

Chapter 33

Switzerland

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1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM

The origins of probation assistance dates back to the first thirty years of the 19th century. Independent of any official agency, ladies' committees and philanthropic organizations, on a voluntary basis, provided aid and support to released prisoners and occasionally also to convicts. Realising the importance of the relative successes of the organizations combined with the increasing number of applications for conditional releases with protective supervisory conditions led to the demand for legally binding and controllable measures. Critics of non-profit organizations contend that probation services on the basis of Christian charity alone cannot be efficient. Consequently, the legal basis for probation assistance was created: in 1838, the canton of St. Gall was the first to regulate assistance after release on parole. In 1868, the canton of Aargau was the first Swiss canton, which combined the conditional release with the ordered and obligatory assistance by protective supervisory agencies.

1.1 The start of probation in Switzerland

In the early 19th century Swiss Probation Service agencies¹ which assisted offenders released from detention centres were charitable organizations. These mainly Christian charities were founded on private initiatives. During the 20th century the Institute of Protective Supervision became part of the federal legislation. As a federal State, Switzerland has 26 cantons, three of which are half-cantons which each have their own jurisdiction on such matters as health, education, police and the prison system. In the areas of police and prison system, cantons have joined to form concordats which coordinate questions of crime policy and the implementation of those policies, plan the prison system, or direct the special responsibilities of the probation service system. The concordats have no fixed structure – members of the concordat take turns in chairing offices. The chairpersons of the Protective Supervision and Probation Service Offices have their own meetings specific to their occupation within the framework of these concordats. The three concordats are structured as follows: Western Switzerland and the Ticino (7 cantons), North Western and Central Switzerland (12 cantons), and Eastern Switzerland (7 cantons).

Since 17 years Switzerland uses the term probation. This term differs in content from the term protective supervision. Protective Supervision is the term used to describe the monitoring of individuals who have been released on parole or have conditions imposed by a correctional facility. The term probation primarily designates the comprehensive activities of the agencies, often also referring to the agencies themselves.

1.2 Important developments

¹ The term probation service is systematically used, even though it is a collective term covering offices, associations incorporated under private law, et al.

From the early 19th century until today the task of assisting offenders was assigned by the protective or probation services to private associations or private individuals. In the beginning and up to the 1960s, their primary task was monitoring. The protective supervisor punished any violations of directives or rules. The result of an intense discussion among the active professionals in Probation Services, which more and more came from a circle of educated social workers, led to a reorientation of function in the 1960s. The debate was mainly about the interpretation of article 47 of the penal code. According to the new perspective, priority should be given to social work and monitoring should only be viewed as a necessary auxiliary function. Instead of control and punishment more weight was given to social work and long-term support. In doing so, the clients should be given more and more responsibilities. This perspective led to a continuous adaptation of services to the changing clientele, to an organizational change within the agencies and to new financial demands on the part of the probation services. At a political level, the national representatives of probation services worked toward codification of the new perspective, which was implemented through the revision of the general part of the penal code in 2007.

1.3 Probation activities in a nutshell

In the provision of Article 93 of the revised Penal Code to social services in the justice system, which takes effect today, we hold that:

- probation assistance shall prevent individuals from recidivism and shall integrate them into society. The governmental agencies in charge of probation service shall provide and recommend the necessary social and professional help;
- individuals, who work in probation service, shall be obliged to confidentiality. With prior written permission by the individual in their care or by the agency responsible for probation service they may release confidential information;
- sentencing agencies may request a report of good conduct from the responsible agency about the individual in their care;

These provisions clearly set the priority for social work in a socio-psychological and under certain circumstances medical sense. Not long ago, this socio-psychological and supporting function had only a verbal, not a binding priority. In the early 1990s, the increasing professionalism in the probation agencies led to a more modern directed social work. The implementation of continuous assistance was of particular concern. It starts in the pre-trial phase and continues throughout the trial-phase and possible post-trial phase and is concluded with possible protective supervision or directives ordered by the court or sentencing authority. In praxis this means, supervision becomes a long-term activity during which objectives specific to the problematic of the individual have to be established. These will be realized within the framework of support programs, which in turn demand continuity of action and periodic evaluations. Pursuant to article 94 of the revised Penal Code, either the court or the sentencing agency may state directives for the probation period which may affect the right to exercise one's profession, the right to drive a motor vehicle and redress medical as well as psychological treatment. In article 95 of the revised Penal Code, Common Provisions, we hold that:

- the court and the judicial service may request a report from the agency responsible for probation services and directives before decreeing probation service and directives. The person affected may respond to the report. Dissenting comments shall be recorded in the report;
- the order of probation and the directives shall be included and justified in the court order or the decree;
- if the convict does not accept probation services or disregards the directives, or if the directives cannot be carried out, or are no longer necessary, then the appropriate authority shall send a report to the court or the sentencing authority;
- in the cases pursuant to paragraph 3 the court or sentencing authority may:
 - prolong the probationary term by half;
 - nullify probation service or re-order it;
 - change or nullify the directives or order new directives;
- in cases pursuant to paragraph 3 the court may revoke the sentence or conditional imprisonment, or if there is serious belief that the convict will commit a new offence, it may order remand to a prison facility or impose sanctions.

In article 96 of the revised Penal Code, Social Assistance, we hold that for the duration of the criminal proceedings and the execution of the punishment, the cantons guarantee social assistance, which is offered on a voluntary basis. The last article is about voluntary social work and has the concept of continuous assistance as basis, which, even though controversial, is increasingly implemented by Swiss Probation Services. The Swiss Association of Probation has always advocated continuous assistance, without aiding in the break-through of the new directive in the Penal Code.

