



Detention: Framework Decisions 829 and 947 and their Impact on Alternatives in the EU

Bucharest, 28 February-1 March
2022

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Criminal Law

Speakers

Viorel Badea, Deputy Director, National Institute of Magistracy (NIM), Bucharest

Charlie Brooker, Honorary Professor, Centre for Sociology and Criminology, Royal Holloway, University of London (online)

Iuliana Elena Cărbunaru, Probation Inspector, National Probation Directorate, Ministry of Justice, Bucharest

Tim Chapman, Chair of the Board, European Forum for Restorative Justice (EFRJ), Belfast

Gabriela-Nicoleta Chihaia, President, Juvenile and Family County Court, Braşov

Gisella Conrad, Regional Coordinator, International Office, Dutch Probation Service, Utrecht

Dr Ioan Durnescu, Professor, Faculty of Sociology and Social Work, University of Bucharest; Confederation of European Probation (CEP) Member

Ramin Farinpour, Senior Lawyer, European Criminal Law Section, ERA, Trier

Vivian Geiran, Adjunct Assistant Professor in the School of Social Work & Social Policy, Trinity College, Dublin; former Director General, Irish Probation Service, Dublin

Natasja Goosen, Legal Assistant, Central Authority for the Transfer of Probation and Supervision Measures and the Transfer of the European Supervision Order, Haarlem

Gerry McNally, Assistant Director, Irish Probation Service, Dublin; President, Confederation of European Probation (CEP)

Jorge Monteiro, Head of Unit, Program and Projects Department, Directorate-General of Reintegration and Prison Services, Ministry of Justice, Lisbon (online)

Jonathan Péromet, Director, Electronic Monitoring Directorate, House of Justice, Federation Wallonia-Brussels, Brussels (online)

Dr Cristina Teoroc, Chief Commissioner, Deputy Director for Education and Social Assistance, Jilava Prison, Bucharest



With financial support from the European Union's Justice Programme 2014-2020

Key topics

- Best practice in relation to alternatives to detention
- Viable alternatives, including probationary measures, electronic monitoring and restorative justice
- The application and correct use of Framework Decision 2009/829/JHA on supervision measures as an alternative to provisional detention and Framework Decision 2008/947/JHA on probation and alternative sanctions, also as an alternative to the European Arrest Warrant

Languages

English, Romanian (simultaneous interpretation)

Event number

322DT56f

Organisers

ERA (Ramin Farinpour) in cooperation with the National Institute of Magistracy (NIM), the Council of Europe, the Confederation of European Probation (CEPS) and the European Forum for Restorative Justice (EFRJ).



Detention: Framework Decisions 829 and 947 and their Impact on Alternatives in the EU

Monday, 28 February 2022

08:30 Arrival and registration of participants

09:00 **Welcome and introduction**
Viorel Badea, Ramin Farinpour

I. **FRAMEWORK DECISIONS 829 and 947 AND THEIR IMPACT ON ALTERNATIVES TO DETENTION IN THE EU**

Chair: Ramin Farinpour

09:10 **Alternatives to detention: the big picture and the various means that constitute actual alternatives within the context of Framework Decisions 829 and 947**
Gerry McNally

09:45 **How the main elements of Framework Decisions 829 and 947 work in practice**

- Framework Decision 829: recognition and monitoring of supervision measure, required form, transfer procedure, role of judicial authorities and lawyers in the process
- Framework Decision 947: transfer procedure, required form, issuing and executing measures, supervision of probation, role of judicial authorities and lawyers in the process

Gisella Conrad, Natasja Goosen

10:30 Discussion

10:45 Coffee break

11:15 **Framework Decisions 829 and 947 and their use**

- State of play, overcoming legal and practical problems and good practices
- Findings from the Probation Network. Training and Network's (PONT) literature and training gap analysis

Ioan Durnescu

12:00 Discussion

12:15 **Legislative reform to enhance the role of alternatives to detention and the effects of Framework Decisions 829 and 947: the example of Romania**
Gabriela-Nicoleta Chihaia, Iuliana Elena Cărbunaru

12:45 **The role of probation services and officers in preventing (re)incarceration: help on release, conflict resolution and working together with the authorities**
Vivian Geiran

13:15 Discussion

13:30 Lunch

II. **PRISON VISIT**

14:30 Pick-up by bus in front of NIM

15:15 Arrival at Jilava Prison

An introduction to the Romanian penitentiary system and Jilava Prison
Cristina Teoroc

Objective

This first seminar in a series of five co-funded by the European Commission on enhancing cross-border mutual legal assistance and recognition of decisions within the context of detention will focus on alternatives to detention, also within the context of the European Arrest Warrant, as well as issues surrounding the proper use of Framework Decision 2008/947/JHA on probation and alternative sanctions and Framework Decision 2009/829/JHA on supervision measures as an alternative to provisional detention.

Who should attend?

Judges, prosecutors, probation officers and lawyers in private practice from eligible EU Member States (Denmark does not participate in the Justice Programme 2014-2020) and eligible Candidate Countries (Albania and Montenegro).

Venue

National Institute of Magistracy (NIM)
53 Regina Elisabeta Blvd, Sector 5
Bucharest
Romania

Participation fee and reimbursement of costs

Participation fee: No fee for judges, prosecutors and probation officers, €200 for lawyers in private practice

Travel costs up to €300 will be reimbursed by ERA for judges, prosecutors and probation officers upon presentation of the original receipts, tickets, boarding passes or invoices after the seminar.

Two nights' hotel accommodation up to €120/night will be reimbursed by ERA for judges, prosecutors, probation officers and lawyers in private practice upon receipt of the original invoice.

15:45 **Prison visit**

Split into three groups and rotate (30 minutes for each location including transfer):
 Group 1 – therapeutic community/reinsertion centre
 Group 2 – section no.1
 Group 3 – 13st fort

17:15 Concluding remarks

17:30 Departure back to NIM

18:30 Arrival back at NIM and end of first day

20:00 Dinner

Tuesday, 1 March 2022

III. ALTERNATIVES TO DETENTION IN THE EU WITHIN THE CONTEXT OF FRAMEWORK DECISIONS 829 AND 947

Chair: Ramin Farinpour

09:00 **Alternative sanctions for drug offenders and those with mental health issues**
Charlie Brooker, Jorge Monteiro

10:00 Discussion

10:15 **Restorative justice as a viable alternative: victim-offender-community mediation within and outside prisons**
Tim Chapman

10:45 **Technology as part of a viable alternative to detention: the use of electronic monitoring in practice and future outlook**
Jonathan Péromet

11:15 Discussion

11:30 Coffee break

12:00 **Simultaneous workshops**

- Applying the Framework Decision on Probation and Alternative Sanctions in practice (*Ioan Durnescu*)
- Applying the Framework Decision on Supervision Measures as an Alternative to Provisional Detention in practice (*Gisella Conrad, Natasja Goosen*)
- Probation services and their work with judicial and other authorities: effective means and methods (*Vivian Geiran*)
- Effective implementation and application of restorative justice (*Tim Chapman*)

13:30 Workshop reports and participant discussion

13:45 End of the seminar and lunch

For programme updates: www.era.int
 Programme may be subject to amendment.

Apply online for this seminar:
www.era.int/?131082&en

Your contact person



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CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to **10 CPD hours**.



Co-funded by the Justice Programme (2014-2020) of the European Union

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Apply online for

Detention: Framework Decisions 829 and 947 and their Impact on Alternatives in the EU

Bucharest, 28 February-1 March 2022 / Event number: 322DT56/sb



Terms and conditions of participation

Selection

1. Participation is open to judges, prosecutors, probation officers and lawyers in private practice from eligible EU Member States (Denmark does not participate in the Justice Programme 2014-2020) and EU Candidate Countries (Albania and Montenegro) who have been fully vaccinated or have recently recovered from COVID-19.
2. The number of places available is limited (50 places). Participation will be subject to a selection procedure. Romanian applicants who work for the judicial and prosecution services must apply for this event through NIM.
3. Applications should be submitted by **24 January 2022**.
4. A response will be sent to every applicant after the deadline. Participation is subject to a selection procedure.

We advise you not to book any travel or hotel before you receive our confirmation.

Registration fee

5. No registration fee for judges, prosecutors and probation officers. Documentation, lunches and a joint dinner provided for.
6. €200 for lawyers, including documentation, lunches and a joint dinner.

Travel expenses

7. Travel costs up to €300 can be reimbursed for judges, prosecutors and probation officers by ERA upon receipt of the original receipts, tickets, boarding passes, invoices after the seminar. €150 can be reimbursed for Romanian judges, prosecutors and probation officers.

Participants are asked to book their own travel. Participants are advised of the obligation to use the most cost-efficient mode of transport available and to read the travel reimbursement information sheet carefully.

Accommodation

8. Two nights' single room accommodation up to €120 per night can be reimbursed by ERA for judges, prosecutors, probation officers and lawyers in private practice upon receipt of the original receipts and invoices after the seminar if they have to travel more than 100km to Bucharest.

Other services

9. Two lunches, beverages consumed during the coffee breaks and the seminar documents are offered by ERA. One joint dinner is also included.

Participation

10. Participation at the whole seminar is required and your presence will be recorded.
11. A list of participants including each participant's address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
12. The participant's address and other relevant information will be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest unless the participant indicates that he or she does not wish ERA to do so.

Apply online for
"Detention: Framework
Decisions 829 and 947
and their Impact on
Alternatives in the EU":

www.era.int/?131082&en

Venue


National Institute of Magistracy
(NIM)
53 Regina Elisabeta Blvd, Sector 5
Bucharest
Romania

Languages

English, Romanian (simultaneous
interpretation)

Contact Person


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Alternatives to detention: the big picture and the various means that constitute actual alternatives within the context of Framework Decisions 829 and 947/2008

ERA 28th February 2022, Bucharest

Gerry McNally
President, CEP

Co-funded by the Justice Programme of the European Union (2014-2020) 

1

Presentation 

- What is CEP?
- CEP and FD 947/2008 and FD 829/2009
- Community Sanctions and Measures
- FD 947 and FD 829 to date
- EC ninth round of mutual evaluations of the mutual recognition legal instruments in the field of deprivation or restriction of liberty (FDs 584/02, 909/08, 947/08 and 829/09)
- Issues, Challenges and Opportunities in the use of FD 947 and FD 829
- Next Steps



2



Confederation of European Probation 

Is the largest European Network Organization for Probation
Founded in 1981

Mission:
To promote the rehabilitation and social inclusion of offenders through sanctions and measures implemented in the community.

Objectives:

- 1) To **unite probation organisations** all over Europe
- 2) To **professionalize** the sector of probation in Europe
- 3) To **raise the profile** of probation in the global arena of criminal justice systems



3




FD 947/2008 and 829/2009 

- **Council Framework Decision 2008/947/JHA**
• on the application of the principle of **mutual recognition** to judgments and probation decisions with a view to the **supervision of probation** measures and alternative sanctions <https://goo.gl/GXZkwi>
- **Council Framework Decision 2009/829/JHA**
• on the application, between Member States of the European Union, of the principle of **mutual recognition** to decisions on **supervision measures as an alternative to provisional detention** <https://goo.gl/NHWdXT>
<http://eur-lex.europa.eu/homepage.html>
- 30/11/1964 Council of Europe European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS No. 051) 

The Convention aims to allow offenders to leave the territory of a Party where a sentence was pronounced, or where the enforcement of a sentence has been conditionally suspended, to establish their ordinary residence in another Party under the supervision of its authorities.


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FD 947/2008

CEP 


The objective is: “to enhance the prospects of the sentenced person’s being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.’


It is implicit in the objective that supervision and compliance could arguably be better achieved in their native or other location, in a more familiar socio-economic and cultural environment or where they have a prospect of employment, training or residency.

Freedom of movement in Europe for EU citizens (with specific limited restrictions) 

5

FD 947/2008

CEP 

- The FD uses the term ‘alternative sanction’, which means a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction.
- These are sanctions and measures, which maintain the offender in the community and involve some restrictions of their liberty through the imposition of conditions and/or obligations. The adjective ‘alternative’ refers to the fact that this sanction is meant as alternative to a custodial sentence.
- FD 947 on Probation and Alternative Sanctions allows a person, who is sentenced to a probation measure or alternative sanction in a Member State to serve this sentence in another Member State where he/she is lawfully and ordinarily resident. 

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FD 947 and 829 Comparative Overview		CEP
	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
General target group	Persons that being sentenced with an alternative to detention or probation measure want to go back to their countries (consent)	Suspected persons awaiting trial that want to go back to their country under an alternative to provisional detention (consent)
Aim	Enhance social rehabilitation by preserving offender's ties.	Protection of the victim and general public. Enhancing the right to liberty and the presumption of innocence
Deadline of implementation	6 th December 2011	1 st December 2012
Countries that have implemented	all EU Member States	All EU Member States
Documentation	Certificate + sentence (Adaptation – nature and duration)	Certificate + Decision on the supervision measure (Adaptation – nature and duration)

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Framework Decisions in Practice


CEP

- Early stage of implementation
- Promising initial, 2016-22, results in FD 947 transfers in some jurisdictions e.g. Netherlands, Latvia
- Most jurisdictions have small numbers of completed FD 947 transfers
- FD 829 still little used, relatively unknown. An 'Orphan'?
- Differences in Knowledge, Experience and Awareness Promotion
- Differences in interpretation of terms e.g. Article 5 'lawfully and ordinarily residing...'
- Procedures are sometimes unknown, long and bureaucratic
- Lack of information and trust
- Language, translations and costs issues
- Data protection to be taken into account in transferring data
- Data gathering and evaluation needed
- https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=37 FD 947
- https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=39 FD 829




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Actions




- Remember the spirit and purpose of the original authors of the FDs.
- Information Sharing and Co-operation between Services
- Training and knowledge development among criminal justice professionals – experience builds expertise
- Promotion - Single Point of Contact for promotion and for information dissemination
- Timeliness in response and decision-making




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Actions



- Level of knowledge among criminal justice professionals
- Identifiable and accessible (preferably single national) points of contact for information for internal applicants, legal professionals and external enquiries
- Clarification on thorny issues such as 'residency'
- Competent Authorities and contact information can be found on the European Judicial Network (EJN): (www.ejn-crimjust.europa.eu).
- Information on CAs and contact details does need to be kept up to date ...as well as being monitored with prompt responses.



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Enhancing the implementation of FD 947/FD 829




- CEP Events and Expert Meetings since 2008
- Conferences and International Seminars with **ERA, EuroPris, European Forum for Restorative Justice, Criminal Justice Platform Europe.**
- Information resources and practitioner guide
- Developing data gathering mechanisms
- CEP website resources; cep-probation.org
- Participate in EU training project on FD:
 - ✓ PONT Project <https://probationobservatory.eu/>





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FD 947 and 829



- FD 2008/947/JHA and FD 2009/829/JHA are valuable European instruments supporting the rehabilitation, integration and settlement of persons subject to community sanctions and measures.
- We must not let them 'wither on the vine' through neglect, excessive bureaucracy, inflexibility/rigidity in interpretation, or lack of knowledge
- Promotion, increased awareness and information dissemination to potential beneficiaries and criminal justice professionals
- Training, good links with other CAS



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Where next.....



- ✓ We need to be open, flexible and committed to the principles and ideals underpinning
- ✓ We need to learn to trust better, communicate more and be creative in how we implement the FDs.
- ✓ We need to continue to organise expert meetings, to promote and disseminate information about the FDs,
- ✓ We can learn from each others experiences, successes and failures
- ✓ We need to work more openly across disciplines, agencies and jurisdictions with respect for difference and what each other 'brings to the table'
- ✓ Ever tried. Ever failed. No matter. **Try again. Fail again. Fail better.**

Samuel Beckett Worstword Ho (1983)



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Thank you!
 Merci!
 Dank!
 Gracias!
 Благодаря!
 Grazie!

www.cep-probation.org
info@cep-probation.org

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 **Reclassering** Nederland

 **SVG**
Verslavingsreclassering

 **Leger des Heils**
Jeugdzorg & Reclassering
voor een aanpak die werkt

The International Desk of the Dutch Probation Service

ERA Conference February 28, 2022

 Co-funded by the Justice Programme of the European Union 2014-2020

1

International Desk, Dutch Probation Service




- Melinda Lewis, Gisella Conrad & Leontien Kuijer



5 ap

2

Reclassering Nederland 


International Desk

Was founded in response to the implementation of European Framework Decisions

- FD 2008/947/JBZ; supervision of probation measures and alternative sanctions
- FD 2009/829/JBZ; supervision measures as an alternative to provisional detention

5 april 2022

3


Reclassering Nederland 

Main tasks

- Information and advice for Competent Authority
- Information and advice for
 - probation workers
 - justice partners, lawyers

5 april 2022

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Reclassering Nederland 

Extra efforts to increase the use of FD's

- Training (induction training new staff)
- Work procedures (instructions what to do when..)
- Contact network NL Embassies and probation volunteers (inform and advice Dutch citizens detained abroad)
- Regular workshops with international colleagues (direct contact/short lines works best)

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Reclassering Nederland 

International Desk


- Outgoing cases

Typical cases

- EU national who has committed a criminal offense in NL and wants to undergo the judgement in his own country
- Int. desk informs advisors, supervisors and community service employees.
- (example of an FD 947 case)

5 april 2022

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Reclassering Nederland 

International Desk

- Incoming cases

Typical cases

- Transfer of supervision measures(FD 829)
- Conditional Sentences (FD 947)
- Community Service

5 april 2022

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Reclassering Nederland 

Figures International Desk 2021

- In total 139 transfer cases (amount of questions received by Int. Desk).
- 48 incoming cases, 91 outgoing cases.
- 30 community service cases, 109 supervision cases.
- Top 5 in 2021: Belgium 57 / Germany 20 / Poland 18/ France 8/ Spain 6.

5 april 2022

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Thank you very much for your attention.

If you have any questions, please do not hesitate to contact us

Phone:


0031 88 80 41 090

Email:

Buitenlandbalie@reclassering.nl

Gisella Conrad


5 april 2022

 Co-funded by the Justice Programme of the European Union 2014-2020

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FD 947 and FD 829

ERA Seminar, February 28, 2022, N. Goosen



1

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- Short Quiz
- Introduction CA
- Our Team
- FD 947 which decision can be transferred
- Which conditions can be transferred
- Procedure incoming cases
- Procedure outgoing cases
- Sample case: transfer from the Netherlands to Belgium
- Practical experiences



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- FD 829 which conditions can be transferred
- Procedure incoming cases
- Procedure outgoing cases
- Practical experiences
- Number of cases
- Contact information department WETS-ETM

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Quiz, Question 1

Approximately how big is the Palace Ceașescu and how many floors does this building have?

1. 300.000 m², 10 floors
2. 340.000 m², 12 floors
3. 500.000 m², 30 floors



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Quiz, Question 2

What is the competent authority for Framework Decision 947 in Romania, Bucuresti?

1. Tribunalul Bucuresti
2. Ministry of Justice
3. Prosecutor's Office of the High Court of Cassation and Justice

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Quiz, Question 3

Which countries do we as the Netherlands have the most transfers with?

1. Belgium and France
2. Belgium and Poland
3. Belgium and Germany

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Quiz, Question 4

In which country is the Probation Service the competent authority for Framework Decision 947?

1. Ireland
2. Spain
3. Hungary

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Competent Authority

Prosecutor's office in Noord-Holland is the competent Authority for:

- Transfer of probation measures (FD 947)
- Transfer of ESO (FD 829)
- Transfer of EPO (Dir. 99)
- Transfer probation measures within the Kingdom of the Netherlands



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Our Team

Henri Tillart (prosecutor)
Natasja Goosen
Meta Vos
Charlotte Rotteveel
Alannah Jas

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Framework Decision 947 Which decision can be transferred

- Conditional sentence with probation measures
- Alternative sanctions of more than 80 hours community service
- Conditional release



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Which conditions can be transferred (article 4 FD 947)

- Obligation to report
- Location ban
- Travel ban
- Contact ban
- Contact with probation
- Therapy
- Community service
- Electronic monitoring

- ECLI:EU:C:2020:237, CJEU March 26, 2020

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Procedure incoming cases

- CA receives certificates from other MS

- CA checks:
 - address / social ties
 - criminal offence
 - certificate
 - execution of conditions

- CA contacts issuing state if necessary
- CA takes decision within 60 days
- CA processes incoming case in national system

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Procedure outgoing cases

- Cases suitable for transfer are being selected by the system
- CA checks if transfer is possible
- CA asks the local prosecutor to fill in the certificate
- CA checks the documents, arranges the translations and sends the documents to the MS
- CA monitors the deadline
- After recognition the CA arranges the registration of the transfer in the national system

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Sample case: transfer from the Netherlands to Belgium

- An e-mail from Gisella Conrad, International Desk
- Waiting on final verdict from the Court in the Netherlands
- An e-mail to a contact in Belgium to ask if transfer is possible
- Due to backlog in Belgium, we did not receive a final answer
- Prosecutor decided to transfer the case anyway and ask for recognition
- Belgium eventually recognized the case



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Practical experiences

- Late or no reaction to transfers
- Lack of knowledge
- Difficulties to adapt the Dutch CS (Germany)
- Wrong interpretation of article 11 paragraph 1 under j
- No information about the execution of the sanction
- Translation problems
 - Days were translated as months
 - Obligation to stay in Amsterdam
 - Not leaving the residence

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Framework Decision 829 Which conditions can be transferred?

