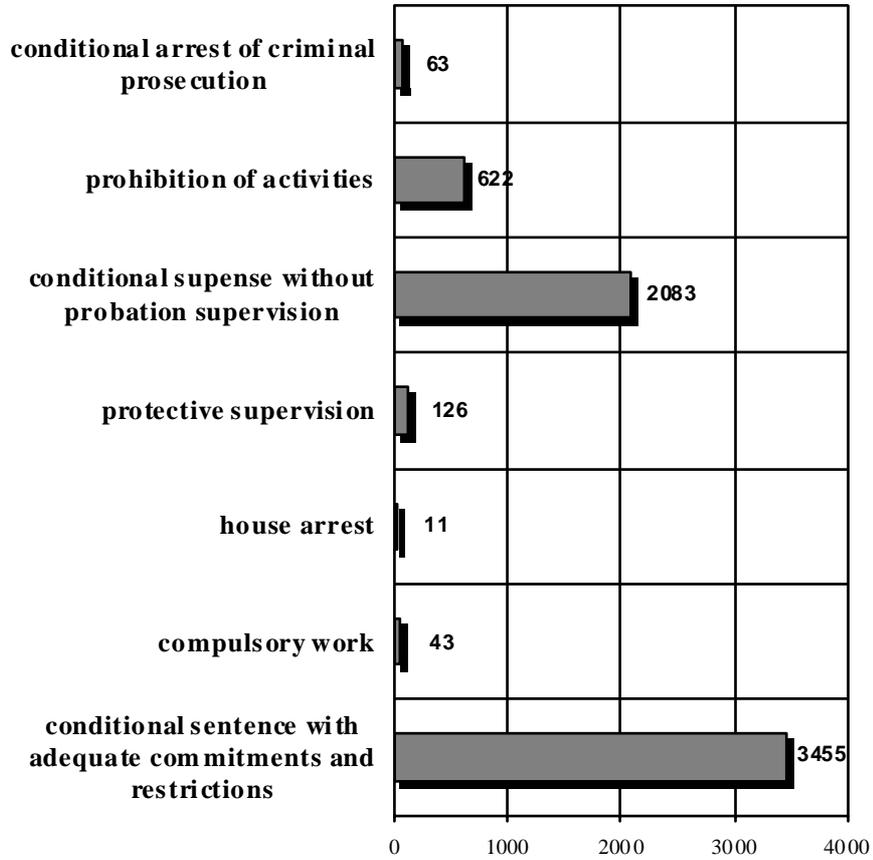
<http://www.zvjs.sk/> - the Slovak Republic Prison and Judiciary Patrol Body

<http://www.osf.sk> – Open Society Foundation

<http://www.minv.sk/prevenicia/> - Council for Crime Prevention in the Slovak Republic

## ANNEX 1

**Table 1.1: Number of chosen sanctions in relation to probation** (in 2006 according to statistical data from Ministry of Justice)



**Table 1.2: The end of probation process (in 2006 - according to statistical data from Ministry of Justice)**  
(N.B. - Disinterest of client - concerning to sanctions before change of Criminal Act – probation used to be voluntary).