The above-described revisions of the penal code demonstrate that the process of legislature in Switzerland is always very slow to progress. 44 years have passed from the preliminary draft for the Swiss Penal Code to the introduction. The revision of the general portion of the penal code took already more than 20 years. The judicial and criminal justice system such as the probation service system in Switzerland must always be understood from a federalist government perspective, in which the comment of interested parties, parliamentary decisions, and possible votes on referenda and initiatives determine the processes of legislative. In that respect Swiss citizens have an indirect influence not only on criminal law policies, but also on the direction of cantons in the area of Probation Services. This procedure is similar on the political level of the cantons.

2 LEGISLATIVE BASIS AND MISSION

2.1 Legislative basis

In 1971, three proposals for revision of the general part of the penal code were submitted and subsequently rejected by the National Council and the Council of States. The purpose of the first proposal was to change the term protective supervision to the term probation service. The second proposal sought to initiate probation service for individuals released from remand. The final proposal was to

cease the monitoring function. Since 1983, a new revision of the general provisions of the penal code is in preparation that would allow codification of modern principles of probation service. In 1983, the Federal Department of Justice and Police commissioned Prof. Hans Schultz with the revision project. Schultz prepared a preliminary draft for an expert commission. In 1993, an amended draft for the proposed government bill was given to interested parties for comment. After numerous revisions the proposed bill was submitted to Parliament. In 2000, the revision passed the 2nd Chamber of Swiss Parliament and in 2001, passed in 13.12.2002, the National Council; the upcoming adjustment of differences was carried out. Between 2003 and 2006, Parliament passed some additional amendments before the law became effective on January 1, 2007. The adoption of the new changes to the penal code will be the legal foundation for working principles that are already widely used by the Probation Services. This concerns the new Articles 93, 94, 95, and 96.

The revised general part of the Swiss Penal Code 13.12.2002, which took effect on January 1, 2007, strives for reorganizing the penal system, the regress of short jail terms as alternatives e.g. the introduction of alternatives to imprisonment such as fines at a per diem rate, and community services as punishment. This revision provides not just an alternative to imprisonment but also flexibility within the penal system. The intent is to provide the offender with incentives to be actively involved in his or her probation, and the criminal investigation authorities, at least to some degree, with relief from petit cases. The implementation of tighter measures for the protection from violent criminals should be implemented through tougher sentencing. This law shall more effectively than before contribute to the safety of society, by preferably deterring offences. In this special Federal law the juvenile penal code was revised as well and took effect on January 1, 2007.

Since January 1, 2007 in Switzerland, the term probation is defined in the general portion of the revised penal code. Despite this fact, many cantons have changed the name from the former Protective Agency to Probation Service over the last few years. It is an expression of the agencies' direction toward a more social-pedagogic professionalism as well as a broader, socially supportive responsibility of the agencies toward their client. There are a growing number of Probation Services, which are taking charge of organizing volunteers, electronically monitoring execution of sentences or measures outside of the prison system. It can be observed that individual probation agencies strive for or rather have gained the status of the executive authority in communal punishments and measures (e.g. the cantons Zurich, Berne and Lucerne). This concept is not without controversy among directors. In these agencies implementation of these changes has created a heated discussion about hard-earned naturalness of a social and socio-pedagogic aligned probation assistance of the early 1970s

In contrast to Anglo-Saxon countries, in Switzerland few people who have been sentenced to a prison term with parole are assigned a probation mandate. Contrary to France and Germany, there is almost no subordinate monitoring with a few exceptions for the time between discharges from pre-trial custody to the time of sentencing. Finally, the sub-ordination under the probation agency is not a sanction unlike in some countries

2.1.1 Protective supervision up to 31 December 2006

In the section of the Swiss penal code relevant to probation, the term protective supervision, which can be ordered by a judge, was used. Furthermore, the term directive, which can be imposed by the judge, is applied.

2.1.2 Probation service starting from 1 January 2007

Probation as an independent part of the justice system is governed by the general section of the revised Swiss Penal Code, Section Five. Compared with the past, the new law does not provide a fundamentally new orientation of the newly defined probation mandate. The directives continue to be accompanying ambulant measures to reduce recidivism as well. The agencies of Probation Services that the cantons will establish as public corporations, take on both tasks. Probation agencies incorporated under private law will also take on in part of these tasks. In some cantons government offices will be responsible for supervisory tasks, in others the tasks will be distributed between the probation agency and the prison authority. Yet again, in other cantons the main burden of supervision falls on the Probation agency itself, while in some the supervision will totally be delegated and the agency itself acts only as coordinating authority

2.2 Mission and mission statement

Timely interpretation of the mission of probation assistance leads to the definition of the following tasks (Art. 93 and 376 revised Penal Code):

- preventing recidivism;
- promoting social integration on the basis of a trusting relationship with clients;
- providing comprehensive assistance based on social work methods;
- defining and reaching (and necessary adjustment) of objectives with the help of a plan considering the client's possibilities and abilities;
- defining and reaching (and adjustment) of goals based on a support plan taking into consideration the possibilities of the client's performance;
- continuous assistance or social assistance (voluntary) pursuant to article 96 of the revised Penal Code;
- the greatest possible involvement of society in the work of integration.

The greatest possible involvement of individual citizens, and the professional networks of all relevant private and public institutions.