- All measures mentioned in art. 8 par. 1 of the FD
 - Obligation to report change of residence
 - Location ban
 - Obligation to stay at a specified place for a specified time
 - Travel ban
 - Obligation to report to the police
 - Contact ban
- For instance also electronic monitoring

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Procedure incoming cases

- CA checks:
 - address / social ties
 - certificate
 - execution of conditions
- CA checks conditions
- CA takes decision
- CA contacts local police for duty to report
- CA processes recognition in national systems

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Procedure outgoing cases

- CA receives request for transfer
- CA checks if transfer is possible
- CA asks the local procecutor to fill in the certificate
- CA controls the documents, arranges the translations and sends the documents to the ES
- CA monitors the deadline
- After recognition the CA informs the local prosecutor
- During the transfer of the ESO the CA will stay in contact with the authorities abroad and the local prosecutor

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Practical experiences

- Lack of knowledge
- Suspects are released before recognition
- Suspects are released but with the obligation to stay in the country
- Extension of the ESO
- No information of ending of the ESO

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Number of cases 2021

	Incoming	Outgoing	Incoming	Outgoing
	947	947	829	829
2021 recognized	38	46	4	4
2021 in progress	21	73	2	2
2021 no transfer	9	81	8	2
2021 consultation	12	8		1
2021 refused	15	14		
Total 2021	95	222	14	7

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Total 2017-2021

Total cases processed	Incoming	Outgoing	Incoming	Uitgoing
	947	947	829	829
2017	27	128	17	7
2018	39	103	11	6
2019	44	178	6	1
2020	56	173	10	7
2021	95	222	14	7

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Contact

- Competent Authority
IRC Noord-Holland, department WETS-ETM
Postbus 6079
2001 HB Haarlem
The Netherlands


Tel.: 088-699 1670
@: WETS-ETM@om.nl

Mr. N. Goosen




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UNIVERSITY OF
BUCHAREST
— VIRTUTE ET SAPIENTIA




CIVIS A European Civic University

'The 9th round of mutual evaluation Romania'


PONT Project Overview

March 4th, 2021

Ioan Durnescu
University of Bucharest
Project Coordinator



Co-funded by the Justice Programme of the European Union 2014-2020



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PONT TEAM

- University of Loyola / Spain
- University of Latvia / Latvia
- Ministry of Justice Bremen / Germany
- CEP
- University of Bucharest









2

PONT ACTIVITIES



LITERATURE REVIEW – AND FORMER PROJECTS



TRAINING GAP ANALYSIS



ELABORATION OF THE E-MANUAL



DELIVERING THE TRAINING IN FOUR DIFFERENT AREAS



REVISING AND DISSEMINATING THE E-MANUAL



BUILDING-UP A NETWORK OF EXPERTISE IN FDS 829 & 947

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Training Gap Analysis on FD 829/2009 and FD 947/2008

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TRAINING GAP ANALYSIS

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TRAINING GAP ANALYSIS. HOW WE DID IT?



Pan-European survey
– agreed among the partners, pre-tested in a few countries

Based on the literature review



Placed on EU Survey
– in English:

FD 829 -
<https://ec.europa.eu/eusurvey/runner/SurveyFD829>
FD 947 -
<https://ec.europa.eu/eusurvey/runner/SurveyFD947>



Distributed via EJN
and direct contact



Two months



35 answers:

15 for FD 829
20 for FD 947

5

FD 829 – 15 RESPONDENTS



Level of knowledge

Only three with some experience
Self-perception – level of knowledge medium (7), good (4) and very good (3)
One CA – very low level



General perception

'very useful in reducing pre-trial detention'
But: 'time consuming', 'very limited possibilities to apply', 'no experience', 'difficult to implement'
'Difficult to rely on other MS to supervise offenders'



The training needs

How to identify the CA in the ES – 3
How to adapt the measure in the national context - 3
General knowledge about the FD – 2
What are the options in the ES – 2
Where to find help - 2

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FD 947 – 20 RESPONDENTS



The level of knowledge

Self perception of level – very good and good (6), moderate (8), low level (5)

With previous experience – 9



The general perception

Very important for 'mobility situation' (8) – to preserve

Application complicated, confusing and time-consuming (3)

Difficulties in: identifying the CA, not knowing the legal possibilities, adapting the measures, lack of response from the CA of IS, limited knowledge of FD

Difficult in particular when: lack of contact, transferring CS in Germany, the 6 months limit



The training needs:

12 asked for more training

How to adapt the sentence (13)

How to fill-out the certificate (9)

How to identify the CA (8)

What are the competencies of probation services (8)

How to do the rehabilitation test (6)

Where to find help (7)

7

THE E-MANUAL

8

THE E-MANUAL

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Very practical!

Available online on different websites – including probationobservatory.eu

In English, Spanish, German and Latvian.

Please disseminate it further!!!

9

issues to think about
usable in practice

mutual understanding

complete

useful

helpful

comprehensive

clear interesting

rigorous

well written

support good

thoroughly pedagogical

informative

complex

10

DELIVERING TRAINING

- Delivered on the network principle
- Based on the e-manual
- In person – in Seville for Spain, Italy and Romania
- Online in Germany – for Germany, Belgium, France and Luxembourg
- Online in Romania - for Romania, Spain, Italy and Poland
- Overall – more than 35 competent authorities benefited from it

11

ONLINE COURSE - INFOGRAPHIC

Online course – more than 150 participants from 14 EU countries

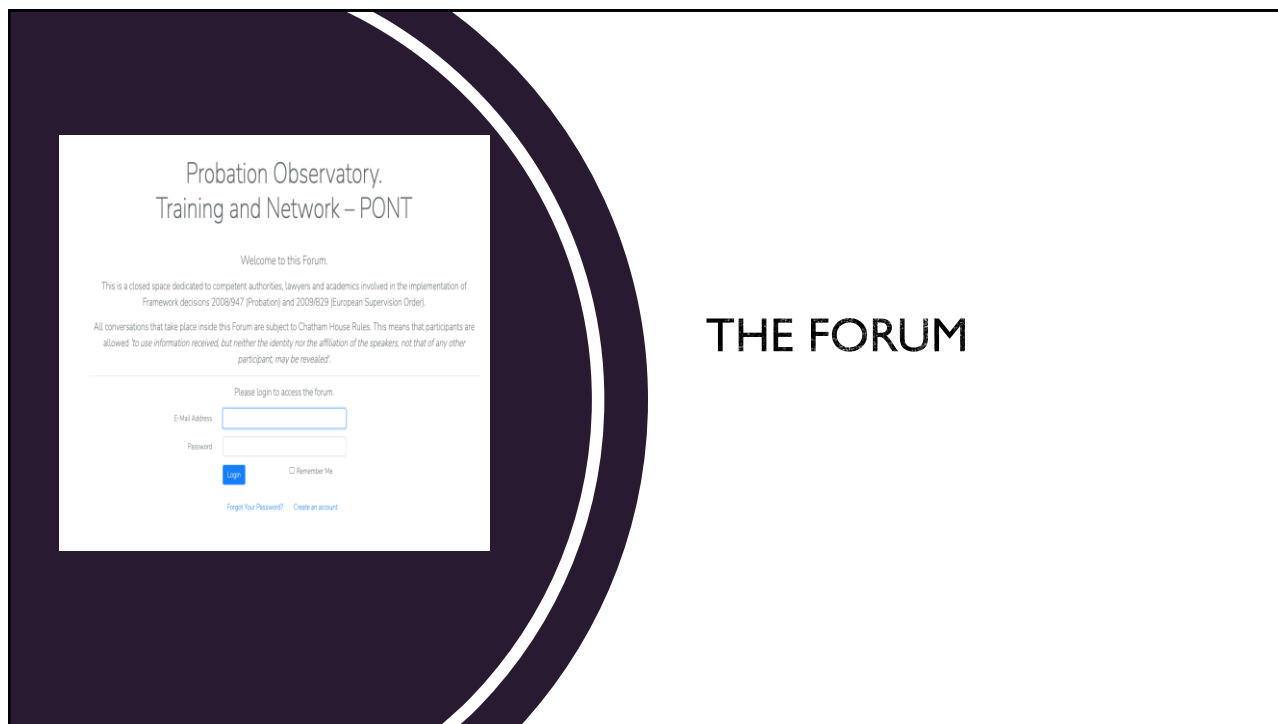
- pont.unibuc.ro
- Tutorials
- Quizzes
- Certificate from UB



Please join in !!!



12



13

the FORUM

<https://probationobservatory.eu/forum/>

- Registration procedure – easy – 2 min. – for controlling the access
- Structured on different subjects: e.g. how to deal with practical cases
- You are informed on email once someone has answered your question
- Please Join in!!!

14

TO SUM-UP THE DIFFICULTIES THAT PONT TRIED TO ADDRESS IN 2020:

2009/829

- *not knowing the legal options in the Executing State (ES),*
- *not being familiar with the procedure and*
- *not receiving the documents in an accessible language.*
- *anxiety regarding the trust in another jurisdiction to follow the supervisory measures was also present.*
- *time pressure*

2008/947

- *slightly higher familiarity*
- *not being sure about the legal options in the ES,*
- *not being sure that the obligations will be carried out in the ES,*
- *not having clear standards of how to measure the rehabilitation prospects*
- *difficulties around the certificate*
- *how to identify the CA in the ES?*

15

ARE THEY STILL THERE?

16



Questions?

More information on:

www.probationobservatory.eu

ioan.durnescu@unibuc.ro

Thanks!!




Detenție:
Deciziile-cadru 829 și 947 și impactul acestora asupra alternativelor la detenție din UE

Detention:
Framework Decisions 829 and 947 and their Impact on Alternatives in the EU

Judecător Gabriela Nicoleta Chihai
Președinte Tribunal pentru Minori și Familie Brașov

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EXPERTISE

**Criminal
Law**

București, 28 februarie-1 martie 2022  Co-funded by the Justice Programme of the European Union 2014-2020

1

Cooperarea cu statele membre ale Uniunii Europene în aplicarea Deciziei-cadru 2009/829/JHA a Consiliului din 23 octombrie 2009 privind aplicarea, între statele membre ale Uniunii Europene, a principiului recunoașterii reciproce în materia deciziilor privind măsurile de supraveghere judiciară ca alternativă la arestarea preventivă

Cooperation with the Member States of the European Union in the application of the Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between the Member States of the European Union, of the principle of mutual recognition in decisions on measures of judicial supervision as an alternative to pre-trial detention

Sediul materiei – Titlul VII, Capitolul I din Legea nr. 302 din 2004 privind cooperarea judiciară internațională în materie penală

The headquarters of the subject - Title VII, Chapter I of Law no. 302 of 2004 on international judicial cooperation in criminal matters

- se aplică în relația cu statele membre ale Uniunii Europene care au transpus legislația Uniunii Europene în domeniu
- se aplică și în relația cu acele state care nu sunt membre ale Uniunii Europene, cu care a fost încheiat un tratat bilateral sau multilateral în domeniu.
- în relația cu statele membre ale Uniunii Europene care nu au transpus legislația Uniunii Europene în domeniu sunt aplicabile dispozițiile [titlului V](#).

Surveillance measures - art. 184 - example:

- Applies in relation to the Member States of the European Union that have transposed the European Union legislation on this matter.
- It also applies in relation to those states that are not members of the European Union, with which a bilateral or multilateral treaty has been concluded on this matter.
- In relation to the member states of the European Union that have not transposed the legislation of the European Union on this matter, the provisions of Title V are applicable.

Măsuri de supraveghere – art. 184 - exemple:

- obligația de a nu intra în anumite localități, locuri sau zone definite din statul emitent sau de executare;
- obligația de a rămâne într-un anumit loc, după caz, în anumite intervale;
- obligația prin care se restricționează părăsirea teritoriului statului de executare;
- obligația de a se prezenta la date stabilite în fața unei anumite autorități;
- obligația de a evita contactul cu anumite persoane în legătură cu infracțiunea presupusă a fi fost săvârșită;
- obligația de a nu conduce un vehicul;
- obligația de a urma un tratament medical sau de dezintoxicare.

Surveillance measures - art. 184 - example:

- The obligation not to enter certain localities, places or defined areas of the issuing or executing state;
- The obligation to remain in a certain place, as the case may be, in certain intervals;
- The obligation to restrict leaving the territory of the executing State;
- The obligation to appear on dates set before a certain authority;
- The obligation to avoid contact with certain persons in connection with the crime alleged to have been committed;
- The obligation not to drive a vehicle;
- The obligation to follow a medical or detoxification treatment.

2

<p>România este stat de executare</p> <p>➤ Competența</p> <ul style="list-style-type: none"> • <u>Primirii certificatelor și a actelor prin care s-au dispus măsurile de supraveghere emise de alte state membre ale Uniunii Europene</u> <ul style="list-style-type: none"> ○ <i>in faza de urmărire penală</i>, Parchetului de pe lângă Înalta Curte de Casație și Justiție, ○ <i>in faza de judecată</i>, Ministerului Justiției, prin direcția de specialitate. • <u>recunoașterii și punerii în executare a actului prin care s-a dispus măsura de supraveghere</u> <ul style="list-style-type: none"> ○ parchetului de pe lângă tribunalul sau tribunalului în a cărui circumscripție persoana supravegheată are reședința legală obișnuită. ○ în cazul persoanei care nu are reședința pe teritoriul României, competența aparține Parchetului de pe lângă Tribunalul București sau Tribunalului București, după caz. • supravegherea respectării obligațiilor stabilite de statul emitent revine autorităților române competente și este guvernată de legea română. • luarea, modificarea, înlocuirea sau încetarea măsurilor de supraveghere este de competența statului emitent și este guvernată de legea acestuia. 	<p>Romania is a state of execution</p> <p>➤ Competence</p> <ul style="list-style-type: none"> • <u>Receipt of certificates and acts ordering surveillance measures issued by other Member States of the European Union</u> <ul style="list-style-type: none"> ○ <i>In the criminal investigation phase</i>, Prosecutor's Office attached to the High Court of Cassation and Justice, ○ <i>In the trial phase</i>, Ministry of Justice, through the specialized directorate. • <u>The recognition and enforcement of the act by which the supervision measure was ordered</u> <ul style="list-style-type: none"> ○ To the prosecutor's office attached to the court or tribunal in whose constituency the supervised person has his habitual legal residence. ○ In the case of a person who does not reside in Romania, the competence belongs to the Prosecutor's Office attached to the Bucharest Tribunal or to the Bucharest Tribunal, as the case may be. • The supervision of the observance of the obligations established by the issuing state belongs to the competent Romanian authorities and is governed by the Romanian law. • The taking, modification, replacement or termination of surveillance measures is the liability of the issuing state and is governed by its law.
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3

<p>➤ Condiții pentru recunoașterea actului prin care statul emitent a luat măsura de supraveghere – art. 199</p> <p>a) <i>actul are, potrivit legii statului emitent, caracter executoriu;</i></p> <p>b) <i>persoana cercetată are reședința legală obișnuită pe teritoriul României sau este unul dintre membrii familiei unui cetățean român sau a unei persoane care are drept de ședere permanentă pe teritoriul României ori urmează să desfășoare pe teritoriul României o activitate lucrativă, de studii sau de pregătire profesională;</i></p> <p>c) <i>recunoașterea nu contravine principiului non bis in idem;</i></p> <p>d) <i>fapta pentru care s-a aplicat măsura de supraveghere ar fi constituit, în cazul în care ar fi fost săvârșită pe teritoriul României, o infracțiune.</i></p> <p>e) <i>măsura de supraveghere a fost aplicată unei persoane care, potrivit legii române, răspunde penal;</i></p> <p>f) <i>măsura de supraveghere a fost aplicată unei persoane care nu beneficiază de imunitate de jurisdicție penală pe teritoriul României;</i></p> <p>g) <i>măsura de supraveghere stabilită de statul emitent face parte din categoria celor prevăzute la art. 184 alin. 2.</i></p>	<p>➤ Conditions for the recognition of the act by which the issuing state took the surveillance measure - art. 199</p> <p>a) <i>The act has, according to the law of the issuing state, an executory character;</i></p> <p>b) <i>The investigated person has the habitual residence on the Romanian territory or is one of the family members of a Romanian citizen or of a person who has the right of permanent residence on the Romanian territory or is to carry out a lucrative activity, studies or professional training on the Romanian territory;</i></p> <p>c) <i>Recognition does not contravene the non bis in idem principle;</i></p> <p>d) <i>The deed for which the supervision measure was applied would have constituted, in case it had been committed on the Romanian territory, a crime.</i></p> <p>e) <i>The supervision measure was applied to a person who, according to Romanian law, is criminally liable;</i></p> <p>f) <i>The surveillance measure was applied to a person who does not enjoy immunity from criminal jurisdiction on the territory of Romania;</i></p> <p>g) <i>The surveillance measure established by the issuing state is part of the category of those provided in art. 184 para. 2.</i></p>
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4

<p style="text-align: center;">Supravegherea de către autoritățile române a respectării obligațiilor stabilite de alte state membre ale Uniunii Europene</p> <p>✓ Proceduri judiciare prealabile</p> <p>➤ PICCJ sau MJ, prin direcția de specialitate, după caz, înaintează certificatul parchetului de pe lângă tribunal sau tribunalului competent și informează în acest sens statul emitent.</p> <p>➤ Procurorul/judecătorul desemnat efectuează verificări privind situația juridică a persoanei supravegheate în România, dacă se află pe teritoriul țării și dacă poate fi supravegheată</p> <ul style="list-style-type: none"> • poate solicita direct autorității competente a statului emitent transmiterea unor informații suplimentare sau clarificări în termen de cel mult 10 zile. • măsura de supraveghere adaptată nu poate fi mai severă decât măsura de supraveghere luată de statul emitent. • procedura are caracter urgent și se desfășoară cu precădere, durata maximă fiind de 40 de zile de la data înregistrării cauzei la parchet sau la instanță, după caz. 	<p style="text-align: center;">Supervision by the Romanian authorities of compliance with obligations established by other Member States of the European Union</p> <p>✓ Preliminary court proceedings</p> <p>➤ The Prosecutor's Office attached to the High Court of Cassation and Justice or the Ministry of Justice, through the specialized directorate, as the case may be, submits the certificate to the prosecutor's office attached to the competent court or tribunal and informs the issuing state accordingly.</p> <p>➤ The appointed prosecutor/judge performs verifications regarding the legal situation of the supervised person in Romania, if he/she is on the territory of the country and if he/she can be supervised.</p> <ul style="list-style-type: none"> • May request directly from the competent authority of the issuing state the transmission of additional information or clarifications within a maximum of 10 days. • The appropriate surveillance measure cannot be more severe than the surveillance measure taken by the issuing state. • The procedure is urgent and takes place mainly, the maximum duration being 40 days from the date of registration of the case in the prosecutor's office or in court, as the case may be.
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5

<p>✓ Recunoașterea, în faza de urmărire penală</p> <ul style="list-style-type: none"> ▪ se realizează prin <i>ordonanță</i>, cu citarea persoanei supravegheate. ▪ ordonanța cuprinde obligațiile pe care persoana cercetată trebuie să le respecte pe durata măsurii de supraveghere ▪ durata măsurii de supraveghere este cea stabilită de autoritatea competentă a statului emitent, în afară de cazul în care aceasta este mai mare decât durata maximă prevăzută de legea română. ▪ <i>împotriva ordonanței poate face plângere</i> persoana supravegheată sau orice persoană interesată, <i>în termen de 5 zile de la comunicarea</i> copiei de pe ordonanță. Dosarul se trimite instanței competente în termen de 24 de ore de la formularea plângerii. ▪ <i>motivele de fond care au stat la baza luării măsurii de supraveghere nu pot face obiectul plângerii</i>, acestea putând fi atacate numai în fața autorității competente a statului emitent. ▪ <i>competența aparține tribunalului</i>. Introducerea plângerii nu suspendă supravegherea respectării obligațiilor ce revin persoanei supravegheate. ▪ <i>Plângerea</i> se soluționează de un <i>complet format dintr-un singur judecător, în camera de consiliu, cu citarea persoanei supravegheate, în termen de 10 zile de la data înregistrării cauzei la instanță, prin încheiere definitivă</i>. Prezența procurorului este obligatorie. ▪ instanța poate desființa soluția atacată, recunoaște actul prin care statul emitent a luat măsura supravegheții și stabilește obligațiile ce revin persoanei supravegheate. Încheierea definitivă se comunică direct autorității competente a statului emitent. 	<p>✓ Recognition, in the criminal investigation phase</p> <ul style="list-style-type: none"> ▪ It is done by <i>ordinance</i>, with the <i>summoning of the supervised person</i>. ▪ The ordinance contains the obligations that the investigated person must comply with during the supervision measure. ▪ The duration of the surveillance measure is the one established by the competent authority of the issuing state, unless it is longer than the maximum duration provided by the Romanian law. ▪ The supervised person or any other interested person <i>may file a complaint against the ordinance, within 5 days</i> from the communication of the copy of the ordinance. The file is sent to the competent court within 24 hours from the moment of filing the complaint. ▪ <i>The substantive reasons that were the basis for taking the surveillance measure cannot be subject of the complaint</i>, these can be appealed only before the competent authority of the issuing state. ▪ <i>The jurisdiction belongs to the tribunal</i>. The introduction of the complaint does not suspend the supervision of the observance of the obligations incumbent on the supervised person. ▪ <i>The complaint</i> is solved by a panel consisting of a single judge, in the council chamber, with the summoning of the supervised person, <i>within 10 days from the date of registration of the case in court, by final conclusion. The presence of the prosecutor is mandatory</i>. ▪ The court may annul the contested solution, recognize the act by which the issuing state has taken the measure of supervision and establish the obligations incumbent on the supervised person. The final conclusion shall be communicated directly to the competent authority of the issuing state.
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6