2.2.1 Ethical guidelines

Up until the middle of 1960, ethical guidelines about the work of protective supervision were rarely discussed. With the awareness of the importance and the status of probation practice, employees adapted more and more the professional code of the Swiss Professional Association of Social Worker. In spring 2007, the conference of Swiss Probation Managers SKLB/CSDP published guidelines based on the before-mentioned statements and created a professional code of ethics: the individual is the focus of the work. The probation services aim at increasing

the performance of the individual on many levels in order to improve integration to society. The Probation Services implement within their framework the legal mandate entrusted to them and guarantee professional information. They put forth faith that the person in their care has potential to change and the ability to learn. They recognize the right of society to be protected from criminal actions and the right of the individual to be protected from the violation of their personal integrity. Additionally they support the victim's right to amends and compensation. More and more the work is defined by the minimum requirements of the European Commission of Human Rights and the European principals of the penal system developed by the Council of Europe.

2.2.2 Function of probation assistance

The function of Probation assistance work leads to a special role dilemma. A social worker and probation officer's duty is two-fold: On the one hand they represent the criminal justice system; on the other hand they work with offenders toward their rehabilitation and re-integration. The probation officer in his or her role as social worker or social educator will foremost be responsible for his client's interests. As a representative of the criminal justice system, he or she has to take the position to abide by the decreed measures, which could result in additional punishments. It influences all aspects of social work. This dual responsibility demands, from both the agencies and from the individual officers, constant evaluation of ethical attitudes in their probation assistance work.

2.3 Crime prevention

The Probation Services take in many cantons an active part in crime prevention projects. These are projects with a limited time frame that are initiated by governmental agencies, universities or non-profit organizations. Funding is provided either by cantons or the Federal government. The most important crime prevention projects in Switzerland, implemented since the late 1990s, are programs dealing with domestic violence, violence in general and child abuse, counselling individuals removed from their home, increased and intensified cooperation between judicial institutions and professionals, efforts to intensify offender-victim-compensation, as well as socio-medical help for drug abusers.

2.4 Victim protection

Institutions for victim protection in Switzerland are not run by probation services but by other institutional or private organisations.

3 THE ORGANIZATION OF PROBATION SERVICES

3.1 Main characteristics

Article 376 of the revised Penal Code demands that cantons provide an organization to implement probation service pursuant to Article 93 or the revised

Swiss Penal Code. The cantons are free to choose the structure of the organization. Therefore, despite a common legal foundation both public and private probation agencies exist alongside each other; the former is working with voluntary probation officers, the latter only with qualified professionals. Irrespective of the organizational structure, financial resources are always provided by the cantons.

In practice, however, the majority of cantons provide agencies governed by public law, which are mostly integrated in the judicial system. Other cantons incorporated Probation Services into the Department of Social Services. Some cantons have appointed private foundations or non-profit organizations as their representative. These organizational differences mainly affect the type of contracts between staff and organization, as a civil servant or an employee and the allocation and management of resources. Finally, whether the organization is a recognized partner of the justice and police department affects the ease of getting information about the client. The clients themselves should not suffer any negative consequences in the way their case is managed.

3.2 Internal organization

Probation Services are organized without rigid hierarchical structures. Even larger agencies employ besides the social workers and staff with more administrative duties, only one manager or director. They are personally accountable that the clients' cases are followed up. They are responsible for the agency's management and its representation toward the public. While larger cantons have probation services with more than thirty employees, smaller ones may only have one person in charge. So it happens that in small cantons the probation officer may also fulfil other functions in the enforcement of sentence and corrective measures for both adults and juveniles.

Different mandates and working conditions make it, at present, problematic to compare individual workloads, just like it is difficult to determine an a median caseload for Switzerland as a whole. Depending on the type of calculation the average caseload fluctuates between 50 and 100 clients with extreme minimal and maximal values occurring. The allocation of social workers' tasks is based on two main criteria: geography and function. Thus some services, in order to facilitate access by clients, have within their own canton set up several offices reporting to one head office, but carry out the specific tasks of social reintegration: admission/reception, social welfare, support, income management, supervision and medical care. Other services, in addition to the traditional probation tasks, have formed special teams, which provide the care for prisoners, be it remands clients or clients in penitentiaries, foreign nationals awaiting deportation or inmates of correctional and therapeutic institutions.

Since the 1990s, Probation Services are increasingly involved in alternative punishments, since the majority of the cantons have delegated community service and electronically supervised sentences. The range of delegated tasks fluctuates from canton to canton. It depends, whether the canton interprets the provisions of the Penal Code regarding probation in a strict sense of release support, whether the principles of the continuous support and cooperative teamwork within the justice system are applied or whether the correctional organisation of communal sentences and measures are passed by.

3.2.1 Probation workers

The staff is continuing education whether managerial, supporting or administrative, generally is the responsibility of the agencies themselves, which they order according to their resources. In the late 1990s and between 2003 and 2007 a committee of directors of Probation Service and the Swiss Association of Probation was, despite this fact, instituted with the objective to evaluate the need for training and continuing education of probation officers in connection with training expectations and occupational developments. Both organisations have taken steps to react to the development of client structure and to new defined tasks and forms of sentencing by the judicial system such as taking on the implementation of alternative sanctions.

3.2.2 Education, training requirements and opportunities

The employment of trained social workers in Probation began in the 1970s when the number of schools for social work increased. For many decades, individuals with training in education, psychology, police work and theology worked in Probation Services. Today, many social workers and socio-pedagogical professionals fill these positions. The social worker is foremost concerned with the individual's problems and social environment, whereas the social educator's emphasis is more on the concrete creation of a good living environment and situation. Faculties on technical colleges and universities offer an increasing number of specialized curricula for social work in the justice system and probation service. There is no existing data about the renewal of staff on a national level. Based on their personal experience and knowledge, the authors assume that cantons have no problems in this area. There are hardly any career paths for the staff. Possibilities of change and career paths are mostly the result of transfers in other social services or treatment centres and less likely by advancing through the hierarchical structure.

At the current level of personnel statistics of Swiss Probation Services, it is not possible to get detailed information about staff working in this field. In 2007, as a whole in the traditional area of probation service agencies 210 full-time positions were staffed, 18 of which (9%) were managerial positions, 140 (66%) were in counselling, and 70 (33%) in administration. At the same time, there are close to 35 full-time positions needed for community service and electronic monitoring. Part-time employees cover several of the areas. The 210 full-time positions are staffed by about 300 employees. Due to the size of probation agencies only in the largest cantons are full-time managers, in part with representatives. In other agencies the managerial function is only a fraction of the full-time positions. Consequently, managers spent a large portion of their time with counselling. The majority of Probation Service agencies do not employ volunteers for supervisory tasks. There are 400 volunteers working in ten cantonal agencies, the majority, 259 of them, are working for the cantons Berne and Zurich (144 and 75 respectively) or 40 for Basle-City.

In summation it can be said, that since the middle 1980s Probation Services in Switzerland has become increasingly professionalized. The tasks that previously were carried out by people coming from a wide variety of professional backgrounds are now nearly completely in the hands of trained social workers.

3.2.3 Other organizations involved in probation work

Today there are Probation Services in all of the 26 cantons; two cantons have outsourced probation to private institutions. As the Probation Services remarkably professionalized they at the same time increased cooperation and inter-institutional exchange with private organisations of psychosocial treatment, medical care and welfare assistance.

4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

4.1 General

Probation Services have different mandates depending on the canton they are located in. While some agencies only provide support upon discharge, others, due to their broader mandate, also provide support for inmates either in remand or for all prisoners, depending on the canton. Recently, some cantons have delegated all tasks associated with the execution of common punishments to the probation service

In Switzerland, judges can impose punishment in the form of fines, conditional and unconditional imprisonment and, since 1 January 2007 also alternatives to imprisonment. Sentences entered in the criminal records of the 1990s consist of 30% fines, 69% imprisonment –one-third of those unconditional – and 1 % alternatives to imprisonment. Pursuant to the penal code imposing an unconditional prison term this will teach the prisoner a lesson and will prepare him for re-integration. Furthermore, it shall work toward making amends for the injustice done to the victim. The prisoner has the duty to perform the work assigned to him. He or she shall be assigned jobs according to their abilities that will help support themselves after release (Art. 81 revised Penal Code). Education is therefore not only an instrument of social work, but is also imposed as punishment.

Jurisdiction of ordering imprisonment is strictly the responsibility of the cantonal executive authority. The collection of fines, executing prison terms and the implementation of out- and inpatient measures, however, may be carried out by different government offices or agencies. It may be the instance, that the execution of short sentences (up to 90 days) and longer sentences (more than 90 days) is delegated to different offices. The general portion of the Penal Code which was enacted 1 January 2007, now provides alternative measures such as per diem fines, community service, partial imprisonment and, in seven cantons, the electronic ankle bracelet to reduce the short prison terms. In the majority, the cantonal prisons and the penitentiaries have the task of executing unconditional prison terms. While the implementation of outpatient measures can take numerous forms, due to the possible suspension of a sentence, the inpatient measure is principally executed in hospitals and therapeutic institutions.

4.1.1 The legal characteristics of probation

The mandate of probation assistance is no safety measure. It is not additional punishment such as the ban to exercise a profession, a trade or a business. It is a decreed social assistance. Probation assistance and directives are not measures in and of itself, but are traditionally rather a part of sentencing or measure, in the case of unconditional punishment of the carried-out punishment as a last, fourth correctional stage. They are always linked with an additional judicial order. Probation or parole time, a probation assistance mandate or directives are decreed for a minimum of twelve months and a maximum of five years. The parole time can vary in length from that of the probation assistance mandate and/or directives. Exceptional rulings of probation mandate for an indeterminate period of time are possible (Art.56/59/62/63/64 revised Penal Code, therapeutic, outpatient -, inpatient measures, and confinement). For affected clients confinement and disclosure of personal living conditions is mandatory. The

courts order compulsory measures such as transfer to an institution or hospital. Sentencing authorities or authorized probation service agencies implement the measures.

4.1.2 Directives of probation assistance mandates

- conditional release from imprisonment (Art. 64a revised Penal Code);
- conditional release from imprisonment in the case of young adults (18 to 25 years of age) (Art. 62. par.3 revised Penal Code);
- conditional release from a penitentiary (Art. 87 Abs. 2) and from military prison (Art 34b Abs. 2 revised Penal Code);
- conditional and partially conditional prison sentence (Art. 42 and 43 pursuant to Art. 44. Abs. 2 revised Penal Code);
- delayed sentencing in favour of an out-patient treatment of a psychological disorder (Art 63. Abs. 2 revised Penal Code);
- tentative release of treatment for individuals with a psychological disorder (Art. 62 Abs. 3 revised Penal Code);
- extension of time of probation in the case of a conditional imprisonment (pursuant Art. 46.2 revised Penal Code, and a conditional, partially conditional military sentence (pursuant Art. 40 Abs. 2 revised Penal Code);
- conditional release from an institution (public or private) for alcohol or drug abuse (Art. 62 Abs. 3 revised Penal Code);
- social assistance (Art. 96 revised Penal Code).