<p>✓ Recunoașterea, în faza de judecată</p> <ul style="list-style-type: none"> ▪ competența aparține <i>tribunalului</i>, în complet de <i>judecător unic</i> ▪ cauza se soluționează prin <i>încheiere motivată, în camera de consiliu, cu citarea persoanei supravegheate.</i> ▪ în cuprinsul încheierii sunt prevăzute obligațiile pe care persoana cercetată trebuie să le respecte pe durata măsurii de supraveghere ▪ hotărârea poate fi atacată cu <i>apel, în termen de 5 zile de la pronunțare ori de la comunicare,</i> după caz, de către persoana supravegheată sau de orice persoană interesată. Dosarul se trimite instanței de apel, în termen de 24 de ore de la declararea apelului. ▪ <i>apelul se soluționează în termen de 10 zile de la data înregistrării cauzei la instanță, de curtea de apel competentă, în camera de consiliu, de către un complet format dintr-un singur judecător,</i> pe baza materialului din dosarul cauzei și a oricăror înscrisuri prezentate. ▪ când s-a dispus recunoașterea, <i>apelul nu suspendă supravegherea</i> ▪ în cazul admiterii apelului împotriva soluției de nerecunoaștere a actului prin care statul emitent a luat măsura de supraveghere, instanța desființează soluția atacată, recunoaște actul prin care statul emitent a luat măsura supravegherii și stabilește obligațiile ce revin persoanei supravegheate. Încheierea definitivă se comunică direct autorității competente a statului emitent. <p>➤ <i>Supravegherea măsurilor se realizează de către autoritățile române competente:</i> instituția, organul sau autoritatea anume desemnată, după caz, de procurorul care a dat ordonanța sau judecătorul care a dat încheierea, în condițiile legii.</p>	<p>✓ Recognition, in the trial phase</p> <ul style="list-style-type: none"> ▪ The competence belongs to the <i>tribunal</i>, as a <i>sole judge</i>. ▪ The case is resolved by a <i>reasoned decision, in the council chamber, with the summoning of the supervised person.</i> ▪ The conclusion sets out the obligations that the investigated person must comply with during the surveillance measure. ▪ The decision can be <i>appealed, within 5 days from the pronouncement or from the communication,</i> as the case may be, by the supervised person or by any interested person. The file is sent to the appellate court, within 24 hours from the declaration of the appeal. ▪ <i>The appeal is resolved within 10 days from the date of registration of the case in court, by the competent court of appeal, in the council chamber, by a panel consisting of a single judge, based on the material in the case file and any documents submitted.</i> ▪ When the recognition has been ordered, <i>the appeal does not suspend the surveillance.</i> ▪ In case of admitting the appeal against the solution of non-recognition of the act by which the issuing state took the supervision measure, the court annuls the contested solution, recognizes the act by which the issuing state took the supervision measure and establishes the obligations of the supervised person. The final conclusion shall be communicated directly to the competent authority of the issuing state. <p>➤ <i>The supervision of the measures is performed by the competent Romanian authorities:</i> the institution, body or authority designated, as the case may be, by the prosecutor who issued the order or the judge who issued the decision, in accordance with the law.</p>
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7

<p>Supravegherea de către autoritățile altor state membre ale Uniunii Europene a respectării obligațiilor stabilite de organele judiciare române</p> <p>România stat solicitant</p> <p>✓ Durata măsurilor de supraveghere</p> <ul style="list-style-type: none"> ▪ <i>se stabilește de organul judiciar român competent.</i> ▪ prelungirea, menținerea, înlocuirea sau încetarea măsurii de supraveghere se dispune <i>în condițiile prevăzute de legea română de către organul judiciar român competent și se notifică de îndată statului de executare și persoanei supravegheate.</i> <p>➤ Se transmite Certificatul prevăzut în anexa nr. 7, care se completează și semnează de către organul judiciar care a luat măsura de supraveghere, și actul judiciar prin care s-a luat măsura de supraveghere, de către organul judiciar român care a luat măsura respectivă direct autorității competente desemnate de statul de executare, prin orice mijloace care permit o înregistrare scrisă.</p> <p>➤ identificarea autorității competente se poate realiza cu ajutorul punctelor naționale de contact la Rețeaua Judiciară Europeană.</p> <p>➤ se poate retrage certificatul transmis statului de executare</p> <ol style="list-style-type: none"> a) măsura de supraveghere prevăzută de legea statului de executare are natură diferită sau aceeași natură, dar cu un conținut diferit față de măsura de supraveghere dispusă de organul judiciar român; b) durata măsurii de supraveghere prevăzute de legea statului de executare nu corespunde cu durata până la care organul judiciar român competent poate prelungi sau menține măsura respectivă; c) statul de executare notifică faptul că în eventualitatea emiterii unui mandat european de arestare de către statul român ca urmare a înlocuirii măsurii sau obligației a cărei supraveghere se solicită cu măsura arestării preventive ar trebui să refuze predarea persoanei supravegheate. <p>➤ Supravegherea respectării de către persoana cercetată a obligațiilor ce îi revin este de competența autorităților române până la data la care statul de executare comunică hotărârea de recunoaștere și punere în executare sau până la data stabilită de comun acord de către autoritățile competente ale celor două state, după caz.</p> <p>➤ Ulterior, supravegherea obligațiilor este de competența autorităților statului de executare și este guvernată de legea acestuia.</p>	<p>Supervision by the authorities of other Member States of the European Union of the observance of the obligations established by the Romanian judicial bodies</p> <p>Romania is a requesting state</p> <p>✓ Duration of surveillance measures</p> <ul style="list-style-type: none"> ▪ <i>Is established by the competent Romanian judicial body.</i> ▪ the extension, maintenance, replacement or termination of the supervision measure is ordered under the conditions provided by the Romanian law by the competent Romanian judicial body and is immediately notified to the executing state and to the supervised person. <p>➤ The Certificate provided in annex no. 7, which is completed and signed by the judicial body that took the supervision measure, and the judicial act by which the supervision measure was taken, by the Romanian judicial body that took the respective measure directly to the competent authority designated by the executing state, by any means that allow a written record.</p> <p>➤ The identification of the competent authority can be done with the help of national contact points at the European Judicial Network.</p> <p>➤ the certificate sent to the executing state can be withdrawn</p> <ol style="list-style-type: none"> a) The supervision measure provided by the law of the executing State is of a different nature or the same nature, but with a different content than the supervision measure ordered by the Romanian judicial body; b) The duration of the supervision measure provided for by the law of the executing State does not correspond to the duration until which the competent Romanian judicial body may extend or maintain that measure; c) The executing State notifies that in the event of a European arrest warrant being issued by the Romanian State as a result of the replacement of the measure or obligation whose supervision is requested with the measure of pre-trial detention, it should refuse to surrender the supervised person. <p>➤ The supervision of the observance by the investigated person of the obligations incumbent on him is within the competence of the Romanian authorities until the date on which the executing state communicates the recognition and enforcement decision or until the date established by mutual agreement by the competent authorities of the two states, as the case may be.</p> <p>➤ Subsequently, the supervision of obligations is the responsibility of the authorities of the executing State and is governed by its law.</p>
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<p>Cooperarea cu statele membre ale Uniunii Europene în aplicarea Deciziei-cadru 2008/947/JAI a Consiliului din 27 noiembrie 2008 privind aplicarea principiului recunoașterii reciproce în cazul hotărârilor judecătorești și al deciziilor de probațiune în vederea supravegherii măsurilor de probațiune și a sancțiunilor alternative</p> <p>➤ Domeniul de aplicare</p> <ul style="list-style-type: none"> ▪ relația cu statele membre ale Uniunii Europene ▪ relația cu alte state cu care a fost încheiat un tratat bilateral sau multilateral în materie. ▪ privește: • <i>hotărâre judecătorească</i> definitivă prin care o instanță a dispus față de o persoană fizică ce a săvârșit o infracțiune una dintre următoarele sancțiuni: (i) suspendarea executării pedepsei sub supraveghere; (ii) amânarea aplicării pedepsei; (iii) liberarea condiționată, dacă restul de pedeapsă rămas neexecutat la data liberării este de 2 ani sau mai mare; (iv) o sancțiune alternativă - orice altă sancțiune neprivativă de libertate, alta decât o sancțiune financiară, și care constă într-o obligație sau măsură de constrângere și care are o existență de sine stătătoare; • <i>decizie de probațiune</i> - luată în temeiul unei hotărâri judecătorești, prin care s-a aplicat o măsură de probațiune sau s-a dispus liberarea condiționată; • <i>măsuri de probațiune</i> - orice măsuri, obligații sau restricții dintre cele prevăzute la art. 203, stabilite în sarcina unei persoane fizice în legătură cu suspendarea executării pedepsei sub supraveghere, amânarea aplicării pedepsei sau liberarea condiționată. 	<p>Cooperation with the Member States of the European Union in the application of the Council Framework Decision 2008/947 / JHA of 27 November 2008 on the application of the principle of mutual recognition in the case of judgments and probation decisions in order to monitor probation measures and alternative sanctions</p> <p>➤ Scope</p> <ul style="list-style-type: none"> ▪ The relationship with the member states of the European Union. ▪ The relationship with other states with which a bilateral or multilateral treaty has been concluded in the matter. ▪ Regards: • a <i>final court decision</i> by which a court has ordered against a natural person who has committed a crime one of the following sanctions: (i) suspension of the execution of the sentence under supervision; (ii) postponement of the application of the sentence; (iii) conditional release, if the remaining sentence remaining unexecuted on the date of release is 2 years or more; (iv) an alternative sanction - any other non-custodial sanction, other than a financial sanction, which consists of an obligation or coercive measure and which has an independent existence; • a <i>probation decision</i> - taken on the basis of a court decision, by which a probation measure was applied or conditional release was ordered; • <i>probation measures</i> - any measures, obligations or restrictions of those provided in art. 203, established in charge of a natural person in connection with the suspension of the execution of the sentence under supervision, the postponement of the application of the sentence or the conditional release.
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<p><u>România este stat de executare</u></p> <p>➤ Competența</p> <ul style="list-style-type: none"> • regula: <i>tribunalul în a cărui circumscripție locuiește persoana.</i> • Excepție: instanța care judecă o altă infracțiune săvârșită de către persoana condamnată prin hotărârea judecătorească străină, infracțiune care ar putea să atragă revocarea sau anularea sancțiunii pronunțate de către instanța străină. <p>➤ Supravegherea respectării măsurilor de probațiune sau a sancțiunii alternative - serviciului de probațiune în circumscripția căruia locuiește persoana.</p> <p><u>România este stat emitent</u></p> <p>➤ soluționarea cererii: instanța care a pronunțat în primă instanță hotărârea judecătorească a cărei recunoaștere se solicită.</p> <p>➤ hotărârea a fost dată de către Înalta Curte de Casație și Justiție - competența revine Tribunalului București.</p>	<p><u>Romania is a state of execution</u></p> <p>➤ Competence</p> <ul style="list-style-type: none"> • rule: <i>the court in whose district the person resides.</i> • Exception: the court that judges another crime committed by the person convicted by the foreign court decision, a crime that could lead to the revocation or annulment of the sanction pronounced by the foreign court. <p>➤ Supervision of compliance with probation measures or alternative sanctions - probation service in the constituency in which the person resides.</p> <p><u>Romania is the issuing state</u></p> <p>➤ Solving the request: the court which rendered in the first instance the judgment whose recognition is sought.</p> <p>➤ The decision was given by the High Court of Cassation and Justice - the competence belongs to the Bucharest Tribunal.</p>
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<ul style="list-style-type: none"> • Recunoașterea hotărârilor judecătorești și a deciziilor de probațiune care stabilesc măsuri de probațiune sau sancțiuni alternative date de către instanțele sau autoritățile altor state membre ale Uniunii Europene, în scopul executării lor în România • • ✓ în baza principiului încrederii reciproce, dacă sunt de natură să producă efecte juridice potrivit legii penale române și nu contravin ordinii publice a statului român. • • Condiții: • a) prin hotărârea judecătorească a fost dispusă suspendarea executării pedepsei sub supraveghere, amânarea aplicării pedepsei, liberarea condiționată sau o sancțiune alternativă; • b) măsurile de probațiune sau sancțiunea alternativă stabilite prin hotărârea judecătorească străină au corespondent în legea română și sunt compatibile cu aceasta; • c) fapta pentru care s-a aplicat sancțiunea ar fi constituit, în cazul în care ar fi fost săvârșită pe teritoriul României, o infracțiune. • d) persoana condamnată se află în statul emiten și dorește să se întoarcă sau să se stabilească în România sau se află deja în România și: <ul style="list-style-type: none"> • (i) are cetățenie română și locuiește sau urmează să locuiască în România; sau • (ii) nu are cetățenie română, însă fie are drept de rezidență sau drept de ședere pe teritoriul României în condițiile legii, fie este unul dintre membrii familiei unui cetățean român sau a unei persoane care are drept de rezidență sau drept de ședere pe teritoriul României, fie face dovada că urmează să desfășoare pe teritoriul României o activitate lucrativă, de studii sau de pregătire profesională. 	<p>Recognition of judgments and probation decisions establishing probation measures or alternative sanctions given by the courts or authorities of other Member States of the European Union, for the purpose of their execution in Romania</p> <ul style="list-style-type: none"> ✓ Based on the principle of mutual trust, if they are likely to produce legal effects according to the Romanian criminal law and do not contradict the public order of the Romanian state. <p>Conditions:</p> <ul style="list-style-type: none"> a) The court decision ordered the suspension of the execution of the sentence under supervision, the postponement of the application of the sentence, the conditional release or an alternative sanction; b) The probation measures or the alternative sanction established by the foreign court decision have a correspondent in the Romanian law and are compatible with it; c) The deed for which the sanction was applied would have constituted, in case it had been committed on the Romanian territory, a crime. d) The sentenced person is in the issuing State and wishes to return or settle in Romania or is already in Romania and: <ul style="list-style-type: none"> (i) Has Romanian citizenship and resides or is about to reside in Romania; or (ii) Does not have Romanian citizenship, but either has the right of residence or the right of residence on the territory of Romania under the law, or is one of the family members of a Romanian citizen or of a person who has the right of residence or right of residence on the territory of Romania, or proves that he is going to carry out a lucrative activity, studies or professional training on the Romanian territory.
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<ul style="list-style-type: none"> ✓ Măsurile de probațiune și sancțiunile alternative a) obligația persoanei condamnate de a informa o anumită autoritate cu privire la orice schimbare a reședinței sau a locului de muncă; b) obligația de a nu intra în anumite localități, locuri sau zone definite din România sau din statul emiten; c) obligația de a nu părăsi teritoriul statului de executare; d) dispoziții privind comportamentul, reședința, educația și formarea, activitățile din timpul liber sau conținând limitări privind modalitățile de desfășurare a unei activități profesionale; e) obligația de a se prezenta la date stabilite în fața unei anumite autorități; f) obligația de a evita contactul cu anumite persoane; g) obligația de a evita contactul cu anumite obiecte care au fost utilizate sau ar putea fi utilizate de către persoana condamnată în scopul comiterii unei fapte penale; h) obligația de a repara, din punct de vedere financiar, prejudiciul cauzat de infracțiune și/sau obligația de a furniza o dovadă a îndeplinirii acestei obligații; i) obligația de a presta muncă în folosul comunității; j) obligația de a coopera cu serviciul de probațiune sau cu o altă instituție sau serviciu social care are responsabilități în ceea ce privește persoanele condamnate; k) obligația de a urma un tratament terapeutic sau de detoxicare; l) obligația de a comunica informații de natură a putea fi controlate mijloacele de existență ale persoanei condamnate. 	<ul style="list-style-type: none"> ✓ Probation measures and alternative sanctions a) The obligation of the sentenced person to inform a certain authority of any change of residence or place of employment; b) The obligation not to enter certain localities, places or defined areas in Romania or in the issuing state; c) The obligation not to leave the territory of the executing state; d) Provisions regarding the behavior, residence, education and training, leisure activities or containing limitations regarding the modalities of carrying out a professional activity; e) The obligation to appear on dates set before a certain authority; f) The obligation to avoid contact with certain persons; g) The obligation to avoid contact with certain objects that have been used or could be used by the convicted person for the purpose of committing a criminal act; h) The obligation to repair, from a financial point of view, the damage caused by the crime and / or the obligation to provide proof of the fulfillment of this obligation; i) The obligation to provide community service; j) The obligation to cooperate with the probation service or with another institution or social service that has responsibilities regarding the convicted persons; k) The obligation to follow a therapeutic or detoxification treatment; l) The obligation to communicate information in order to be able to control the livelihood of the convicted person.
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12

Motive de refuz – art. 204

- a) persoana a fost condamnată în România pentru aceeași faptă. Se poate dispune recunoașterea parțială a acesteia;
- b) persoana a fost condamnată într-un alt stat pentru aceeași faptă, iar hotărârea judecătorească străină dată în acest stat a fost anterior recunoscută și pusă în executare pe teritoriul României;
- c) persoana condamnată beneficiază în România de imunitate de jurisdicție penală;
- d) sancțiunea a fost aplicată unei persoane care, potrivit legii penale române, nu răspunde penal în virtutea vârstei sale;
- e) sancțiunea implică executarea unei măsuri care vizează starea psihiatrică sau de sănătate a persoanei și care nu poate fi pusă în executare în România sau, după caz, prevede un tratament medical sau terapeutic care nu poate fi supravegheat în România, în conformitate cu sistemul național juridic sau de sănătate;
- f) potrivit legii penale române, a intervenit prescripția executării pedepsei;
- g) persoana condamnată nu a fost prezentă personal la judecată, în afară de cazul în care statul emitenț informează că, în conformitate cu legislația sa;
- h) durata termenului de supraveghere sau durata măsurilor de probațiune, respectiv a sancțiunii alternative sau intervalul de timp rămas până la împlinirea acestora sunt mai mici de 6 luni sau de 60 de ore în situația muncii în folosul comunității.

Reasons for denial – art. 204

- a) The person was convicted in Romania for the same act. Partial recognition may be ordered;
- b) The person was convicted in another state for the same act, and the foreign court decision given in that state was previously recognized and enforced in Romania;
- c) The convicted person enjoys immunity from criminal jurisdiction in Romania;
- d) The sanction was applied to a person who, according to the Romanian criminal law, is not criminally liable by virtue of his age;
- e) The sanction involves the execution of a measure aimed at the psychiatric or health condition of the person and which cannot be enforced in Romania or, as the case may be, provides a medical or therapeutic treatment that cannot be supervised in Romania, according to the national system legal or health;
- f) According to the Romanian criminal law, the prescription of the execution of the sentence intervened;
- g) The sentenced person has not been personally present at the trial, unless the issuing State informs that, in accordance with its law;
- h) The duration of the supervision term or the duration of the probation measures, respectively of the alternative sanction or the time interval remaining until their fulfillment are less than 6 months or 60 hours in the work situation for the benefit of the community.

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✓ **Înscrisuri și informații necesare recunoașterii și executării hotărârii judecătorești**

- a) certificatul completat potrivit modelului din anexa nr. 9;
- b) hotărârea judecătorească sau decizia de probațiune;
- d) declarația persoanei cu privire la intenția de a se întoarce sau de a se stabili în România în următoarele 30 de zile de la data declarației, în situația în care persoana condamnată se află în statul emitenț;
- e) orice alte documente depuse de persoană la autoritatea din statul emitenț.

✓ **Durata procedurii**

- durata totală este de maximum 60 de zile de la momentul primirii cererii și a documentelor.
- termenul poate fi depășit cu maximum 60 de zile, în situații excepționale (a fost nevoie de traducerea documentelor sau de informații suplimentare etc.)

✓ **Admiterea în principiu**

- examinarea cererii în vederea admiterii în principiu, maxim de 5 zile de la data înregistrării cauzei la instanță.

➤ **Măsuri premergătoare:**

- se verifică dacă înscrisurile sunt traduse în limba română, dacă certificatul este complet completat etc.
 - se solicită remedierea în termen de cel mult 15 zile
 - se pot solicita acte suplimentare – spre ex. referatul de evaluare
- instanța judecă în complet format dintr-un singur judecător.
- dacă constată că documentele transmise îndeplinesc cerințele sau au fost completate sau corectate, *admite în principiu cererea prin încheiere și fixează termen pentru soluționarea acesteia.*
- informează serviciul de probațiune și solicită acestuia avizul consultativ cu privire la măsurile de probațiune sau sancțiunea alternativă
- dacă constată că documentele transmise nu îndeplinesc cerințele și nu au fost transmise, completate sau corectate, *respinge prin sentință definitivă cererea și informează despre aceasta statul emitenț.*
- dacă statul emitenț își retrage certificatul, *ia act de retragerea cererii, se dezinvestește prin sentință definitivă și restituie documentele primite statului emitenț.*

✓ **Documents and information necessary for the recognition and enforcement of the judgement**

- a) The completed certificate according to the model in annex no. 9;
- b) The court decision or the probation decision;
- d) The declaration of the person regarding the intention to return or settle in Romania within the next 30 days from the date of the declaration, in case the convicted person is in the issuing state;
- e) Any other documents submitted by the person to the authority of the issuing state.

✓ **Duration of the procedure**

- The total duration is a maximum of 60 days from the moment of receiving the application and the documents.
- The term may be exceeded by a maximum of 60 days, in exceptional cases (translation of documents or additional information was required, etc.)

✓ **Admission in principle**

- Examination of the application for admission in principle, maximum 5 days from the date of registration of the case in court.