Table1: 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 Enquiry report	x	x	x
Supervision / assistance to pre-trial detainees	x		
Organising/Supervising community sanctions		x	
Organising/Supervising mandates of directives		x	x
Organising/Supervising mandates of probation, directives and mandates of ambulatory measures (out of custody)		x	x
Organising/Supervising measures for drug / alcohol addicts and psychiatric clients		x	x
Organising/Supervising mediation before court (ATA)	x		
Organising/Supervising electronic			x

monitoring			
Organizing/Supervising offender treatment programs		x	x
Organizing/Delegation after care			x

4.2 Pre-trial phase

The work of the probation service on behalf of remand clients may be initiated as soon as the person is detained. The first task is to assist bridging the difficult time because, unless the person is a repeat offender, each arrest is a traumatic experience. Afterwards, the social worker can take on a variety of tasks such as contacting family members, relatives, and lawyers, preparing for the time of execution of a sentence until such time that the debt is redeemed, which can take place after discharge. Social workers work closely with the administration of remand prisons, prison staff, examining magistrates and lawyers.

4.2 Pre-trial report

According to the revised penal law, probation services may be asked by judges and prosecutors to report on conduct and social situation of the offender.

4.3 Trial and enforcement phase

4.3.1 General

4.3.2 Pre-sentence report

According to the revised penal law Probation Services may be asked by judges and prosecutors to report on conduct and social situation of the offender.

4.3.3 Probation procedures and processes

The sentencing to community related punishments differs from the more traditional forms of probation assistance. Measures related to the community in the form of community service work or electronically supervised sentencing are fairly recent (see their description under pilot schemes). Their implementation was mainly delegated to probation services. This task goes beyond monitoring and supervising offenders. In addition, they have to organize and control the work performance or control the compliance with the rules of the house arrest. The most important principles and forms of supervision of mandated individuals outside the penitentiary (conditional sentences, out-patient measures with suspended sentences, probation mandates, and directives) were already described in Chapter II.

4.4 Post-release phase

In principle, a plan for serving the penalty is prepared for each offender who has to serve an unconditional prison sentence. Support comes from various directions such as from doctors, psychiatrists, psychologists or social workers who are appointed to submit their observations to the Department for the application of penalties and measures for the benefit of reintegrating the offender after his release into society.

The before-mentioned monitoring of a committed person is more pronounced when the punishment consists of an inpatient measure for repeat offenders, mentally ill convicts and sentenced alcohol or drug abusers. If the sentence was ordered by the court based on a psychiatric report, then the procedure for suspending the sentence is more complex. By law, suspension of a sentence has to be evaluated by the relationship of the recovery process of the convict, at the latest after a period of five years and subsequently every year thereafter. A committed person can also apply for discharge. Today, in most cantons, the task of the discharge directive is in the hands of the correctional institution, in some cantons in the hands of the courts and in the instance of a dangerous convict the evaluation of danger is also delegated to the regional commission. Based on the opinions submitted by the various persons and institutions involved, the Commission decides either to lift the measure or prolong it. The decision is submitted to the enforcement agency.

Social work in prison increasingly means social workers being the “bridge” between the prison population and the outside world. Wardens and social workers who work in penitentiaries systematically take part in supervising convicts, preparing them for their release and establishing contacts with families and their social environment. They work hand in hand with social workers of probation services whose goal is re-integration. Treatment measures in prison vary with each individual. Two types of needs which call for two responses are differentiated: first, practical support, which concern material aspects of living conditions of the client or his or her family and second, the existential help, which is far more difficult to determine and to define. Support in this area may help the convict to a better knowledge about him or herself and their own past, resulting in improved chances for re-integration.

4.5 Care and after-care outside the criminal justice system

Probation Services provide after care counselling and service, often together with private social organisations on voluntary basis.

5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION

5.1 Finances

Generally, the funds for staff resources and expenses for the ongoing operation of the probation services are fully provided by the cantons. Probation Services organized under private law are subsidized on the basis of a performance agreement with the canton. The mandate, scope of work and thereby defined areas of work largely determine the financial resources of the agencies. Additionally, private funds can be used in five cantons.

Depending on the canton, agencies can also apply for public funding to provide the clients with a more substantial financial support. There are additional resources from private sources or foundations, which fund special support programs. Besides the public and private sources, further financing of

support services is available through the delegation or assignment of funds or the acceptance of the clients' financial support in various institutions on the basis of a decision of probate services. In some cantons the work is restricted to psychosocial care and legal support.

In 2005, the total cantonal expenditure for Probation Services was about 30 MIO Swiss Francs (18,75 MIO EUR). During the same year, there were appr.2 MIO Swiss Francs (1.2 MIO EUR) available for support programs directly administered by the agencies. For further financial support and social, medical and psychological counselling the institutions working in partnerships with the agencies Probation Services spent a great deal more than the aforementioned amount. Examples are the social services and drug and alcohol abuse programs which are supported with public and private funds.

The administration and monitoring of funds is the responsibility of the probation services, while the responsibility for the budget and accounting is, depending on the canton, the duty of the justice and police departments. However, for the government, approval is done by the parliament which discharges the government funds and provides new funds for the new fiscal year.

5.1.1 Registration systems and evaluation procedures

Switzerland lacks reliable, uniform and nationwide applied statistical guidelines for the collection of cantonal data. There is no consensus about the objectivity of the data collection (base data, performance indicators and information as to the effectiveness) and the data to be collected. This phenomenon occurs despite a slowly progressing development of limited Swiss national statistics for the performance of probation services, for aggregated performance indicators. The reason for the lack of statistics is the Swiss federalist structure, i.e. the fact that probate services are organized within the cantons and they are held only accountable by their departments as well as the absence of a national evaluation and supervisory office. In the absence of an evaluation system, probation service is ultimately only regulated by way of recourse in courts or through the justice system.

The currently published cantonal statistics are in most cases rudimentary and summary. They are mostly not in written form or identical, they lack time consistency and are therefore not comparable. Routine changes in the way data is collected and represented lead to additional problems of year-by-year comparisons. Only since the latter part of the 1990s individual cantons have tried computerized statistics. The creation of national statistics was for the first time attempted in 1998 by the Swiss Federal Statistical Office in cooperation with the Swiss Association of Probation. This sort of evaluation has three objectives:

- creating national, aggregated indicators on the implementation of directives and for the adoption of voluntary supervision of individuals out of prison and in prison;
 - discussion of the value and importance of national statistics about probation service;
 - setting up probation statistics beyond the minimal and aggregated information.
- The Federal Statistical Office offered in 2000 for the first time and later in an annual publication a statistical overview for the implementation of Probation

Services. Over and above the statistic, data and information about individual programs, especially the innovative ones supported by the Federal Office of Justice are collected, evaluated, and interpreted. The latter concerns, for example, the implementation of community service or the electronically supervised sentence enforcement, a multi-disciplinary socio-scientific evaluation that is executed by university faculties or independent evaluation offices. These reports are evaluated by a scientific advisory board that was appointed by the Federal Office of Justice. They serve the contextual direction of the innovative projects.

6 PROBATION CLIENTS' RIGHTS

The order of probation or directives does not mean that the monitored individual becomes fully dependent on the probation service agency. Their position is not one without any rights. The person who is supervised has the right to be heard and supported and has to have a domicile as well as sufficient income. He or she has the right to discretionary support from the authority. A person on probation can petition for a reduction of the probation or supervisory term if the re-integration develops favourably. If a client repeats an act of misdemeanour, i.e. is sentenced again to imprisonment under three months, then the evaluating authority can pronounce a warning instead, in order not to undermine the progress made.

During the probation term, the supervised person keeps his or her civil and constitutional rights, unless the agency in charge has decided differently. As there are no explicit written statements on clients' rights, there are no independent studies showing the viewpoint of the client in regard to implementation of probation service, forms and means of support.

7 NEW DEVELOPMENTS

From the Federal perspective, probation is a cantonal matter. Within the cantons probation service is determined by the distribution of political power, internally by the framework of the justice departments, externally by the governments and parliaments, and by legal revisions, decreed by the Federal Council or enacted by the Federal Assembly, or by pilot projects offered or financed by the Federal government.

The social work that is performed within the framework of probation service agencies is further developed by the inter-cantonal planning and communication of intervention standards in the concordant conferences. Here, ideas focusing on content and further development of organisational structures are exchanged and further professional and political strategies are worked out to help with the acceptance of innovations. Besides this, the training facilities for social work and the professional association of social workers provide the professionals with stimuli for the evaluation of supervisory concepts and for the revision of intervention principals. Finally, to develop probation services further, an exchange on an international and especially European level is important.

7.1 Pilot projects to reform sentencing and probation service

The implementation of new forms of sentencing of unconditional imprisonment has led to the most important modernization of the Swiss probation system. It is the introduction of community service and the electronically monitored law enforcement. The adoption of the concept of continuous supervision and its progressive implementation has gained further importance. Some cantons increasingly monitor a person released from remand. Pilot schemes to re-appraise the offence and mediation are increasingly defined.

All new tasks of probation are connected to the basic consideration and idea of sanction and imprisonment. If the goal of sanction and execution of a sentence is to protect society, then re-integration of the offender has to be priority. Today the significance and purpose of punishment cannot be based on recompense, but rather in preventing recidivism. The latter judges the criminal justice system. Since the 1990s cost-efficiency has been increasingly questioned. Enforcement of sentences has to be carried out and organized in a most cost-efficient way. Those responsible for implementing the punishment, therefore, have the task of constantly reassessing the effectiveness based on the criteria of re-integration. They have to ask themselves, whether other sanctions and forms of punishments are available, which are more cost-efficient, thus more economical, and at the same time just as effective as unconditional imprisonment. Furthermore, they have to ask themselves, how to accomplish secondary goals such as reconciliation between victims and perpetrators or how to avoid the negative consequences of imprisonment. With the goal to find concrete answers to the questions, more and more pilot programmes and schemes were implemented since the 1990s. A short description follows:

7.2 Completed pilot schemes from 1990 – 2000

7.2.1 Community service in Switzerland from 1991-1995 (GACH 1)

Community service (GA) as a form of sentencing of unconditional prison terms of up to 30 days was implemented by the enactment of the Penal Code (VStGB 3, March 19, 1990). The cantons Berne, Lucerne and Vaud were the first ones to implement it. Ten other cantons followed suit until 1995. In these cantons, offenders who were sentenced to prison terms of up to 30 days (in canton Vaud up to 14 days) were able to file a petition for community service. The first three cantons have done their own evaluations. The Federal Office of Justice has largely adopted their recommendations for the reorganization of sentencing conditions of community service. All executed sentences in the participating cantons were evaluated in a separate report. GACH 1 was the reason for a new statistic at the Federal Office for Statistic. Between 1991 and 1995 there were a total of a little more than 3,000 applications of community service.

7.2.2 Community service in Switzerland from 1996-1998 (GACH 2)

With enactment 3 of the Penal Code, dated December 4 1995, new conditions with a new conversion key (1 day in prison equals 4 hours of community service) for sentencing to unconditional prison terms of up to 90 days have been created. The evaluation was carried out in all of the cantons and linked to the implementation of a statistic. The number of participating cantons increased from 10 to 18 applications between 1996 and 1998. At the end of the pilot scheme, more than 6,000 community service hours were carried out.