➤ **Preliminary measures:**

- It is checked if the documents are translated into Romanian, if the certificate is complete, etc.
 - Remediation is requested within a maximum of 15 days.
 - Additional documents may be requested – i.e. evaluation report.
- The court shall consist in a single judge.
- If it finds that the submitted documents meet the requirements or have been completed or corrected, *it admits in principle the request by conclusion and sets a deadline for its settlement.*
- It informs the probation service and requests its advisory opinion on probation measures or alternative sanctions.
- If it finds that the submitted documents do not meet the requirements and have not been completed or corrected, *it rejects the application by final sentence and informs the issuing state about this matter.*
- If the issuing state withdraws its certificate, *it takes note of the withdrawal of the application by a final sentence and returns the received documents to the issuing state.*

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<p>✓ <u>Soluționarea pe fond a cererii de recunoaștere a hotărârii judecătorești</u></p> <ul style="list-style-type: none"> ➤ în camera de consiliu, cu citirea persoanei condamnate și a serviciului de probațiune. ➤ participarea procurorului este obligatorie. ➤ se verifică condițiilor prevăzute la art. 202. ➤ instanța pronunță o sentință, în termen de 10 zile de la data aditerii în principiu. ➤ hotărârea se redactează în cel mult 5 zile de la pronunțare și se comunică persoanei condamnate și serviciului de probațiune. ➤ împotriva sentinței pot declara apel, în termen de 5 zile, procurorul, din oficiu sau la cererea serviciului de probațiune, precum și persoana condamnată. ➤ apel se judecă în complet format dintr-un singur judecător. Dosarul va fi înaintat în termen de 3 zile, iar apelul se soluționează în termen de 5 zile. Hotărârea se redactează în cel mult 5 zile de la pronunțare și se comunică persoanei condamnate și serviciului de probațiune. ➤ soluția definitivă a instanței de judecată române se comunică de îndată autorității competente din statul emitent. 	<p>✓ <u>Solving on the merits the request for recognition of the court decision</u></p> <ul style="list-style-type: none"> ➤ In the council chamber, with the summoning of the convicted person and the probation service. ➤ The participation of the prosecutor is mandatory. ➤ The conditions provided by art. 202 are verified. ➤ The court pronounces a judgment, within 10 days from the date of admission in principle. ➤ The decision is drafted within 5 days from the pronouncement and is transmitted to the convicted person and to the probation service. ➤ The prosecutor, ex officio or at the request of the probation service, as well as the convicted person may appeal against the judgment within 5 days. ➤ The appeal is judged by a single judge. The file shall be submitted within 3 days, and the appeal shall be resolved within 5 days. The decision is drafted within 5 days from the pronouncement and is transmitted to the convicted person and to the probation service. ➤ The final solution of the Romanian court is immediately transmitted to the competent authority of the issuing state.
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<p>✓ <u>Soluții posibile</u></p> <ul style="list-style-type: none"> ➤ Admiterea cererii <ul style="list-style-type: none"> ▪ recunoașterea hotărârii judecătorești și dispunerea supravegherii măsurilor de probațiune sau a sancțiunii alternative așa cum au fost stabilite în hotărârea judecătorească a statului emitent; ▪ recunoașterea hotărârii judecătorești și dispunerea supravegherii măsurilor de probațiune sau a sancțiunii alternative așa cum au rezultat în urma adaptării acestora potrivit art. 211. ➤ Respingerea cererii <ul style="list-style-type: none"> ▪ nu sunt îndeplinite condițiile prevăzute la art. 202; ▪ există un motiv de refuz dintre cele prevăzute la art. 204. ❖ o nouă cerere privind aceeași hotărâre judecătorească este inadmisibilă, cu excepția situației în care cererea a fost respinsă pentru neîndeplinirea condițiilor de formă (la admisibilitatea în principiu) 	<p>✓ <u>Possible solutions</u></p> <ul style="list-style-type: none"> ➤ Admission of the application <ul style="list-style-type: none"> ▪ Recognition of the judgement and the order of supervision of the probation measures or of the alternative sanction as established in the court decision of the issuing state; ▪ The recognition of the court decision and the ordering of the supervision of the probation measures or of the alternative sanctions as they resulted from their application, according art. 211. ➤ Denial of the application <ul style="list-style-type: none"> ▪ The conditions provided by art. 202; ▪ There is a reason for denial among those provided by art. 204. ❖ a new application for the same judgement is inadmissible, unless the application has been rejected for failure to comply with the formal requirements (admissibility in principle).
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<p>✓ Adaptarea măsurilor de probațiune sau a sancțiunii alternative</p> <p>a) durata măsurii de probațiune sau a sancțiunii alternative ori a termenului de încercare stabilit de instanța străină pentru infracțiunea săvârșită nu corespunde sub aspectul cuantumului sau depășește limita maximă generală a măsurii de probațiune ori a termenului de încercare care se aplică, potrivit legii române.</p> <p>b) natura măsurii de probațiune ori a sancțiunii alternative nu corespunde cu natura măsurilor de probațiune ori a sancțiunii alternative care se aplică, potrivit legii române.</p> <p>✓ Se poate realiza o recunoaștere și o executare parțială</p> <ul style="list-style-type: none"> ▪ dacă persoana a fost condamnată pentru mai multe infracțiuni, ▪ dacă doar unele dintre măsurile de probațiune stabilite în hotărârea judecătorească sau decizia de probațiune străină pot fi executate în România ▪ instanța solicită statului emitent să precizeze dacă își reține certificatul. ▪ dacă până la momentul recunoașterii hotărârii judecătorești de către instanța română, măsurile de probațiune sau sancțiunea alternativă a fost parțial executată, instanța deduce în mod corespunzător partea deja executată și pune în executare restul rămas neexecutat. 	<p>✓ Adaptation of probation measures or alternative sanctions</p> <p>a) The duration of the probation measure or of the alternative sanction or of the probation period established by the foreign court for the committed crime does not correspond in terms of the amount or exceeds the general maximum limit of the probation measure of probation period that applies, according to the Romanian law.</p> <p>b) The nature of the probation measure or of the alternative sanction does not correspond to the nature of the probation measures or of the alternative sanction that is applied, according to the Romanian law.</p> <p>✓ Partial recognition and execution may be achieved</p> <ul style="list-style-type: none"> ▪ If the person has been convicted of several offenses. ▪ If only some of the probation measures established in the court decision or the foreign probation decision may be executed in Romania. ▪ The court requests the issuing state to specify whether to withdraw its certificate. ▪ If until the moment of recognition of the court decision by the Romanian court, the probation measures or the alternative sanction has been partially executed, the court appropriately deducts the already executed part and enforces the remaining unexecuted part.
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<p>✓ Executarea măsurilor de probațiune sau a sancțiunii alternative</p> <ul style="list-style-type: none"> ▪ este <i>governată de legea română</i>. ▪ competența judecării unei căi de atac în vederea desființării sau modificării hotărârii judecătorești străine aparține statului emitent. ▪ <i>instanța care a recunoscut</i> hotărârea judecătorească străină <i>este instanța de executare</i> și are competența de a lua măsurile subsecvente ulterior recunoașterii. ▪ Serviciul de probațiune supraveghează executarea măsurilor de probațiune și a sancțiunilor alternative în conformitate cu legislația română în domeniul probațiunii. ▪ amnistia sau grațierea poate fi acordată atât de statul emitent, cât și de autoritățile române. 	<p>✓ Execution of probation measures or alternative sanctions</p> <ul style="list-style-type: none"> ▪ Is governed by Romanian law. ▪ The competence to judge an appeal in order to annul or modify the foreign court decision belongs to the issuing state. ▪ <i>The court that recognised the foreign court decision is the court of execution</i> and has the competence to take the subsequent measures after the recognition. ▪ The probation service supervises the execution of probation measures and alternative sanctions in accordance with the Romanian legislation related to the probation. ▪ Amnesty or pardon may be granted both by the issuing state and by the Romanian authorities.
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<p style="text-align: center;"><i>Recunoașterea hotărârilor judecătorești care stabilesc măsuri de probațiune sau sancțiuni alternative date în România în scopul executării lor în alte state membre ale Uniunii Europene</i></p>	<p style="text-align: center;"><i>Recognition of court decisions establishing probation measures or alternative sanctions imposed in Romania for the purpose of their execution in other Member States of the European Union</i></p>
<p>România este stat solicitant</p> <p>✓ Condiții:</p> <ul style="list-style-type: none"> ▪ prin hotărârea judecătorească instanța a dispus: suspendarea executării pedepsei sub supraveghere; măsuri educative neprivative de libertate; amânarea aplicării pedepsei; liberarea condiționată; ▪ măsură de probațiune care se încadrează cele prevăzute de lege; ▪ hotărârea judecătorească este definitivă și executorie; ▪ din referatul de evaluare întocmit de serviciul de probațiune rezultă că executarea măsurilor de probațiune pe teritoriul statului de executare este de natură să asigure reintegrarea socială a persoanei condamnate; ▪ persoana condamnată nu este urmărită penal sau judecată pentru alte infracțiuni; ▪ intervalul de timp rămas până la împlinirea termenului de supraveghere stabilit de instanță este mai mare de 6 luni. 	<p>Romania is a requesting state</p> <p>✓ Conditions:</p> <ul style="list-style-type: none"> ▪ By the court decision the court ordered: the suspension of the execution of the sentence under supervision; non-custodial educational measures; postponement of the application of the punishment; parole; ▪ Probation measure that falls within the provisions of the law; ▪ The court decision is final and enforceable; ▪ It results from the evaluation report drawn up by the probation service that the execution of the probation measures on the territory of the executing state is likely to ensure the social reintegration of the convicted person; ▪ The convicted person is not prosecuted or tried for other crimes; ▪ The time remaining until the fulfillment of the supervision term established by the court is longer than 6 months.

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<p>✓ Procedura:</p> <p>➤ judecătorul delegat cu executarea din cadrul instanței de executare completează Certificatul prevăzut în <u>anexa nr. 9</u></p> <ul style="list-style-type: none"> ○ când hotărârea a fost dată de ICCJ, certificatul se completează de către judecătorul delegat din cadrul Tribunalului București. <p>➤ <i>Certificatul, hotărârea judecătorească și referatul de evaluare întocmit de serviciul de probațiune sunt transmise prin fax, e-mail sau prin orice mijloc de comunicare, autorității străine competente, traduse în limba oficială a statului de executare sau pe care acesta o acceptă.</i></p> <p>➤ <i>judecătorul delegat solicită informații</i> cu privire la:</p> <ul style="list-style-type: none"> • durata maximă a privării de libertate prevăzute de legislația statului de executare pentru infracțiunea cu privire la care s-a pronunțat hotărârea judecătorească și care ar putea fi impusă persoanei condamnate în cazul încălcării măsurilor de probațiune sau al săvârșirii unei noi infracțiuni; • declarația statului de executare cu privire la asumarea sau neasumarea deciziilor subsecvente recunoașterii hotărârii judecătorești. 	<p>✓ Procedure:</p> <p>➤ The judge delegated with the execution within the enforcement court completes the Certificate provided in annex no. 9.</p> <ul style="list-style-type: none"> ○ when the decision was given by the ICCJ, the certificate is completed by the delegated judge of the Bucharest Tribunal. <p>➤ <i>The certificate, the court decision and the evaluation report prepared by the probation service are sent by fax, e-mail or by any means of communication to the competent foreign authority, translated into the official language of the enforcement statute or which it accepts.</i></p> <p>➤ <i>The delegated judge requests information on:</i></p> <ul style="list-style-type: none"> • the maximum duration of deprivation of liberty provided by the law of the executing State for the offense in respect of which the judgment was given and which could be imposed on the convicted person in case of violation of probation measures or committing a new offense; • the statement of the executing State regarding the assumption or non-assumption of the decisions subsequent to the recognition of the judgment.
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<ul style="list-style-type: none"> ✓ Certificatul transmis poate fi retras • dacă înainte de recunoaștere de statul de executare, sunt incidente dispozițiile referitoare la revocarea sau anularea sancțiunii; • se constată că durata maximă a privării de libertate prevăzută de legislația statului de executare este superioară celei prevăzute de legea română; • se apreciază că măsurile de probațiune stabilite de statul de executare nu sunt de natură să corespundă celor dispuse în hotărârea judecătorească română ori să asigure reintegrarea socială a persoanei condamnate. • pentru ultimele două situații, în termen de maxim 10 zile de la primirea informațiilor. ✓ Efectele recunoașterii hotărârii judecătorești de către statul de executare ➢ Executarea măsurilor de probațiune este guvernată de legea statului de executare. ➢ Competența judecării unei căi de atac în vederea desființării sau modificării hotărârii judecătorești aparține statului român. ➢ Amnistia sau grațierea poate fi acordată atât de statul român, cât și de statul de executare. ✓ Ulterior recunoașterii hotărârii judecătorești, statul de executare este competent să ia toate deciziile subsecvente cu privire la sancțiunea aplicată prin hotărârea judecătorească română, cu excepția situațiilor prevăzute la art. 225. ✓ Dacă statul de executare declară că, în anumite cazuri, expres menționate, nu își asumă deciziile subsecvente recunoașterii hotărârii judecătorești, instanța de executare redobândește competența cu privire la revocarea sancțiunii aplicate prin hotărârea judecătorească. 	<ul style="list-style-type: none"> ✓ The transmitted certificate can be withdrawn • If, prior to recognition by the executing State, the provisions concerning the revocation or annulment of the sanction are incidental; • It is found that the maximum duration of deprivation of liberty provided by the legislation of the executing state is longer than that provided by the Romanian law; • It is appreciated that the probation measures established by the executing state are not such as to correspond to those ordered in the Romanian court decision or to ensure the social reintegration of the convicted person; • For the last two situations, within a maximum of 10 days from receiving the information. ➢ The effects of the recognition of the judgment by the executing state ➢ The execution of probation measures is governed by the law of the executing state. ➢ The competence to judge an appeal in order to annul or modify the court decision belongs to Romania. ➢ Amnesty or pardon can be granted by both the Romanian state and the executing state. ✓ Subsequent to the recognition of the court decision, the executing state is competent to take all subsequent decisions regarding the sanction applied by the Romanian court decision, except for the situations provided in art. 225. ✓ If the executing State declares that, in certain cases, expressly mentioned, it does not assume the decisions subsequent to the recognition of the judgment, the executing court regains the competence regarding the revocation of the sanction applied by the judgment.
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<p>Studiu de caz nr. 1</p> <p>O.C.F și Z.C.B. au fost condamnați de către Tribunalul Constanța la o pedeapsă de 3 ani închisoare, cu suspendarea executării pedepsei sub supraveghere, pe un termen de supraveghere de 3 ani.</p> <p>Avocatul acestora a transmis Serviciului de Probațiune București o adresă prin care <i>solicita demararea procedurilor de transfer a sentinței spre executare în Italia</i>, întrucât persoanele condamnate au reședința pe teritoriul statului italian, depunând documente justificative în acest sens.</p> <p>Serviciul de Probațiune București a întocmit un proces-verbal cu care a sesizat instanța de executare – judecătorul delegat cu executarea (în baza prevederilor art. 219 alin. 2 din Legea 302/2004), prin care a solicitat analiza necesității inițierii procedurii de transfer.</p> <p>Judecătorul delegat din cadrul Tribunalului Constanța a completat Certificatul prevăzut de Legea nr. 302/2004 și l-a înaintat direct autorității competente din Italia (Procuraturii Generale de la Curtea de Apel din Florența - „Procura generale presso la Corte di Appello di Firenze”).</p> <p>În prezent se așteaptă răspunsul autorităților italiene în sensul adaptării la legislația națională din Italia a măsurilor și obligațiilor impuse celor două persoane supravegheate.</p>	<p>Case study no. 1</p> <p>O.C.F and Z.C.B. were sentenced by the Constanța Court to a sentence of 3 years imprisonment, with the suspension of the execution of the sentence under supervision, for a term of supervision of 3 years.</p> <p><i>Their lawyer sent to the Bucharest Probation Service an address requesting the start of the proceedings for the transfer of the sentence to execution in Italy, as the convicted persons reside on the territory of the Italian state, submitting supporting documents in this regard.</i></p> <p>The Bucharest Probation Service drew up a report with which it notified the court of execution - the judge delegated with the execution (based on the provisions of art. 219 paragraph 2 of Law 302/2004), requesting the analysis of the need to initiate the transfer procedure.</p> <p>The delegated judge from the Constanța Court completed the Certificate provided by Law no. 302/2004 and forwarded it directly to the competent authority of Italy (Attorney General of the Court of Appeal in Florence - „Procura generale presso la Corte di Appello di Firenze”).</p> <p>The response of the Italian authorities to adapt the measures and obligations imposed on the two supervised persons to Italian national law is currently awaited.</p>
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22

STAT DE CONDAMNARE: ROMÂNIA

Instanța: Judecătoria Arad

Autoritatea de supraveghere română: Serviciul de probațiune Arad

STAT DE EXECUTARE: BULGARIA

Instanța bulgară: Tribunalul Pazardzhik

Autoritatea de supraveghere bulgară: Serviciul de probațiune în competența căruia se afla localitatea Semchinovo

K.K. (38 ani), cetățean bulgar, cu domiciliul în Parardzhik, Bulgaria, a fost condamnat la pedeapsa de 1 an și 8 luni închisoare, cu suspendarea sub supraveghere a executării pedepsei pe durata unui termen de supraveghere de 3 ani, prin *Sentița Penală nr. 1490/27.08.2020* a Judecătoriei Arad, definitivă la data de 21.10.2020.

Supravegherea a fost încredințată Serviciului de probațiune Arad.

Pe durata termenului de supraveghere, persoanei i-au fost impuse măsurile de supraveghere prevăzută de art. 93 alin. 1 Cod penal, obligația de a frecventa unul sau mai multe programe de reintegrare socială derulate de Serviciul de Probațiune Arad (art. 93 alin. 2 lit. b Cod penal) și obligația de a presta o muncă neremunerată în folosul comunității pe o perioadă de 60 zile (art. 93 alin. 3 Cod penal).

La data de 04.12.2020, persoana condamnată s-a prezentat la Serviciul de Probațiune Arad pentru prima întrevvedere de supraveghere și a fost informată că există posibilitatea transferului internațional a supravegherii sale, aspecte consemnate într-un proces-verbal.

La data de 04.05.2021, persoana condamnată a completat un *Proces-verbal cuprinzând Declarația de voință privind transferul internațional* și a depus documente justificative privind locuința pe teritoriul statului bulgar. În aceeași zi, Serviciul de Probațiune Arad a înaintat Judecătoriei Arad *Procesul-verbal privind Propunerea de inițiere a procedurii de transfer internațional*.

CONDEMNATION STATEMENT: ROMANIA

Court: Arad District Court (Tribunal)

Romanian Supervisory Authority: Arad Probation Service

STATUS OF EXECUTION: BULGARIA

Bulgarian court: Pazardzhik Tribunal

Bulgarian Supervisory Authority: Probation Service under the jurisdiction of Semchinovo

K.K. (38 years old), Bulgarian citizen, residing in Parardzhik, Bulgaria, was sentenced to 1 year and 8 months imprisonment, with suspension under supervision of the execution of the sentence for a period of supervision of 3 years, by Criminal Sentence no. 1490 / 27.08.2020 of the Arad District Court, final on 21.10.2020. The supervision was entrusted to the Arad Probation Service.

During the term of supervision, the person was imposed the supervision measures provided by art. 93 para. 1 of the Criminal Code, the obligation to attend one or more social reintegration programs carried out by the Arad Probation Service (art. 93 para. 2 letter b of the Criminal Code) and the obligation to perform unpaid work for the benefit of the community for a period of 60 days (art. 93 paragraph 3 of the Criminal Code).

On 04.12.2020, the convicted person presented himself at the Arad Probation Service for the first supervision meeting and was informed that there is the possibility of international transfer of his supervision, aspects recorded in a report.

On 04.05.2021, the convicted person completed a Minutes containing the Declaration of Will on International Transfer and submitted supporting documents regarding housing in the territory of the Bulgarian state. On the same day, the Arad Probation Service submitted to the Arad Court the Minutes on the Proposal to initiate the international transfer procedure.

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La data de 07.05.2021, Judecătoria Arad a emis *Certificatul european menționat la art. 6 din Decizia-cadru 2008/947/JAI* privind aplicarea principiului recunoașterii reciproce în cazul hotărârilor judecătorești și al deciziilor de probațiune în vederea supravegherii măsurilor de probațiune și a sancțiunilor, către Republica Bulgaria. Copia certificatului emis a fost transmisă către Serviciul de Probațiune Arad și înregistrată la data de 14.05.2021.

La data de 08.07.2021, judecătorul delegat din cadrul Biroului de executări penale al Judecătoriei Arad a comunicat Serviciului de Probațiune Arad Decizia nr. 21/08.06.2021 pronunțată de Tribunalul Pazardzhik din Bulgaria, prin care s-a recunoscut hotărârea nr. 1490/27.08.2020 pronunțată de Judecătoria Arad.

În consecință, la data de 08.07.2021, Serviciul de Probațiune Arad a procedat la arhivarea dosarului și întocmirea raportului privind finalizarea supravegherii exercitate de autoritatea română până la acea dată.

On 07.05.2021, the Arad District Court issued the European Certificate mentioned in art. 6 of Framework Decision 2008/947/JHA on the application of the principle of mutual recognition in the case of judgments and probation decisions to the supervision of probation measures and sanctions, to the Republic of Bulgaria. The copy of the issued certificate was sent to the Arad Probation Service and registered on 14.05.2021.

On 08.07.2021, the judge delegated from the Bureau of Criminal Executions of the Arad Court communicated to the Arad Probation Service Decision no. 21 / 08.06.2021 pronounced by the Pazardzhik Tribunal in Bulgaria, recognizing the decision no. 1490 / 27.08.2020 pronounced by the Arad Court.

Consequently, on 08.07.2021, the Arad Probation Service proceeded to archive the file and prepare the report on the completion of the supervision exercised by the Romanian authority until that date.

24



 **MINISTERUL JUSTIȚIEI**
DIRECȚIA NAȚIONALĂ DE PROBAȚIUNE

 Co-funded by the Justice Programme of the European Union 2014-2020

Legislative reform to enhance the role of alternatives to detention and the effects of Framework Decisions 829 and 947: the example of Romania

Reforma legislativă pentru sporirea rolului alternativelor la detenție și a efectelor Deciziilor-cadru 829 și 947: exemplul României

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1

Content/Conținut

- | | |
|----------------|--------------|
| ✓ The context | • Contextul |
| ✓ The change | • Schimbarea |
| ✓ The practice | • Practica |
| ✓ The progress | • Progresul |

2

The Context/Contextul

15 years of EU membership

Inhabitants (2016) = 19.760.314

(Source: National Institute of Statistics)

15 ani de la aderarea la UE

Locuitori (2016) = 19.760.314 (Sursa: INS)

Fundamental legislative reform (New Criminal Code, New Criminal procedure code) - since 1st of February 2014

- ✓ a new criminal policy – complying with the European standards
- ✓ a change in the sanctioning system
- ✓ new alternatives for executing an imprisonment sentence
- ✓ Completely different sanctioning system for juveniles in conflict with the criminal law. Only educational measures. No punishments

1 Februarie 2014 - Reformă legislativă complexă (Nou Cod penal. Nou Cod de procedură penală) –

- ✓ O nouă politică penală – în concordanță cu standardele europene
- ✓ Schimbarea regimului sancționator
- ✓ Noi alternative la închisoare
- ✓ Sistem diferit de sancționare a minorilor. Doar măsuri educative, fără pedpese!

3

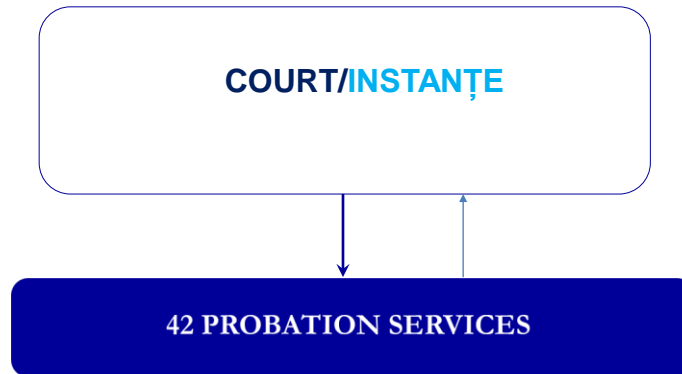
Probation system/Sistemul de Probațiune



4

FD process/Procesul cu privire la DC

Explained by Mrs President/Explicat de dna Președinte



5

The Change – probation activity/ Schimbarea - Activitatea de probațiune

Pre-trial (prosecutors)	Trial (judges)	Enforcement of the sanctions (community and judges)	Post release (community and judges)
Reports for minors	Reports for minors	Minors - 4 educative measures	Release from a detention center
	Reports for adults	Postponement of the sanction Suspended sentence with supervision + Community Service	Conditional release ≥ 2 years

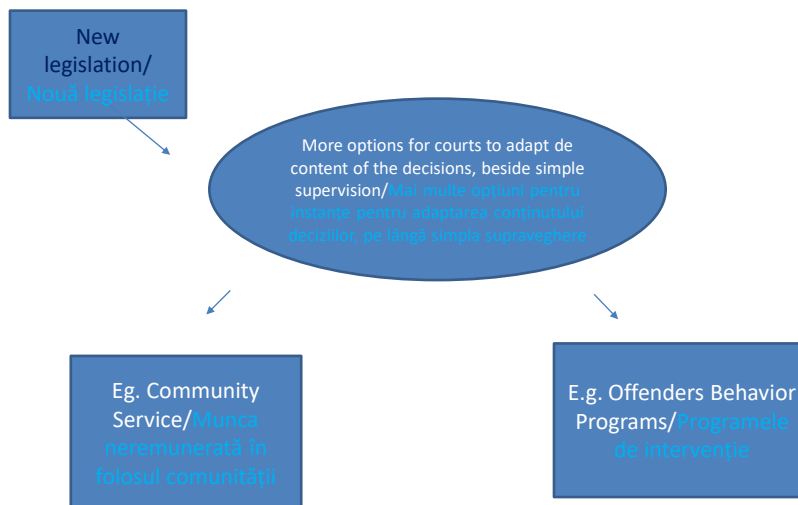
6

The Change – supervision/Schimbarea - activitatea de supraveghere

Before 2014/ <i>înainte de 2014</i>	After 2014/ <i>După 2014</i>
<p>Only 2 supervision institutions under the authority of probation/<i>Doar două modalități de sancționare sub autoritatea probațiunii:</i></p> <ul style="list-style-type: none"> - Supervised liberty (juveniles)/<i>Libertate supravegheată (minori)</i> - Suspended sentence with supervision (both juveniles and adults)/<i>Suspendare sub supraveghere (minori și adulți)</i> 	<p>Increased the number of “alternatives”/<i>Număr crescut de „sanțiuni alternative”</i></p> <ul style="list-style-type: none"> - 4 educative measures (juveniles)/<i>4 măsuri educative (minori)</i> - Supervision of the release juveniles from a detention center/<i>Supraveghere minori liberați din centrul de detenție</i> - Postponement of the sanction (2 years)/<i>Amânarea aplicării pedepsei</i> - Suspended sentence (+ community service)/<i>Suspendarea executării pedepsei sub supraveghere (+ MNFC)</i> - Conditional release/<i>Liberare condiționată</i>

7

The Change – for FD 947/Schimbarea pentru DC 947



8

The change – range of specialized programs/**Schimbarea paleta de programe**



Individual programs/technics/**Programe sau tehnici pentru aplicare unu la unu:**

- "OTO program"/**Program UNUlaUNU**
- Motivational Interviewing/**Interviul Motivațional**
- Pro-social Modelling/**Modelarea Prosocială**
- SEED approach/**Abordarea SEED**

Group programs/**Programe de grup:**

- Development of social skills, adults (DAS – adults)/**Dezvoltare Abilități Sociale**
- "STOP! Think and change" – **Stop Gândește-te și Schimbă**
- RRR – Reducing the Risk of Reoffending – **Reducerea Riscului de Recidivă**
- Drink and Drive/**Conducere sub influența alcoolului**
- **Anger Management (common IE, IT RO)/Managementul Furiei**
- My choice (drug and alcohol behaviour)/**Alegerea Mea**
- PPRMPT-Peers Prosocial modelling/**Modelarea Prosocială între egali**
- Drive safe! Stop accident!/**Program de prevenție In siguranță la volan. Stop accidentelor!**

Programs implemented by community institutions/**Programe implementate de instituții din comunitate**

- **Bringing Safety on the Roads – Programul AUTOControl – implementat de o instituție abilitată**

9

The change – raising awareness among staff on FD 947/**Schimbarea - Informare în rândul personalului despre DC 947**

In 2010 JPEN -Action Grant Cooperation FD 2008/947/JHA/**Proiect finanțat de CE**

Appointing staff to participate to various meetings organized by other partners, CEP/**Dezignare participanți la anumite întâlniri organizate de parteneri sau de CEP**

The law regarding the cooperation in criminal matters (302/2004) is included in the theoretical framework for future probation counsellors/**Legea 302/2004 în bibliografia de admitere în profesie**

Planning future trainings for probation staff NFM 2014-2021/**Plan de formare în proiect cu finanțare din granturile norvegiene**

10

The practice/În practică. In numbers/Date

	2018	2019	2020
RO issuing state/ RO stat emitent	8	7	16 (7 from 2019)
Ro execution state/RO stat de executare	0	0	8

11

The practice of Bucharest Probation Service/Câteva constatări practice din SP București

1. In most cases Romania is issuing state (Romanian citizens with residence in other EU country, foreign citizens)/În majoritatea cazurilor - RO stat emitent (cetățeni români cu reședința în alte state sau cetățeni străini)
2. Usually the transfer starts at the initiative of probation service (when Romania is issuing state)/ De regulă transferul este inițiat de serviciul de probațiune
3. Pandemic situation has facilitated extensive application of FD/Pandemia a facilitat aplicarea DC
4. Judges are familiar with procedures/Judecătorii sunt familiarizați cu procedurile
5. Counselors were encouraged to apply the decision in practice/Consilierii sunt încurajați să aplice decizia în practică

12

The progress/**Progresul**

As any change/**Ca orice schimbare...**

It is a process,
takes time!
**Este un proces,
ia timp!**

The pandemic - a
positive impact!
**Pandemia
a avut un impact
pozitiv!**

It is slow BUT is
increasing!
**Este
un proces lent, dar
în creștere!**

Better staff informed/**Personalul de probațiune informat**



Better probation subjects informed! **Persoane condamnate mai bine informate!**

13

Thank you!/**Mulțumesc!**



14



Trinity College Dublin
Coláiste na Tríonóide, Baile Átha Cliath
The University of Dublin



Co-funded by the Justice Programme of the European Union 2014-2020

The Role of Probation Services & Officers in Preventing (Re)Incarceration: Help on Release, Conflict Resolution and Working Together with the Authorities

ERA Seminar, Bucharest, Monday 28 February 2022

Vivian Geiran

Adjunct Assistant Professor, School of Social Work & Social Policy
Former Director, Irish Probation Service

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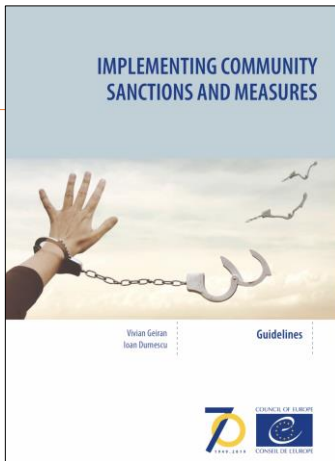
Aims of session

- To provide an overview of Probation role and work – reducing risk of reoffending and reintegration in the community.
- The place of Probation in the Criminal Justice System
- The focus & goals of practice.
- Interagency cooperation.
- Contemporary trends in Probation.
- Draw on examples from Ireland.
- Explore some relevant issues.



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Resources



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Some bases for probation work

- a) Law / legislative framework.
- b) Politics and policy.
- c) History and evolution.
- d) Ethics, values and standards.
- e) Data / research / evidence-based practice.
- f) Lived experiences.
- g) Part of a system – local, national, international.



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Recurrent Themes & Challenges

- Care 'v' control.
- Probation practice as Criminal Justice Social Work.
- Professional status, independence and organisation.
- Probation as 'Cinderella' of CJS.
- Perceptions of probation as a 'let-off.'
- Effective practice and 'managerialism'.



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Council of Europe Standards / Recommendations

- Juvenile Offenders Subject to Sanctions or Measures (2008)
- Probation Rules (2010)
- Foreign Prisoners (2012)
- Electronic Monitoring (2014)
- White Paper on Prison Overcrowding (2016)
- Rules on Community Sanctions and Measures (2017)
- Guidelines and Handbook on Radicalisation & VE (2017)



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CoE Standards / Recommendations - continued

- Restorative Justice (2018)
- Children of Prisoners (2018)
- Recruitment, Selection, Education, Training & Professional Development of Prison & Probation Staff (2019) – guideline
- Application of the Convention on Transfer of Sentenced Persons (2020)
- European Prison Rules (2006) – revised in 2020
- Assessment, Management & Reintegration of Sex Offenders (2021)
- Next: (a) Mental Health/Illness and (b) Technology/Artificial Intelligence



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Role of Probation Agencies

- **CoE Rules**
 - implement community sanctions and measures, defined by law and imposed on an offender - a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.
 - Probation Agencies - means any body designated by law to implement the above tasks and responsibilities
 - aim to reduce reoffending by establishing positive relationships with offenders
 - contributes to community safety and the fair administration of justice



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Role of Probation Agencies

- **General points**

- Role of probation agencies established by law and involves the state authority
- Support the court in the decision process
- Implement courts decisions
- Dual role – supervision and support for a positive change in the offender’s behaviour



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Tasks of Probation Agencies (CoE Rules)

- **CoE Rules**

- Pre-sentence reports & other advisory reports (Rules 42-46)
- Community service (Rules 47 – 52)
- Supervision measures - before, during and after trial (Rules 53 -55)
- Work with the offender’s family (Rule 56)
- Electronic monitoring (Rules 57 – 58)
- Resettlement (Rules 59 – 61)
- Aftercare (Rule 62)
- Probation work with offenders who are foreign nationals and with nationals sanctioned abroad (Rules 63 – 65)
- *Work with victims (Rules 93 – 96)*
- *Restorative justice practices (Rule 97)*
- *Crime prevention (Rule 98)*



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Tasks of Probation Agencies

- **General points**
 - **Care v Control**
 - **Confidence – of sentencers, politicians, public, media**
 - **Effectiveness**
 - **Efficiency**
 - **Evidence base**
 - **Expectations**



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Organisation of Probation Agencies

- **CoE Rules**
 - The structure, status and resources of probation agencies shall correspond to the volume of the tasks and responsibilities
 - reflect the importance of the public service they implement
 - formal policy instructions and rules provided by the competent authorities
 - Probation shall remain the responsibility of the public authorities, even in the case when services are delivered by other agencies or volunteers

Basic Principles & Rules 18 – 20



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Organisation of Probation Agencies

- General points
 - Centralised v Localised
 - Role of and in the community
 - Staff training and qualifications
 - Professionalism v voluntarism
 - Interagency co-operation and tensions
 - Prioritisation
 - Specialism v Generalism

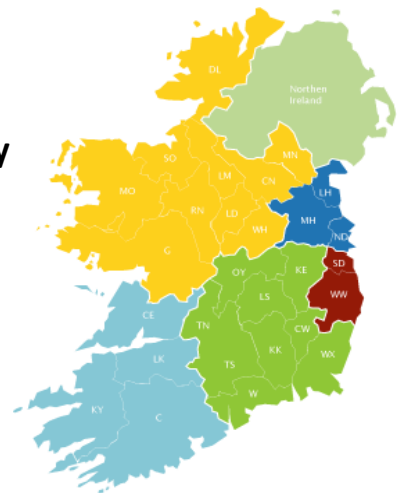


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Organisation of Probation Agencies

- Ireland
 - Agency of the Department of Justice & Equality
 - Independent day-to-day functioning
 - National Service – Director
 - All staff – civil servants
 - Significant reorganisation in 2006-2007
 - Budget (Justice)
 - Links to Europe and international bodies



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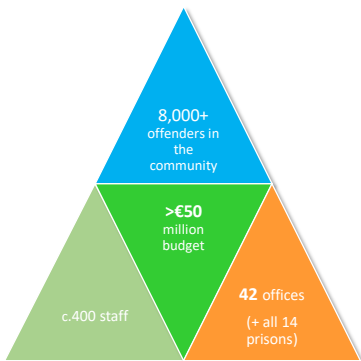
Irish Criminal Justice System



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Probation Service today – Overview



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Daily Stats – December 2021

Probation Service: Monthly Offender Population Report

Caseload	Community Regions (Point in Time December 1 2021)*				In Custody	Total (Persons)
	Eastern	Midlands and South East	South West	West and North West		
Total	3,818	2,056	1,912	1,788	1,507	11,081
Of Whom:						
Female	469	310	285	240	68	1,372
Male	3,349	1,746	1,627	1,548	1,439	9,709
Under 18	125	30	53	21	0	229
18 and over	3,693	2,026	1,859	1,767	1,507	10,852
Totals:					Total Caseload, in community:	9,574
					Total Caseload, in custody:	1,507
					Grand Total, national Probation Service caseload:	11,081

The following are the major community supervision categories.

Probation Type Supervision**:	3,572
Community Service:	2,024
Supervision in the Community Post Release from Custody***:	1,555
Community Return****:	76
Life sentence prisoners on supervision in the community****:	120
Sex offenders on supervision post release from custody****:	201

***Regions**

Eastern: Dublin, Meath, Louth, Wicklow

Midlands and South East: Kildare, Laois, Offaly, Carlow, Kilkenny, Tipperary, Waterford, Wexford

South West: Cork, Clare, Limerick, Kerry

West and North West: Galway, Mayo, Sligo, Leitrim, Longford, Roscommon, Cavan, Monaghan, Donegal, Westmeath

****Probation Type Supervision** includes Probation Orders, Fully Suspended Sentence Supervision Orders, and Supervision During Deferment of Penalty.

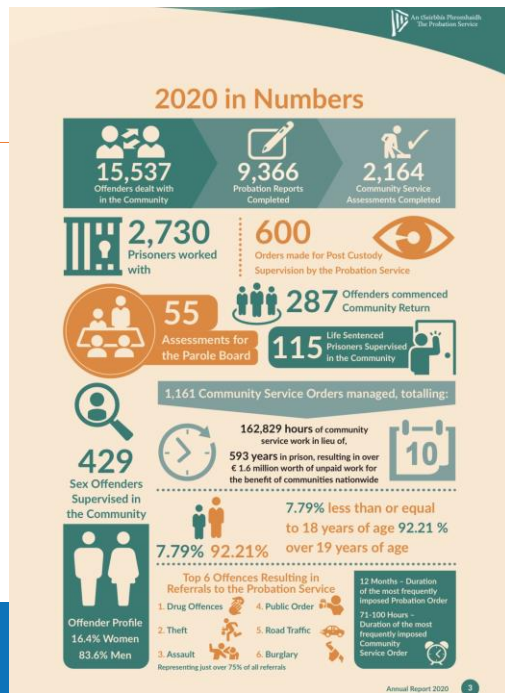
***** Supervision in the community post release from custody** includes Part Suspended Sentences, Temporary Release Supervision, Community Return, Life Sentence Prisoners on supervision in the community and Sex offenders on supervision in the community post release from custody..

******** Already included in the total of supervision in community post release from custody.



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Probation in numbers (2020)



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History of Probation in Ireland

- Court Missionaries
- Probation of Offenders Act 1907
- To professional Social Work Agency

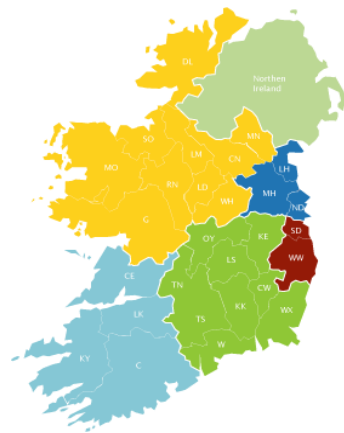


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Probation Role

- **Manage court orders**
- **Reduce risk of harm**
- **Reduce likelihood of reoffending**
- **Make good the harm caused by crime**



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What Probation Does

- The Probation Service deals with almost 15,000 offenders in the community annually (including c.8,000 assessments on offenders which assist judges in making decisions in criminal cases).
Two main work category areas:

Assessment

- Assessment Reports for Court
- Assessment teams in major urban areas
- Risk Assessment tools
- Parole Board Assessment Reports

Supervision and Rehabilitation of offenders:

- **Court-ordered supervision:** Probation (adults and young people), Community Service, Fully suspended sentences.
- **Post-Release Supervision :** Community Return, Part-suspended sentences, Life Sentence Prisoners (Parole), Sex Offenders



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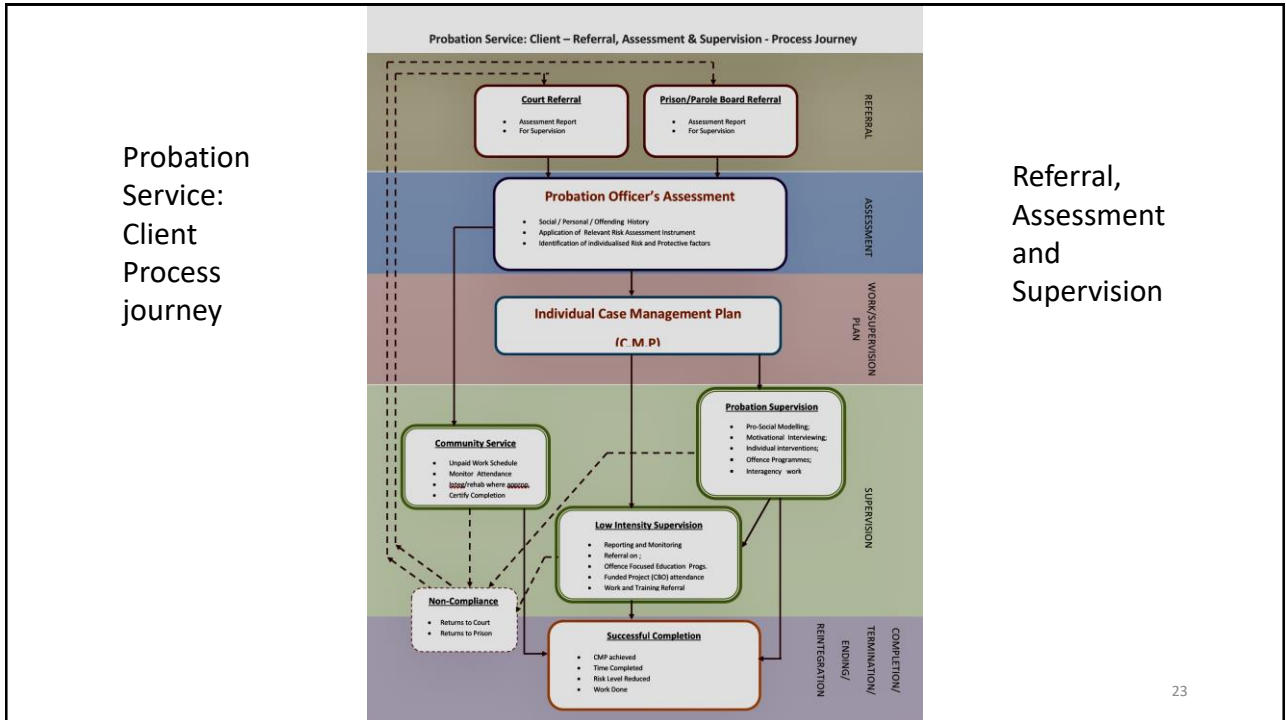
Some Legal Issues

- **Assessment.**
- **Terms, conditions, duration of orders.**
- **Sex offenders.**
- **Non-compliance.**
- **International movements/transfers.**
- **Information sharing.**



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Case Management Plan

- Outlines the agreed work that will be done while client is 'on probation'.
- Outlines frequency of contact based on level of risk.
- Includes criminogenic needs as identified in the assessment – with specifics of what is to be done, by whom, and agreed timeframes.
- Includes some early wins – something that can be achieved early in supervision to inspire confidence
- Includes some goals of the client (training/education/repairing relationship with family member/re-joining sports team)



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Approaches to Probation Practice

- What Works? Who Works? (with involuntary clients)
- Include: professional relationship, collaboration, MI, role clarification, pro-social modelling, model/wheel of change, problem-solving, CCP.
- What does not work?
- Risk / Need /Responsivity.
- Desistance.
- Good Lives Model.



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Process of Supervision



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Dual Role: Helper vs Controller

It is important to inform the client of the dual aspect of the work- to help but also to control behaviour and promote public safety

Clearly explaining the role and authority of the Probation Officer including the limitations to confidentiality is also linked with improved outcomes for involuntary clients (Trotter, 2002, 2012, Shulman, 1991).

Helping the client understand the purpose of the intervention; what is negotiable and what is not negotiable is related to good outcomes (Trotter, McIvor& Sheehan 2012)

Agreeing on the problem to be addressed with the client is also linked with better outcomes for involuntary clients.