7.2.3 Community service for socially excluded unemployed convicts in the canton of Zurich from 1996 – 1999

This pilot project was conducted as an independent project within the scope of the introduction of community service. It was to offer a special program targeted to people who were on the margins of society, conditionally sentenced up to 30 days and who were unlikely to be utilized for the general community service program. The clients were not only supported in guided teamwork, but also in their search for employment and a place to live. The goal was to assist in social re-integration. This pilot project demonstrated that community service is a proper tool for supervising a segment of people with special problems.

7.2.4 Community service with additional differentiated support programmes, 1996 – 1999

This pilot scheme is implemented in canton Zurich. It constitutes a special project within the framework of GACH II. It offers offenders serving unconditional prison terms of up to 90 days execution of their sentence in the form of community service also individual counselling and information sessions to support re-integration.

7.3 Pilot-Projects since 2000

7.3.1 Electronic monitoring, 1999-2002

The pilot scheme was carried out by the cantons Berne, Basel-City and Basel-Country, Vaud, Ticino and Geneva. Electronically monitored confinement of offenders sentenced to an unconditional prison term, allows them to serve their prison term during their own available spare time at home. The cantons of Basle-City and Basle-Country use this form of punishment for sentences ranging from 1 to 12 months, the canton Bern for sentences from 3 to 12 months, the cantons Vaud, Geneva, and Ticino for sentences between 1 and 6 months. While this form of punishment is meant to be an alternative to imprisonment (front door Variety), it can also be utilized to serve the remainder of the term after a conditional release from a long prison term (backdoor variety), thereby removing the stigmatising or socially negative effects of imprisonment or part-prison term. From an economic point of view this sort of punishment is less costly than imprisonment and is cost saving in the criminal justice system. Nearly 500 people served this form of a sentence between September 1, 1999 and December 31, 2001.

7.3.2 Learning programs as new forms of intervention in criminal justice from 1999 to 2004

This pilot scheme is carried out in the canton Zurich with the objective to change cognitive behaviour in such a way as to aid social integration and lessen the risk of recidivism. It is an attempt to change attitudes and behaviour, especially self-esteem, while at the same time strengthening the offender's willingness to take responsibility for his or her own actions.

7.3.3 Re-appraisal of offence and redress, TAWI², 1999-2003

The pilot scheme is carried out by the canton Bern since February 1999. The goal is to evaluate possibilities of redress within the timeframe of four years. The vision is to focus on and work through unsolved social conflicts between offender and victim through them by re-appraisal of the offence and redress (TAWI). The main focus of the pilot scheme is supporting the offender to bring into conscious the underlying motivation and behaviour which lead to the offence and to take responsibility for the victim for the consequences of his or her own actions
See also Compensation Mandate of the Victim Relieve Act (OHG³) of 1993 and the relevant amendment of the of Article 37 of the Swiss Penal Code

7.4 Further programmes or pilot projects, 2000-2007

7.4.1 The following programmes and pilot projects have been implemented, completed or renewed

- Out-patient treatment for sex offenders, St. Gall
- Probation Service for dangerous offenders, Zurich
- Foreign nationals and criminal justice, Zurich
- Earning remission to pay fines, Zurich
- Criminal justice-Mediation, out-of-court settlement, Zurich
- OPTIMA- New Public Management, Thurgau
- Clients' Data Management and Documentation, Zurich
- Quality manual for Probation Service, Luzern
- BEWIS, EDP Application, Solothurn
- Quality management in probation and criminal justice, Zurich
- Counselling of removed offenders of domestic violence, St. Gall
- Offender Learning Programs, 2003 Zurich, St. Gall, Solothurn
- Offence-oriented practice of Supervision, 2004 Zurich, Solothurn
- Domestic violence offender counselling 2005/06, St.Gall, Solothurn, Basle-Country, Zurich
- Risk Assessment and Offender Learning Programs, 2007 Basle-City

8 IMPORTANT PUBLICATIONS

Die Bewährungshilfe in der Schweiz 2000, Die ersten gesamtschweizerischen Ergebnisse, Oktober 2001, BFS, Neuchâtel

Die Bewährungshilfe 2001, La probation 2001, Juin/Juni 2003, BFS, Neuchâtel
Seit 2003 unter www.justice-stat.admin.ch Thema: Kriminalität und Strafrecht

Probation 2001, June 2003, SFSO, Neuchâtel (in German and French). Since 2003 data are available, in German and French, under: www.justice-

² TAWI - Tataufarbeitung und Wiedergutmachung.

³ OHG – Opferhilfegesetz.

www.justice-stat.admin.ch. Subtheme: Crime and Penal Law. Publications may also be downloaded.

Gemeinnützige Arbeit 1996, BFS, BJ, Neuchâtel, 1998

Gemeinnützige Arbeit 1996-1998, BFS, BJ, Neuchâtel 2000

Seit 2000 unter www.justice-stat.admin.ch Thema: Kriminalität und Strafrecht
Community Work 1996, SFSO, SFOJ, Neuchâtel, 1998. Community Work 1996-1998, SFSO, SFOJ, Neuchâtel, 2000. Since 2000, data are available, in German and French, under www.justice-stat.admin.ch. Subtheme: Crime and Penal Law.
Elektronisch überwachter Strafvollzug
Seit 2003 unter www.justice-stat.admin.ch Thema: Kriminalität und Strafrecht
Since 2003 data are available, in German and French, under www.justice-stat.admin.ch. Subtheme: Crime and Penal Law.