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Probation Values & Principles

- Public Protection.
- Belief in the capacity of people to change.
- Probation Officers as change agents.
- Everyone has the right, irrespective of what they have done, to be treated with dignity and respect.
- Inter-agency working: No one agency working alone is as effective as agencies working together.



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Challenges

- **Dual role – care and control.**
- **Substance misuse.**
- **Mental health / illness.**
- **Gangs / intimidation.**
- **Accommodation/homelessness.**
- **Poor education.**
- **Poverty.**
- **Changing demographics in Ireland.**



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Ireland: Some Practice Developments

- **Desistance theory and practice.**
- **Implementing evidence-informed practice.**
- **Prioritising prolific, serious offenders.**
- **Voice of the victim.**
- **Restorative Justice.**
- **Integrated Community Service.**
- **Responding to particular groups.**
- **Voice of the ex-offender.**



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And finally...

- Implementing complex plans with people who are reluctant, damaged and perhaps dangerous will always be a challenge!
- The supervision process depends on the establishment of relationships and on the quality of the relationships, though good relationships alone are not enough to bring about change
- Adopting approaches that are more effective (in evidence) maximises the potential for well directed supervision.



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- Dept. of Justice: www.justice.ie
- Council of Europe – Council for Penological Cooperation (PC-CP): <https://www.coe.int/en/web/prison/council-for-penological-co-operation>
- Confederation of European Probation (CEP): <https://www.cep-probation.org/>
- United Nations Office on Drugs and Crime: <https://www.unodc.org>



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Evolving Trends in Crime and Responses

- Cybercrime.
- Extremism and terrorism.
- Domestic Abuse and Violence.
- Human trafficking and exploitation.
- Drugs and Drug-Related Intimidation.
- Human rights and populism.



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Key Summary Points

- Importance of values.
- Do justice. Do your best.
- People can/do change.
- Probation - at home in social work.
- Importance of 'social' and 'system.'
- Interagency approach.
- Effective practice – always learning.



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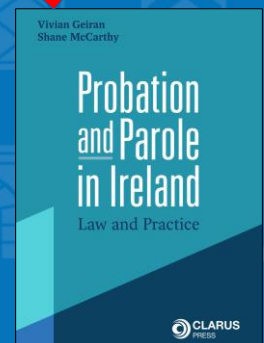
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Thank You

Coming soon

Email: geiranv@tcd.ie

Twitter: @VGeiran



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THE NATIONAL ADMINISTRATION OF PENITENCIARIES



Co-funded by the Justice Programme of the European Union 2014-2020

1

Romanian prison system



19,025,603 inhabitants
prison population rate: 120
(23rd place in Europe)

22 900 inmates
female prisoners 4.5%
minors: 1.2%
pre-trial: 11.9%
45 units of detention


12.141 staff

prison service is
subordinated to the
Ministry of Justice

very high dynamic of staff in
2016: (1826 retired/1424
new comers)

2

Romanian prison system



SUPPORTED BY THE NORWAY GRANTS FOR 2014-2020 THROUGH THE FUND FOR EUROPEAN WORK AND TERRITORIAL DEVELOPMENT

www.norwaygrants.ro

Total number of functions in prison system: 15.041


Necessary number of staff: 20.000

Steps taken so far:
 Work group set up
 Design the standard unit
 Establishing staff standards on sectors, activities, **(closed and high security standards, semi open and open standards, prison hospitals standards, detention centre, education centre)**
 Analysed each unit to see the differences
 Reducing the gap - modification of the organigrams. (small steps taken)

3

STATISTICS

- ✘ 17 prisons have open and semi-open regime
- ✘ 17 prisons have close and maximum security regime
- ✘ 23 units with special wards for preventive arrest
- ✘ 2 detention centers with 540 persons
- ✘ 1 prison for women (plus 6 wards for women in other prison units)
- ✘ 2 educative centers with 376 persons
- ✘ 289 foreign inmates from 46 different countries
- ✘ 10,574 recidivists in the system
- ✘ 6,425 inmates with criminal records and 10,599 without criminal records



4

DETENTION REGIMES



- ✘ Preventive arrest- 2315 inmates
- ✘ Quarantine - 642 inmates

Executing regimes :

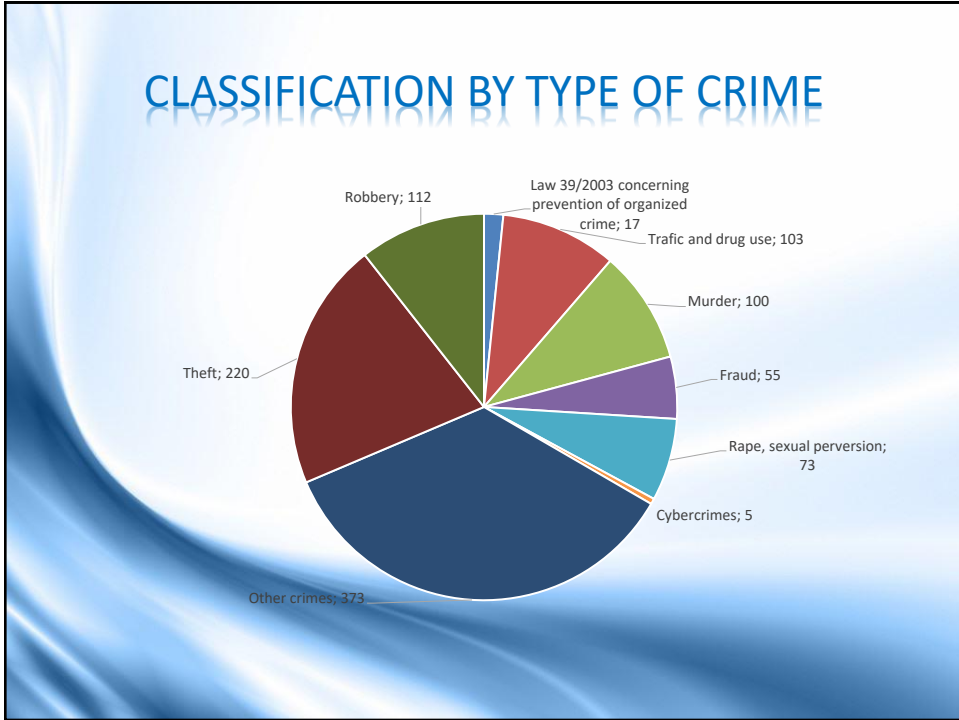
- ✘ The set of rules which underlay the execution of the sentences;
- ✘ Based on the progressive and regressive systems:
 - + High security regime – 1943 inmates
 - + Close regime – 7428 inmates
 - + Semi-open regime – 10207 inmates
 - + Open regime – 4022 inmates

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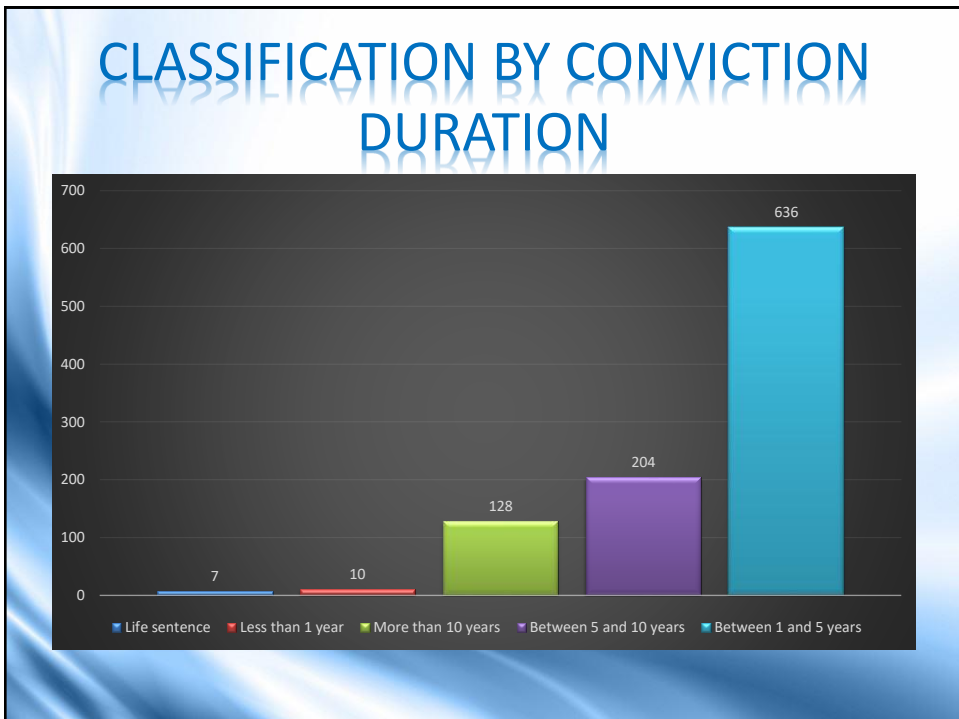
BUCHAREST JILAVA PENITENTIARY



6




7



8


FOREIGN INMATES



Albania - 1	Iran - 1
Bulgaria - 4	Italy - 2
China - 4	Israel - 1
Congo - 1	Moldova - 1
Cameroon - 1	Turkey - 9
Jordan - 1	Palestine - 1
Irak - 2	Vietnam - 3

9

OVERCROWDING IN PRISONS



Compliance with European rules on conditions of detention in Bucharest-Jilava Penitentiary:

- CPT rule (4 sqm) – 22 detention rooms – 111 inmates
- Internal rule (6 cubic meters) - 43 detention rooms – 389 inmates

Total capacity – 1219 inmates
Capacity on 4 sqm – 683 inmates – overcrowding index 144%

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THE RIGHT TO BE VISITED



open regime – 6 visits/ month
semi open regime – 5 visits/ month

* 1 visit / quarterly
* additionally intimate visit, as a reward



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FRIENDLY VISIT SPACE



- ✘ Inmates can request to benefit from their right to meet their families in this area, if they have children aged up to 7 years
- ✘ It provides a suitable environment for the children's emotional balance



12

PACKAGES AND SHOPPING



**1524
Lei/week
305 €/week**




**1 PACKAGE
/ MONTH +
additional
package as
a reward**





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BEING INFORMED



**The information
is posted on
bulletin boards
or via the
information
points within
each ward**






Information about:

- legal situation;
- the number of rewards and sanctions;
- financial status;
- work situation;
- offer social reintegration activities;
- the number of credits accumulated;
- the list of the books from library;
- executorial laws etc

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MEDICAL CARE



- ✗ permanent healthcare
- ✗ consult / admission to Jilava Penitentiary Hospital




1 general medical practitioner
1 dentist
1 psychiatrist

11 nurses
2 pharmacy assistant
1 medical register




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WORKING ACTIVITIES




36% OF INMATES ARE CONSTANTLY INVOLVED IN PRODUCTIVE ACTIVITIES



16

EDUCATIONAL SERVICE AND PSYCHO-SOCIAL ASSISTANCE




THE NUMBER OF INMATES IS APROXIMATLY 1000

Standard	Employed
1 educator officer/100 inmates	7 educators
1 education agent/400 inmates	2 education agents
1 technical agent/500 inmates	1 technical agent
1 sport monitor/500 inmates	2 sport monitors
1 priest/prison	1 priest
1 psychologist /100 inmates	7 psychologists
1 social worker/125 inmates	6 social workers


We are the largest social reintegration team in the system

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SCHOOLING AND TRAINING



- ✘ Primary & secondary education
- ✘ High school
- ✘ The possibility to attend higher education
- ✘ IT (ECDL certification included)
- ✘ Trainings: sales worker, tailor, hair stylist, typo graphist, seller etc.



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LIBRARY AND SPORT ACTIVITIES



- ✘ 14.000 books
- ✘ lecture room/hall
- ✘ 3 sport fields
- ✘ 1 gym



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THERAPEUTIC COMMUNITY PROGRAM



- ✘ Special program for former drug users
- ✘ Opened in 2011 with the Norwegian funds
- ✘ 26 beds
- ✘ In 2016, we provided professional expertise to open a therapeutical center in Gherla Prison for women with mental health problems



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FORT 13 JILAVA



- ✘ a historical monument;
- ✘ built after general Brialmont's plans as part of the City of Bucharest defense belt with forts and batteries that surround the city ring;
- ✘ it was used as a political prison for the first time after the 1907 uprising, and then after the Second World War;
- ✘ many historical, political, cultural personalities were imprisoned here, and some have even been executed on the field of execution called Valley of the Peaches (Valley of Wailing) near the fort;
- ✘ the last prisoners were imprisoned here during the Revolution of 1989;
- ✘ currently, part of the former cells are set up as a memorial museum

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IN THE FUTURE...



- ✘ we will continue to organize meetings with former residents of the therapeutic community program in partnership with organizations, the animal assisted therapy and "Respect Ward" programs
- ✘ greater involvement with the help of NGO's in the post release period;
- ✘ by implementing The Ethnography of the Prisoner's Transitions project, we want to propose legislative changes in the executional domain, using the research from the project

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BUCHAREST JILAVA PENITENTIARY



Thank you!

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Prisons and probation: Council of Europe/ CEP Mental Health Project

Professor Charlie Brooker
Royal Holloway, University of London

Jorge Monteiro
Psychologist, MoJ, Portugal



ROYAL
HOLLOWAY
UNIVERSITY
OF LONDON



Co-funded by the Justice Programme of the European Union 2014-2020

Design

- Two questionnaires were designed and agreed by the Council of Europe's member states and jurisdictions.
- The questionnaires aimed to elicit government policies and practical approaches to mental health disorders in probation services and in prisons.
- The survey was out in the field for approximately 10 weeks and a number of reminders were sent to non-responders
- The survey closed in July, 2021

Response

	Prisons	Probation Services
Number of Total Returns	<p>Note: Germany sent 10 different responses (out of a possible 16), Spain sent 2</p> <p>Thus, there was a possibility of 67 'Response Units'</p> <p>Data is reported from 42 out of a possible 67 'response units'</p>	<p>Note: Germany sent 11 different responses (out of a possible 16), Belgium sent 3 and Spain sent 2. The UK sent 3/4.</p> <p>Thus, there was a possibility of 67 'Response Units'</p> <p>Data is reported from 46% out of a possible 67 'response units'</p>
% Overall Response	63%	66%

3

Prisons and probation: Council of Europe/CEP Mental Health Project

Received no questionnaires

Azerbaijan
Estonia
Liechtenstein
Monaco
North Macedonia
Georgia
Nakhchivan Autonomous Republic
Norway
Ukraine

Received the Probation questionnaires only

Albania
Hungary
Northern Ireland
Scotland
Serbia
The Republic of Ireland
Turkey

Received both questionnaires

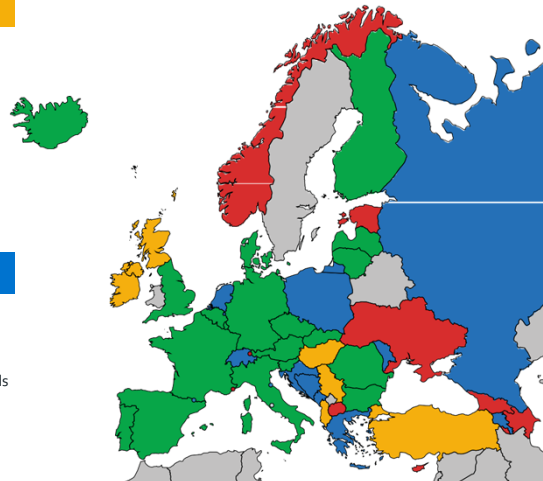
Austria
Belgium
Bulgaria
Czechia
Denmark
England
Finland
France
Germany
Iceland

Italy
Latvia
Lithuania
Luxembourg
Malta
Portugal
Romania
Slovakia
Slovenia
Spain

Received the Prison questionnaires only

Andorra
Armenia
Bosnia and Herzegovina
Croatia
Greece
Moldova
Montenegro
Poland

Russia
San Marino
Switzerland
The Netherlands



4

Prisons and probation: Council of Europe/CEP Mental Health Project

The existence of Government policy for the treatment of prisoners or probationers with mental health disorders.

	Prisons**	Probation*
Yes, policy exists	39/42 (92,8%)	17/32 (53%)

*Countries where Government policy exists in probation include: Austria, Flemish speakers (Belgium), Czech, Finland, Albania, Baden-Wurttemberg (G), Lower Saxony, Malta, Iceland, Italy, Lithuania, Northern Ireland, Portugal, Romania, Spain, Turkey, England, Scotland

** Countries where Government policy exists in prison include: Andorra, Austria, Belgium, Bosnia and Herzgovina, Bulgaria, Croatia, Germany (all answers), Greece, Iceland, Italy, Lithuania, Latvia, Luxemburg, Malta, Montenegro, The Netherlands, Portugal, Romania, Russian Federation, San Marino, Slovak republic, Spain, Catalonia, Sweden, Switzerland

Receiving mental health awareness training

	Prisons	Probation Services
Number receiving training	31	14
No. of Valid responses	42	39
% 'Yes' training received*	74%	36%
Range	N/A	N/A

Estimating prevalence in probation

- In probation some estimates were based on research (Ireland, Finland, and Sweden). In other countries the response indicated that probation staff undertook assessments that were aggregated into national administrative data (Belgium, England, the majority of the states in Germany, Hungary, Malta, Northern Ireland, Portugal, Scotland, Slovenia and Turkey).
- Only 3 probation services collected prevalence routinely (Catalonia, Northern Ireland and two German states: Berlin and Brandenburg).

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Prisons and probation: Council of Europe/CEP Mental Health Project

Who provides care and treatment in prisons and probation?

	Prisons	Probation (n=37 valid responses)
Ministry of Justice	a) 42,8%; b) 73,8%	7 (19%)
Healthcare	a) 14,3%; b) 21 (50%)	32 (86%)
Voluntary sector	b) 4 (9,5%)	10 (28%)
Other	a) 8(19%); b) 2,3%	8 (22%)

- a) Only institution providing mental health care
- b) Combined with other institution

8

Prisons and probation: Council of Europe/CEP Mental Health Project

What is the role of prison/probation services in providing mental health care?

	Prisons	Probation
Valid responses		37
Providing interventions/treatment themselves	35 (83,3%)	5 (14%)
Inviting external services to work on the premises	27 (64,2%)	4 (11%)
Referring people to external services working elsewhere	26 (61,2%)	31 (84%)
Referring people to external services working elsewhere	23 (54,7%)	7 (19%)

9

Prisons and probation: Council of Europe/CEP Mental Health Project

Screening for mental health disorders in prison and probation – when does it take place?

When does screening take place in probation?

	Probation
Valid responses	36
Arrest	15 (42%)
Court	34 (94%)
Prison	31 (86%)
Probation	16 (44%)

10

Prisons and probation: Council of Europe/CEP Mental Health Project

Who usually screens for mental health disorders in prison and probation?

	Prison	Probation Services
Valid responses	42	36
Prison Staff	12 (28,5%)	
Probation staff		11 (32%)
Other criminal justice staff	5 (11,9%)	2 (6%)
Nurse	16 (38%)	3 (8%)
General Practitioner	32 (76,2%)	11 (31%)

11

Prisons and probation: Council of Europe/CEP Mental Health Project

Examples of screening tools used in probation

- The screening tools used vary greatly and are generally used by the experts often pre-court appearance.
- However, there are two services, which both have in-house psychology teams that use structured screening tools.
- The probation service in Malta uses such the GAD (for generalised anxiety disorders) and the STAX (suitable for assessment of personality disorder).
- The service in Northern Ireland uses the BDI (Beck Depression Inventory) and the PDE (Personality Disorder Examination).

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Prisons and probation: Council of Europe/CEP Mental Health Project

Examples of screening tools used in probation

- Bulgaria makes use of the Hare Psychopathy Checklist, an adapted suicide assessment schedule (PSRAC – Prison Suicide Risk Assessment Schedule) and structured tools to assess the severity of drug and alcohol consumption.
- In Iceland the Mini-Mental State is employed in order to assess symptoms of mental health.
- Spain has access to use of the CAGE (Alcohol consumption), the GHQ-28 (anxiety and depression).
- Otherwise, probation services do not assess mental health disorders themselves

13

Prisons and probation: Council of Europe/CEP Mental Health Project

Does the service, prison or probation, have any special order/requirements for people with mental health disorders?

	Prisons	Probation
No of valid responses	42	38
% stating 'yes'	16 (38%)	12 (32%)

14

Prisons and probation: Council of Europe/CEP Mental Health Project

Probation

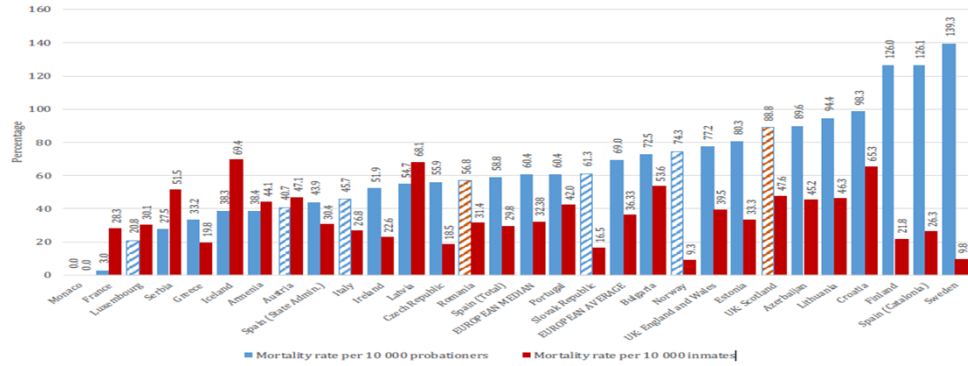
- One-third of probation services can obtain orders for the mental health care of clients.
- Countries where this occurs include: Catalonia, England, France, Berlin (G), Mecklenburg-Vorpommern (G), Northern Ireland, Schleswig-Holstein (G), Scotland and Turkey
- I will address the case of England in more detail in the second part of the paper

Prisons and probation: the monitoring of suicide

	Prisons	Probation services
No of valid responses	42	38
% stating 'yes'	38 (90%)	5 (13%)

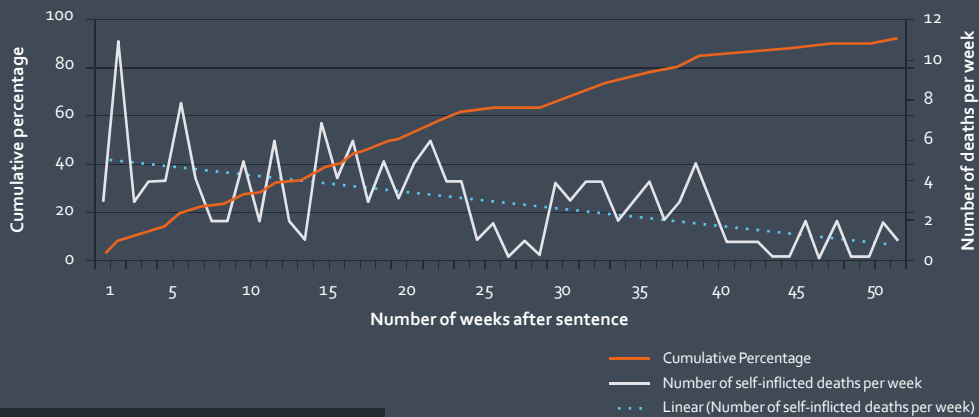
Death Rates: a European-wide comparison of prisons and probation

Figure 9. Deaths of inmates per 10,000 inmates and deaths of probationers per 10,000 probationers during 2017 (N = 27)



Suicide in Probation through time

Fig.1 Number of deaths per week after sentence and cumulative percentage of self-inflicted deaths (2015/16)



Probation and prison: gender specific approaches

	Prisons	Probation services
No of valid responses	42	38
% reporting yes and countries listed	20 (47%)	10 out of 38 (26%) Belgium (German speaking); Berlin (Germany); Brandenburg (Germany), Hessen (Germany); Iceland; Italy; Turkey; Northern Ireland; England; Scotland

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Prisons and probation: Council of Europe/CEP Mental Health Project

Examples of gender specific approaches in probation

- Three probation services stated that their approach to women with mental health disorders in the criminal justice system was trauma-informed namely Scotland, England and Northern Ireland.
- In England the MHTR programme is an example of a gender approach to the delivery of mental health treatment requirements in primary care see the link here: [Community Sentence Treatment Requirements | London City Hall](#).

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Prisons and probation: Council of Europe/CEP Mental Health Project

Examples of gender specific approaches in probation

- In Scotland some local authority social work services are developing specific services for woman involved in the criminal justice system. In Northern Ireland, 'gender approaches are always considered with a trauma informed lens in terms of appropriate assessment, intervention and treatment pathways.
- In France research is being undertaken by SPCS by a team in Lille one aspect of which focuses on women leaving detention. In the other 6 countries answering this question all made general statements about how important a gender approach was and that it was used in their services.

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Prisons and probation: Council of Europe/CEP Mental Health Project

Conclusions

- There was good response to the survey boosted by the returns of 11/16 German states.
- Half the proportion of probation staff received mental health awareness training compared to prison staff (74% vs 37%)
- Training and raising awareness on mental health disorders is provided for all prison staff in many countries (74%)
- Estimates of the prevalence of mental health problems in probation varied from 2% (Slovakia) to 90% (Scotland) with a median of 15%.
- Robust research indicates that the figure is closer to 40% so largely probation services seriously underestimated the prevalence
- Importance of research on the prevalence of mental health disorders among inmates in order to better acknowledge the specific needs of this population (62% of answers)

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Prisons and probation: Council of Europe/CEP Mental Health Project

Conclusions

- Only 4 jurisdictions collected prevalence data routinely.
- By far the most common model for probation clients to access mental healthcare was through the use of external healthcare agencies (86%), 10% accessed services in the voluntary sector.
- In prison context, we observed and increasing shared responsibilities between MoJ and MoH in the treatment of inmates with mental disorders (66%)
- Screening for mental health disorders was most likely to take place in the court (94%) or in prison (86%). Psychiatrists (61%) and psychologists (61%) were mostly involved although GPs were involved in nearly one-third of cases (30%)

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Prisons and probation: Council of Europe/CEP Mental Health Project

Conclusions

- Most probation responses indicated that the role of probation services was to direct probationers to external services (as above). It should be noted that two countries, Malta and Northern Ireland, used an 'in-house' treatment service run by psychologists. England had a one-off initiative for offenders with a personality disorder.
- Most prison organizations provide treatment themselves, but also invite external services (mainly specialists), as well refers to the health services in the community
- 12 (32%) countries/jurisdictions had specific treatment orders for mental health. In England, there had been concerted efforts to maximise the use of mental health treatment requirements in the MHTR project.

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Prisons and probation: Council of Europe/CEP Mental Health Project

Conclusions

- 5 (14%) of countries jurisdictions monitor suicide rates in probation (Bulgaria, N Ireland, France and Ireland) but provide no data. England provides a website address showing that probation suicides have been examined for a number of years.
- Suicide in prison is a concern of all countries and jurisdictions and it's a very important topic with large positive responses rate (90%).
- Many countries have in place suicide prevention programs inside prison that combine screening for early signs and symptoms of risk of suicide and follow-up of cases of risk.
- A small number of probation services work with families (17%) and 27% provide a gender approach to probation which was often trauma-informed.

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Prisons and probation: Council of Europe/CEP Mental Health Project

Does the service, prison or probation, have any special order/requirements for people with mental health disorders?

	Prisons	Probation
No of valid responses	42	38
% stating 'yes'	16 (38%)	12 (32%)

26

Prisons and probation: Council of Europe/CEP Mental Health Project

Recent Study on CBT for Probationers in London with a mental health problem (10)

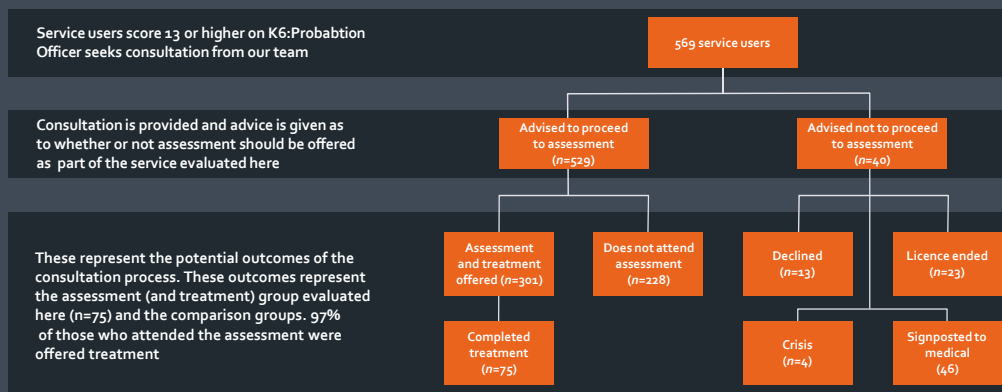
- Only published in December 2019 by Fowler, J et al (2019)
- Every person in the London Probation service was screened with Kessler-6 (K-6), six items all scored 1–5, if you scored 13 or over offered intervention. The K-6 is a general measure of mental health status
- The intervention consisted of a 'manualised' CBT-type intervention with aimed for emotional regulation (copy right St Andrews)
- The intervention was not offered as part of a Mental Health Treatment Requirement (MHTR)

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Probation and Mental Health: Do we really need 'Equivalent' care?

Results from the Fowler Study – sample attrition

Referral throughput numbers



28

Probation and Mental Health: Do we really need 'Equivalent' care?

Pre- and post-intervention results

Psychometric results

Assessment	Pre-mean (SD)	Post mean (SD)	Statistical value (pre-post comparison)
Kessler Psychological Distress Scale (K6)	22 (3.5) Clinically significant n=75	14.6 (4.9) Clinically significant n=41	t=18.1 (df1) p>0.001 Cohen's d=1.3
Patient Health Questionnaire-9 (PHQ-9)	17 (5.8) Clinically significant n=65	9.2 (6.2) Clinically significant n=29	t=11.8 (df1) p>0.001 Cohen's d=1.1
Generalised Anxiety Disorder 7 (GAD-7)	14.7 (5.2) Clinically significant n=65	8.4 (5.2) Clinically significant n=39	t=10.5 (df1) p>0.001 Cohen's d=1
Work and Social Adjustability Scale (WSAS)	18.2 (10.3) Clinically significant n=61	11.8 (10.1) Clinically significant n=37	t=6.8 (df1) p>0.001 Cohen's d=0.7

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Probation and Mental Health: Do we really need 'Equivalent' care?

Pre- and post-intervention results

Treatment condition offending rates

	12 months pre-treatment mean (SD)	12 months post-treatment mean (SD)	Statistical value (pre-post comparison)	Reliable change index
Treatment condition (n=61)	1.64 (1.13)	0.43 (0.9)	t=9.3 (df1) p<0.001 Cohen's d = 1.02	1.43

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Probation and Mental Health: Do we really need 'Equivalent' care?

Mental Health, Alcohol and Drug Treatment Rquirements in England/Wales

[Introducing Sefton Complex Cases Court's Community Sentence Treatment Requirements programme - YouTube](#)





Co-funded by the Justice Programme of the European Union 2014-2020

ERA – ACADEMY OF EUROPEAN LAW

MENTAL HEALTH IN PRISON

Reducing risk Factors

Jorge Monteiro

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DIREÇÃO-GERAL DE REINserÇÃO E SERVIÇOS PRISIONAIS

Mental health in prison

Summary



1. INTRODUCTION

- Concepts and definitions



2. COMMON MENTAL HEALTH DISORDERS

- Special needs of individuals with mental illness in contact with the criminal justice system



3. DEALING WITH MENTALLY ILL IN PRISON

- Different levels of care and key areas for inmates with mental illness
- Challenges and recommendations



4. COMPREHENSIVE REHABILITATION APPROACH

- Risk, Needs, responsivity



5. European Survey CoE

- Findings and conclusions

Mental health in prison

Reducing Risk Factors



The World Health Organization defines...

CONCEPTS AND TERMINOLOGY



Absence of agreement on the most appropriate terminology



- Medical model
- Social model

Health

"... a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"

Mental health

"... a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community"

Mental health in prison

Reducing Risk Factors



Mental health influences how we...

- Think and feel about ourselves
- Think about our future
- Think about others
- Interpret events
- Communicate
- Form, sustain and end relationships
- Cope with change, transition and life events

- Mental health has strong influence on the way people see themselves and the others.
- Emotional stability is essential to overcome stressful situations.
- Personality traits can affect the way reality is perceived by a person.

- Mental illness (or mental distress) is an umbrella concept term that refers to various psychiatric disorders.
- Just like physical illness, mental illness can vary significantly in the symptoms.
- The 5th edition of the Diagnostic Manual of Mental Disorders (DSM-5) describes in more detail the different nosologically categories of mental disorders.



Mental health in prison

Reducing Risk Factors



- People without any mental disorder prior to imprisonment might develop mental health problems during incarceration due to inherent deprivation of liberty and other special factors related to prison environment.
- Overcrowding, violence, bullying, stigma, discrimination are factors that have direct influence in the mental health conditions of inmates.
- The cumulative effect of all these factors (if not addressed) will worsen the mental health of prisoners and increase the likelihood of incidents such as displays of aggression, bullying, mobbing, suicide attempts and self-harm.

Factors that negatively affect mental health in prison



Mental health in prison

Summary

- ✓ 1. INTRODUCTION
 - Concepts and impacts of imprisonment on mental health
- ✓ 2. SPECIFIC NEEDS
 - Special needs of individuals with mental illness in contact with the criminal justice system

Mental health in prison

Reducing Risk Factors

- In terms of prevalence of mental illness in prison context, about 4% of inmates (males and females) present mental disorders.
- 10% of male inmates struggle with depression, and 47% have an antisocial personality out of 65% with personality disorders.
- 12% of female prisoners show signs of having a major depression, while 21% have an antisocial personality disorder (out of 42% with PD9):



- Male inmates**
- Psychotic illnesses 4%
 - Major depression 10%
 - Personality disorder 65%
 - Antisocial personality disorder 47%



- Female inmates**
- Psychotic illnesses 4%
 - Major depression 12%
 - Personality disorder 42%
 - Antisocial personality disorder 21%

Inmates vs General Population

Inmates present higher rates of mental illness...



...when compared to the general population

- Meta-analysis data confirms that inmates show higher rates of mental illness when compared to the general population.
- Emotional disorders rates can greatly vary according to the stage of imprisonment.
- Research shows that during the first week of imprisonment, emotional disorders can be prevalent in almost 90% of the cases (after 6 months >50%)
- After trial, several inmates arrive in prison with previously detected mental health conditions, importing them to a whole new context.

Mental health in prison

Reducing Risk Factors

- Inmates with existing mental disorders are at further risk of acute mental harm, as they have fewer resources to cope in an environment lacking in privacy.
- This risk is higher in tendentiously depressive inmates, who may become suicidal and psychotic due to an increased emotional deterioration.
- Prisoners without any mental health problems prior to imprisonment may develop a range of mental disabilities in prisons, where they do not feel safe, dormitories overcrowded and staff not trained to deal with their specific psycho-social support requirements.

PRISON ENVIRONMENT



Negatively influences...



Physical health



Mental health



Social health

Mental health in prison

Reducing Risk Factors



1. Depression symptoms

- Depressed mood;
- Diminished or no pleasure and interest at all in activities;
- Recurrent suicidal ideation, attempts or a plan to commit suicide.



2. Anxiety disorder

- Difficulty concentrating or mind going blank
- Irritability and muscle tension
- Sleep disturbance (difficulty falling or staying a sleep, or restless, unsatisfying sleep)



3. Suicidal Ideation

- Withdrawing from activities and isolating from family and friends;
- Calling people to say goodbye and/or giving away prized possessions;
- Aggression, Irritability, Anxiety, Hoplesness,

Mental health in prison

Reducing Risk Factors

RISK OF SUICIDE AND SELF-HARM



- Research shows that suicide rates within the prison context are higher than in the general population.
- This is caused by a variety of factors, such as long-term sentences, single-cell use, mental disabilities, substance abuse as well as individual's history of suicidal tendencies.
- International findings shows that inmates who commit suicide actually suffered from some form of mental disability.

- Inmates who commit self-harm usually have a background of being victims of violence and/or substance abuse.
- Such historical component should require therapeutic responses from the correctional facilities where their serving their sentence, especially since these inmates are even more likely to attempts suicide then others.



Mental health in prison

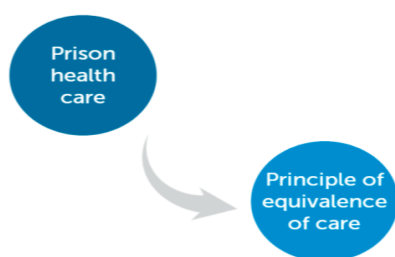
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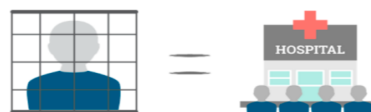
Mental health in prison

Reducing Risk Factors

LEVELS OF CARE



Level & quality of mental health services...



- Training on mental health to prison health staff
- Regular visits from a community mental health team
- Access to outside health care services / right to be transferred



- When analyzing prison health care issue, often the principle of equivalence of care is referred, highlighting the importance of prison services providing the same level of quality of the basic health services as in the community, including mental health.
- This principle might be achieved through different levels or means:
 - Prison health staff training on mental health;
 - Regular visits from a community mental health team;
 - Access to health care services outside prison.

Mental health in prison

Reducing Risk Factors



Mental health promotion in prisons:
A Management Checklist



10 areas to consider



1. Reception

- As entry into prison can be a traumatic experience, efforts must be made to ensure a safety environment and to detect early signs of mental illness or distress, as well as collecting information about urgent immediate actions to be taken.



2. Induction

- A well-organized procedure should be in place in order to help prisoner with incarceration, reinforcing the information already provided regarding all important topics of life inside prison (health department, schedule for visitation, telephone calls)



3. A clean environment

- A clean prison environment reinforces prisoner's trust in positive relations with staff and the administration.



4. A controlled environment

- A safe prison environment is paramount to ensure prisoner's mental well-being. Overcrowding and poor design strategies can have a negative impact on the mental stability of inmates.

Mental health in prison

Reducing Risk Factors



Mental health promotion in prisons:
A Management Checklist



10 areas to consider



5. Management & staff: Support for prisoners

- An important part of prison officer's role should be to support inmates while serving their sentence, and in their preparation for release. Prison staff should be trained on basic mental health issues, including how to recognize and deal with mental disorders and to be aware of emotional distress and crisis.



6. Management and colleagues: Support for staff

- Prison staff should feel that their work is recognized and their needs are addressed by prison administration. Staff support and counseling should be available and management should be aware of signs of burnout and distress among prison staff.



7. Contact with family, friends and community

- Prisons should promote the contact between inmates and their family and friends, since they play an important role on inmate's well-being.



8. Activities

- Prisoners should be provided with meaningful activities in order to make the best use of their time and reduce the negative impact of imprisonment on their well-being (educational, vocational training, physical activities, arts, religious and spiritual care, cognitive therapies, among others).

Mental health in prison

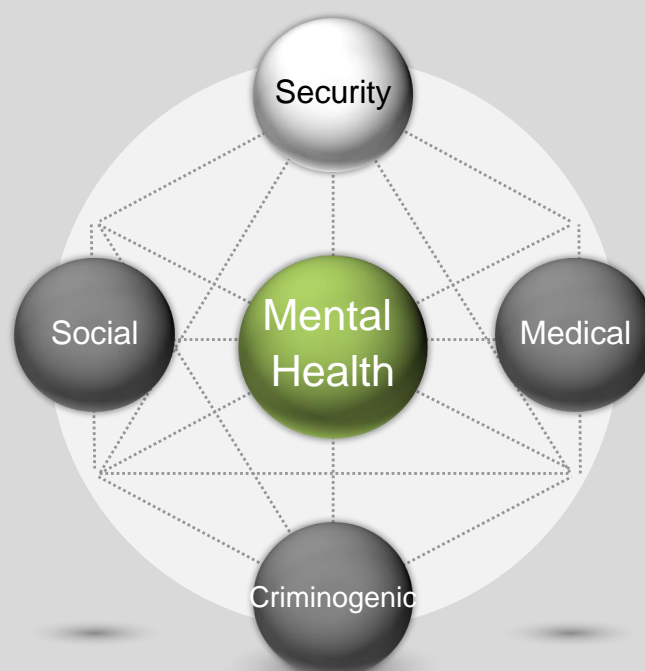
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Risk and Needs Assessment

Mental Health in prison context

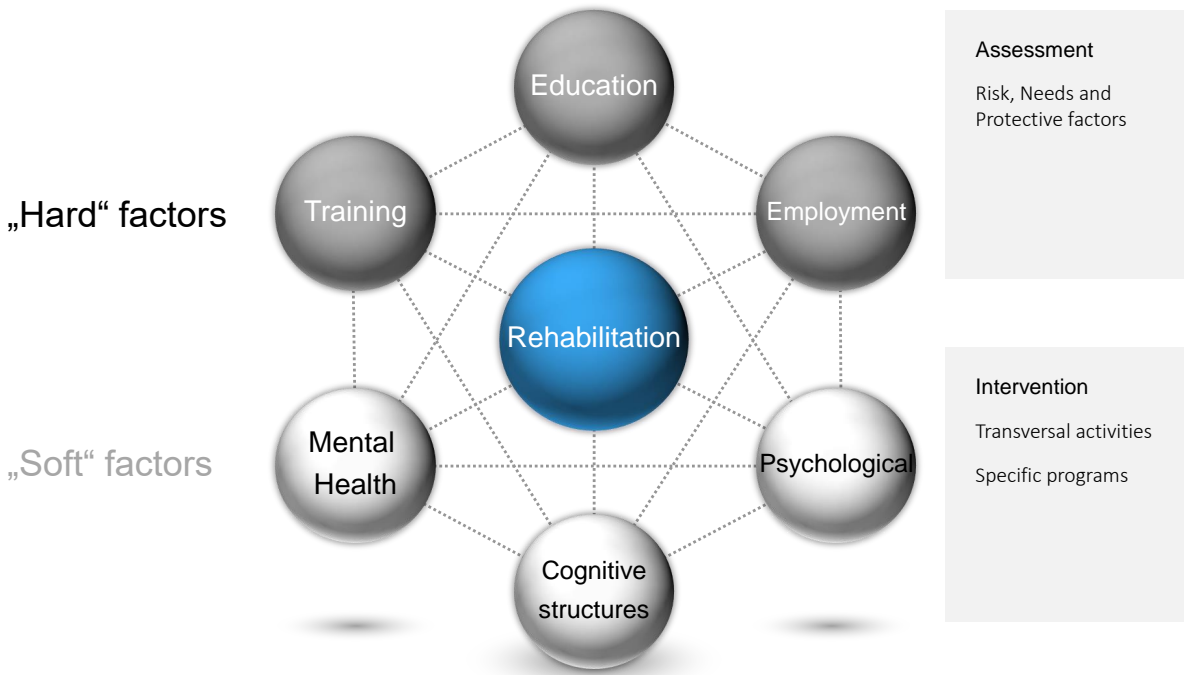
- History of antisocial behavior
- History of violent acts
- Previous attempts against others or themselves
- Family support
- Housing
- Work habits and history of being fired



- Use of drugs and/or alcohol
- Personality disorder
- Depression and anxiety
- History of Psychotic episodes
- Adherence to medical treatment