Statistiken zum Freiheitsentzug und zum Vollzug von Strafen:

Seit 2000 unter www.justice-stat.admin.ch Thema: Kriminalität und Strafrecht
Statistics on incarcerations and execution of sentences:
Since 2000 data are available, in German and French, under www.justice-stat.admin.ch. Subtheme: Crime and Penal Law.

Ethical principles and the field of action of Swiss probation

Leitbild – lignes directrices – Linee direttrici

Booklet German / French / Italian or under www.probation.ch

The 26 autonomous cantonal probation services of Switzerland have reached an agreement on the common ethical principles and the field of action of Swiss probation. Quite an achievement, taken into account that the German, French and Italian parts each have their own distinct culture and organisation of probation.

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ANNEX 1

Probation in Switzerland – Data Collection

From 2000 to 2005, the total number of convictions is up by 20% from 77,000 to 93,000, which is a tremendous increase. Since 2002, the same can be said for the numbers of unconditional prison sentences. In contrast, there is only a slight increase in the probation services caseload of supervising convicts and prisoners, who are released with parole or without parole from a correctional facility or institution. Multiple count and quality problems in the survey are taken into consideration. The number of new cases per year as well as completed supervisions approach the 2000 mark. This can be attributed to the fact that recently misdemeanours that carry real short, conditional and unconditional sentences of less than 30 days have greatly increased. Those are the ones, which usually do not require assistance. At the same time, it can be stated, that the numbers of long sentences and measures, which may lead to a mandate for supervision by the probation services, have only marginally changed or rather show an upwards trend.

Within the scope of this survey, the statistically recorded activities of the probation agencies are found to mainly focus on supervising people who were released from a correctional facility or institution: From the 1915 new cases in 2005, 850 were released from prison (44 %). The second largest group was made up people who were ordered to outpatient care in connection with a suspended sentence

Within the last three years, a slight carry-over from the number of new cases versus the number of completed existing cases can be noted, resulting in a slight increase in the total number of supervised persons, raising it within the last three years from 4900 to 5400 supervised individuals. While the number of inmates, who continued to be supervised at year's end, stayed relative stable, the number of the newly admitted supervisions fluctuated on a relatively high level (between 4500 and 6000 new cases).

The statistic about the implementation of community service work (GA⁴) and the electronically monitored sentencing (EM) demonstrates a stable assignment of 5000 cases in the area of community service (GA) between 2000 and 2005, and 300 executed sentences in the area of EM during the same time period. This concerns the execution of unconditional prison sentences, which are mostly organized through probation agencies

Further it can be stated, that the services among various probation agencies differs. In particular, some help in getting jobs in special shops and businesses.

⁴ GA – Gemeinnützige Arbeit

Table 1.1
Input Offender Statistics

2003, 2004, 2005				
		2003	2004	2005
Data relating to Convictions				
Total Convictions		88771	97301	92917
<i>conditional prison term</i>		42302	46199	42257
<i>unconditional prison term</i>		12688	15114	15124
Measures		546	594	586
Prison Population				
<i>in remand</i>		1723	1903	1929
<i>in Penitentiary</i>		3119	3606	3794
Commitment into Supervision on the legal basis of court orders				
Total		1943	1962	2104
Transfers to other Cantons		90	92	168
Order 1) of Probation Assistance (or rather protective Supervision) through				
<i>conditional Sentencing</i>		247	244	281
<i>out-patient Treatments</i>		337	371	345
<i>conditional Release of Prison</i>		716	818	779
<i>conditional or probationary Discharge from an inpatient Treatment</i>		130	104	189
<i>probationary release from a work and reformatory institution</i>		21	37	22
Directives (exclusively)		284	149	292
Other		198	139	196
Admittance into Supervision without mandatory decree				
Total				
Voluntary Supervision 2)		185	182	162
in Penitentiary		5999	5758	5106

1) Mandate of protective Supervision in conditional Sentencing pursuant to Art. 41.2 Penal Code
Mandate of protective Supervision during out-patient treatment with suspended Sentence pursuant to Art. 43.2.2, 44.1, and 44.6 Penal Code
Mandate of protective Supervision under conditional Release pursuant to Art. 38.2 Penal Code
Mandate of protective Supervision under conditional and probationary discharge from inpatient or outpatient measures without Sentence Suspension pursuant to, Art. 43.4.2, and 44.4.2 Penal Code
Mandate of protective Supervision under conditional release from a work and reformatory institution (AEA), pursuant Art. 100s Penal Code
Directives: Social Assistance under ordered Directives
Other: Assignments pursuant cantonal Legislation
Transfers thereof: Extent of possible double Census due to Transfers of supervisory Mandates to other Cantons

2) Persons who are monitored by the Probation Agencies for an ordered period of time

Source: Crime Statistic, Statistic of Imprisonment, Statistic of Probation Assistance
© BFS - Statistical Library of Switzerland; in the internet under www.justice-stat.admin.ch

Table 1.2

2. Average Offender Population			
	2003	2004	2005
Total number of monitored persons, as of December 31st.			
Total	4914	5239	5343
Mandate - Decreed Probation	4429	4780	4932
Voluntary Supervision 5)	485	459	411
Supervised Prisoners			
Existing numbers and Admittance into Supervision			
Total as of December 31 st	2205	2536	2395

Table 1.3**3. Staffing Statistics**

2003, 2004, 2005				
Staff and Supervisory ratios in Probation Service	2003	2004	2005	
Total Supervisory Staff	199	197	196	
trained Social Workers	131	127	123	
Swiss median supervisory rate	70	78	76	
Staff supervising people serving a Community Service Sentence (GA) and EM Sentence	2003	2004	2005	
Total Supervisory Staff				
for Community Service Sentences		27		
for electronically monitored Sentences		11		