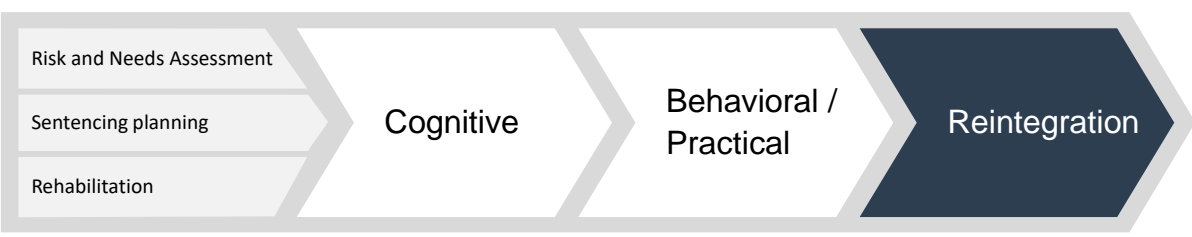
7S-FRAMEWORK (MCKINSEY)

The seven Success Factors for rehabilitation



Rehabilitation Model (RNR)

Risk-Needs-Responsivity



- Changing risk factors and hard skills
- Reducing criminogenic needs
- Improving protective factors
- Rehabilitation programs vs Specialist psychological interventions
- Mentoring programs
- Mental Health treatment
- Theological education and pastoral support
- Social and family support
- Resettlement plans
- Transition management
- Social and organizational support

Mental health in prison

Summary



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2. Common Mental Health Disorders

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3. DEALING WITH MENTALLY ILL IN PRISONS

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4. COMPREHENSIVE REHABILITATION APPROACH

- Risk, Needs, responsivity



5. European Survey CoE

- Findings and conclusions



Council of Europe
Conseil de l'Europe

Questionnaire on Mental Health Disorders and Disabilities of Persons in Penal Detention and under Probation Supervision

*Charlie Brooker, Honory Professor, Centre for Sociology and Criminology
Royal Holloway, University of London*

Jorge Monteiro, Head of Unit- Prison and Probation Services- Portugal

Council of Europe
Conseil de l'Europe





Mental health in prison and probation

Main findings



Table 1 – Response

<i>Prisons</i>	
<i>Number of Total Returns</i>	Note: Germany sent 10 different responses (out of a possible 16), Spain sent 2
	Thus, there was a possibility of 67 'Response Units'
	Data is reported from 42 out of a possible 67 'response units'
<i>% Overall Response</i>	63%

The Council of Europe/CEP Survey: mental health in prisons and probation response rate

- Received no questionnaires
- Received both questionnaires
- Received the Probation questionnaire only
- Received the Prison questionnaire only



Mental health in prison and probation

Main findings



Table 2 – Receiving mental health awareness training

<i>Prisons</i>	
<i>Number receiving training</i>	31
<i>No. of Valid responses</i>	42
<i>% 'Yes' training received*</i>	73.8%
<i>Range</i>	N/A



- In prison, many countries provide training for staff in the area of mental health, mostly raising awareness training activities but also specialized training for diagnose and treatment

Table 4 – Estimation of Prevalence of mental health disorders in Prisons and Probation



- Range – 0% - 80%
- It was not a consensual topic, since it depends on the definition of mental health disorders and disabilities

<i>Prisons</i>	
<i>No of valid responses</i>	26 (61.9%)
<i>List estimates by Country/Jurisdiction</i>	Andorra- 20%; Armenia- 12%; Bulgaria- 0,36%; Croatia- 10/80%; Czech Republic- 60%; Finland- 65%; France- 6/24%; Greece- 9%; Iceland- 15%; 10%- Lithuania- 10%; Latvia- 38%; Luxemburg- 15%; Malta- 20%; Montenegro- 65%; Portugal- 2%; Romania- 16%; Russia- 8%; San Marino- 0%; Slovenia- 5-13%; Spain- 4%; Spain-Catalonia- 19%; Sweden- 46%; DE- NI- 30%; DE-SH- 20%; England - 78%



Mental health in prison and probation



Initial findings

Table 6 – When does screening for mental health problems take place in prison

	<i>Prisons</i>
<i>Intake</i>	30 (71,4%)
<i>Admission</i>	34 (80,9%)
<i>Preparation for release</i>	12 (28,5%)
<i>Probation</i>	



- Most of the countries have screening procedures established in the first phase of incarceration (Intake and Admission)

Table 8 – How often are prisoners screened for MH problems



- Mainly health professionals are conducting the screenings, although some countries replied that prison staff is also assessing inmates

Frequency of Prisoner screening for mental health problems

<i>By request of the prisoner</i>	28 (66,6%)
<i>By medical order</i>	28 (66,6%)
<i>Once a year or less</i>	24 (57,1%)
<i>Every two years or more</i>	28 (66,6%)



Mental health in prison and probation



Initial findings

Table 11 – Does the prisons in your country/jurisdiction have special units to provide treatment to detainees with psychiatric mental health disorders?



- A significant number of countries mentioned that there are special units with specific resources (including physical conditions) adapted to the needs of prisoners with mental health disorders

	<i>Prisons</i>
<i>No of valid responses</i>	42
<i>% stating 'yes'</i>	29 (69%)

Table 14 – Is there a prison suicide reduction programme established in your country/jurisdiction

	<i>Prisons</i>
<i>Valid responses</i>	42
<i>% stating there is such a programme</i>	37 (89%)



- Suicide in prison is a concern of all countries and jurisdictions
- It's a very important topic with large positive responses rate
- Many countries have in place suicide prevention programs that combine screening for early signs and symptoms of risk of suicide and follow-up of cases of risk



Mental health in prison

Summary



- Good reaction from members states to the questionnaire (63%)
- Extensive reports with a lot of interesting and relevant information
- Clear increasing investment from member states on the mental health of inmates
- Training and raising awareness on mental health disorders is provided for all prison staff in many countries (74%)
- Importance of research on the prevalence of mental health disorders among inmates in order to better acknowledge the specific needs of this population (62% of answers)
- Increasing shared responsibilities between MoJ and MoH in the treatment of inmates with mental disorders (66%)
- Existence of special units with physical conditions and human resources specialize in the accommodation and care of inmates with mental health disorder and other disabilities (69%)
- Very impressive rate of positive responses to the collection of data related to suicide behaviors (90%)
- As well as the existence of suicidal prevention programs and strategies (89%)
- Good responsive rate referring to the work with the community in resettlement plans

Promoting change...



... building new opportunities.



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MENTAL HEALTH IN PRISON

Reducing risk Factors

Jorge Monteiro

*Clinical Psychologist
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1



2

Key premises of effective practice

- People fear crime
- The primary aim is to protect the public
- The primary goal is to reduce reoffending
- The criminal justice system has a significant impact on crime rates
- Research into factors associated with offending and what works in reducing reoffending.
- Standardised assessments of risk and need and evidence-based practices to address risk and needs
- Focus on prolific offenders with a higher risk of reoffending
- This will gain the courts' and the public's credibility and trust
- Courts will make less prison sentences and more community orders

3

The reality

4



5

	England and Wales prison population	Rate per 100,000
2000	64,602	124
2002	70,861	135
2004	74,657	141
2006	78,150	145
2008	82,636	152
2010	84,725	153
2012	86,634	153
2014	85,307	149
2016	85,348	146
2018	82,773	140
2020	79,514	133

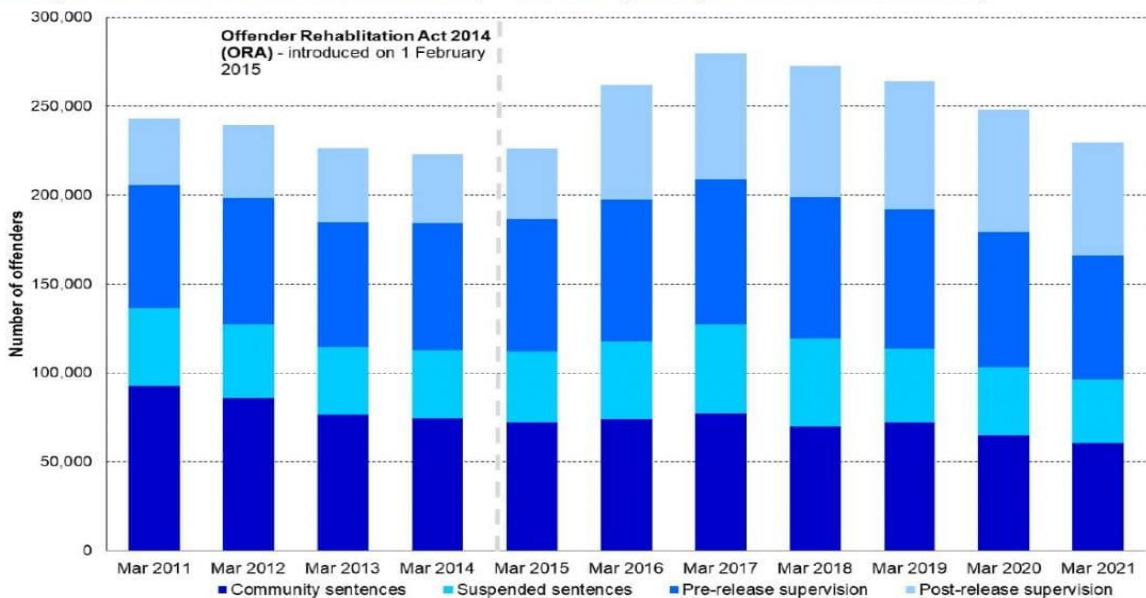
6

Statistics England and Wales

- 2000 prison population 64,602
- 2020 prison population 79,514
- The total number of pre-sentence reports (PSRs) prepared by the Probation Service decreased by 68% between 2010 and 2020 to 68,077.
- In 2007, 191,000 people received community orders. In 2020, 52,937 COs were started.
- Between 2007 and 2017 the use of fines increased and there were 17,000 more suspended sentences.

7

Figure 3: Number of offenders under Probation Service supervision, 31 March 2011 to 31 March 2021 (source for 2018 to 2021: Table 4.6; source for years prior to 2018: Table 4.7)



8

The further problem of the attrition rate

- Crimes committed
- Crimes reported
- Crimes recorded
- Crimes cleared up – (the police clear up 8 to 9% of 1,500,000 offences reported in London)
- Convictions
- Community orders
- Reoffending rate

9

An alternative reality

10

What if?

- The problem is not offenders, but the harm caused by crime to victims and communities.
- The primary emotion of the public over crime is anger rather than fear.
- What matters to most victims is to undo injustice done to them rather than protection and punishment.
- Justice is experienced by attending to what matters to victims and communities.
- We evaluated effectiveness by the victims' satisfaction with what offenders did to address the loss and damage caused by crime.
- We judged offenders by how they fulfilled their obligations to the victim and the community rather than their offending.

11

Victims could be the drivers
for reducing the prison
population.

12

What restorative justice does

Restorative justice offers safety from domination in skilfully facilitated processes which provide participants with opportunity.....

To rigorously examine the lived experience of being harmed and harming someone.

To engage in dialogue in which the unjust exercise of power and control over another is made transparent and the beliefs and values supporting this injustice can be confronted and challenged.

To validate the truth of victims and vindicate their lack of responsibility for the wrong-doing and lift the burden of any shame so they can regain power and control over their lives.

To expose perpetrators to the reality of their actions, and their unjust and harmful impact, to make commitments to make amends and to become accountable for their past and future behaviour.

13

Restorative justice outcomes in Northern Ireland

Law on young offenders makes it mandatory in almost all cases for prosecutors or judges to offer a restorative conference with victims.

90+% satisfaction reported by victims.

More positive desistance from offending rates than the existing community orders.

95% compliance rate.

Significant reduction in sentences of custody by the courts.

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Restorative justice in prisons in Northern Ireland.

- 100 prison governors and officers trained in Restorative Justice.
- Victims enabled to have restorative meetings with prisoners.
- Officers can mediate between 'enemies' in prison.
- Restorative circles reduce discipline problems and transform the relationships between staff and prisoners.
- Restorative meetings between prisoners and their families prior to release.

15

What if?

- Prisons focused on the obligations of prisoners towards those whom they have harmed as well as on risks and needs.
- Prisons with reduced numbers of inmates could become restorative communities in which people can learn to live with others without recourse to harm.
- Victims and members of the community regularly met with prisoners to work on reparation and reintegration.

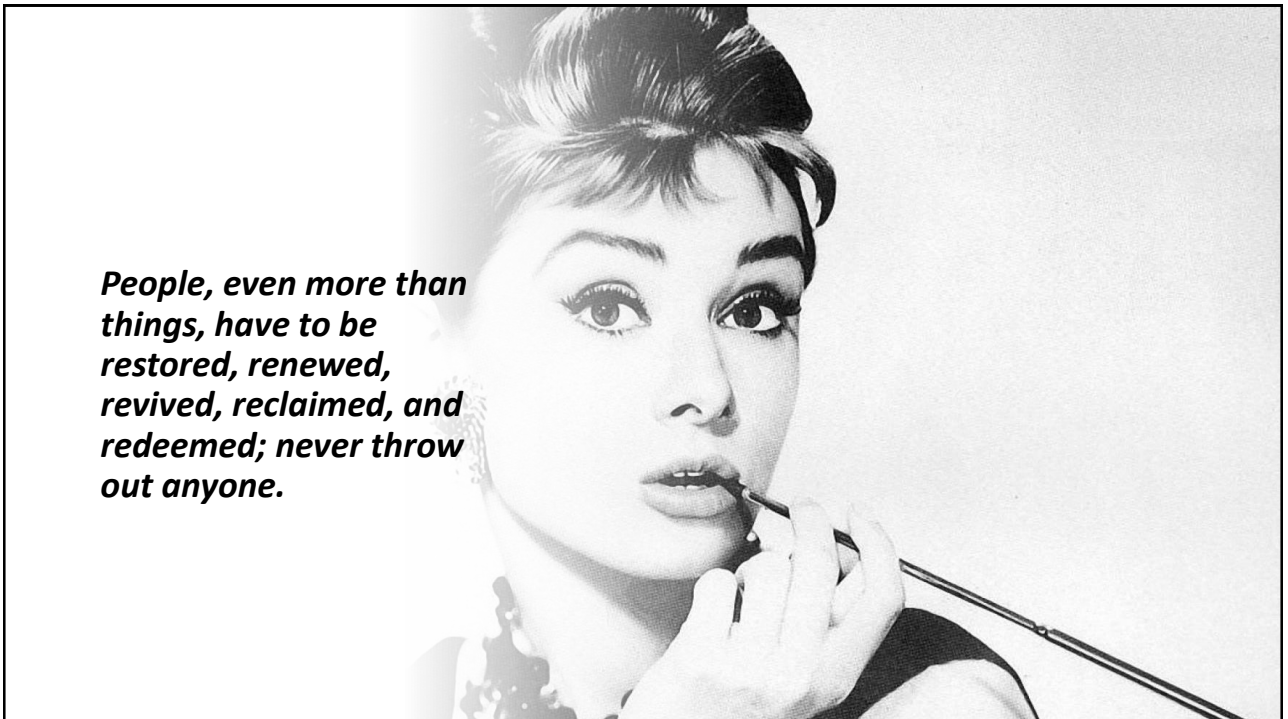
16



When you hit a wrong note, it's the next note that you play that determines if it is good or bad.

Miles Davis

17



People, even more than things, have to be restored, renewed, revived, reclaimed, and redeemed; never throw out anyone.

18

Mulțumesc
Thank you

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Technology as part of a viable alternative to detention: the use of electronic monitoring in practice and future outlook

ERA seminar
Bucharest, 28 February - 1 March 2022



Co-funded by the Justice Programme of the European Union 2014-2020

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1

••• Content

1. Context of electronic monitoring in Belgium
2. Electronic monitoring data in Belgium
3. Objectives of the Electronic Monitoring Directorate (DSE)
4. The prospects for innovation
5. Points of attention in relation to the Council of Europe recommendations

2

2

Context of electronic monitoring in Belgium

Electronic monitoring has been implemented in Belgium since 1998

Initially electronic monitoring was under the responsibility of the General Administration of Penitentiaries (Virtual Prison) and in 2007 electronic monitoring was transferred to the General Directorate of Houses of Justice (Community Reintegration with Electronic Monitoring)

Historically, National Electronic Monitoring Centre.

In 2015 after a new institutional reform :

- DSE for the Wallonia-Brussels Federation and the German-speaking Community

- VCET for the Flemish Community

Global figures Belgium, VG, FWB

Electronic monitoring is managed by public services and is free of charge for offenders.

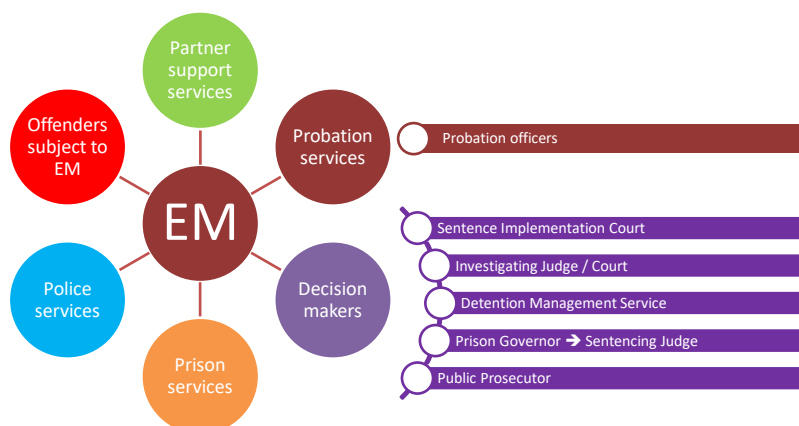
We work with private companies only for the supply of the electronic monitoring equipment and software applications.

3

3

Context of electronic monitoring in Belgium

Stakeholders



4

4

Context of electronic monitoring in Belgium

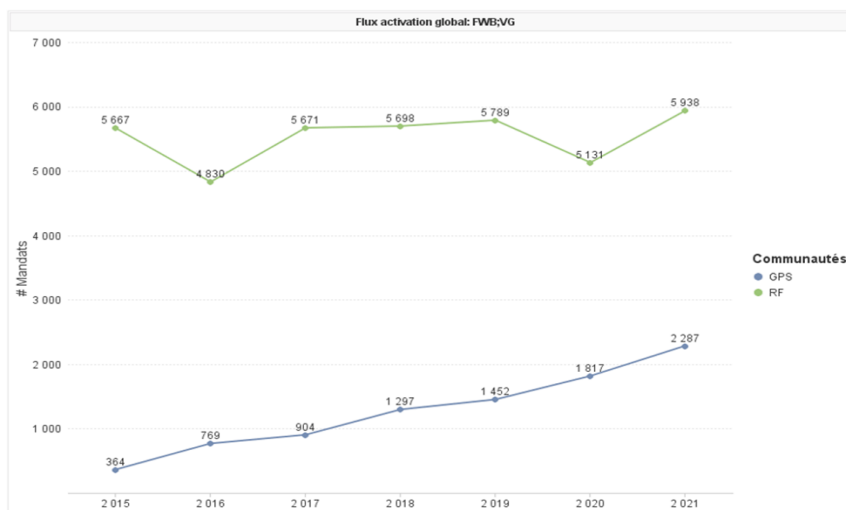
- **Field of application : several types of electronic monitoring**
 - Electronic monitoring in replacement of pre-trial detention (DPSE)
Decision-maker: investigating judge, investigating courts
 - Electronic monitoring for sentences < ou = to 3 years imprisonment (DD + SEDIRP)
Decision-maker: prison governor and Detention Management Service
01/06/2022 entry in force of the Sentence Implementation Judge
 - Electronic monitoring for sentences > to 3 years imprisonment (SETAP)
Decision-maker: sentence implementation court (SIC)
 - Electronic monitoring as additional punishment to the main sentence, to protect society against persons who have committed serious crimes (i.e., rape, murder,...)
Decision-maker: criminal judge but put as disposal of the SIC
 - Electronic monitoring for mentally ill offenders
Decision-maker: SIC specialized for mentally ill offenders
 - Electronic monitoring as an autonomous Punishment
Decision-maker: Criminal Court

5

5

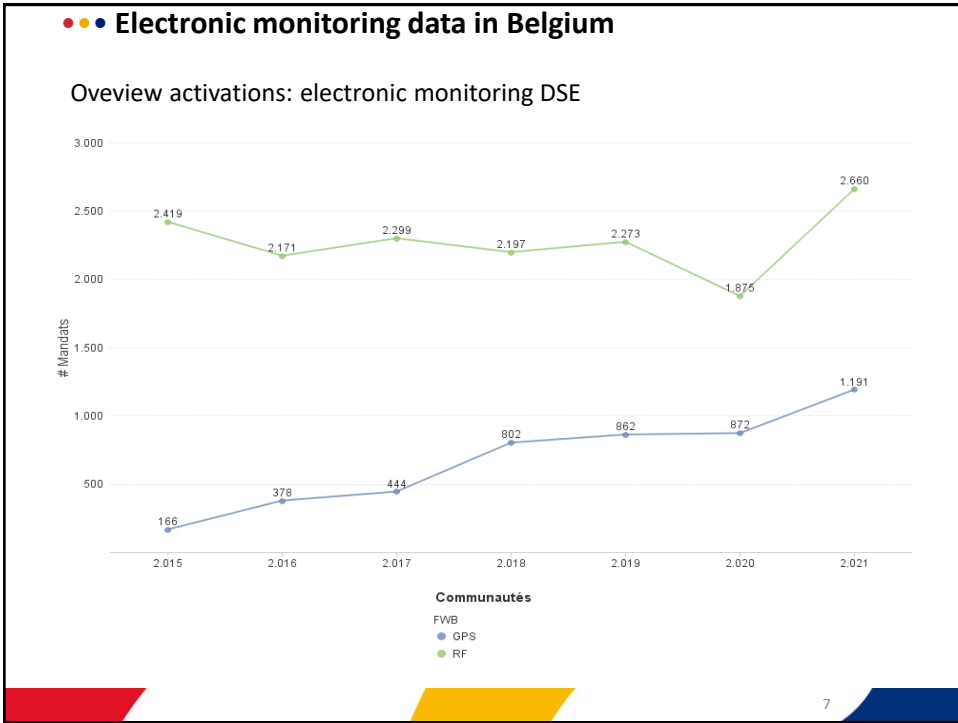
Electronic monitoring data in Belgium

Overview activations: electronic monitoring VCET+ DSE

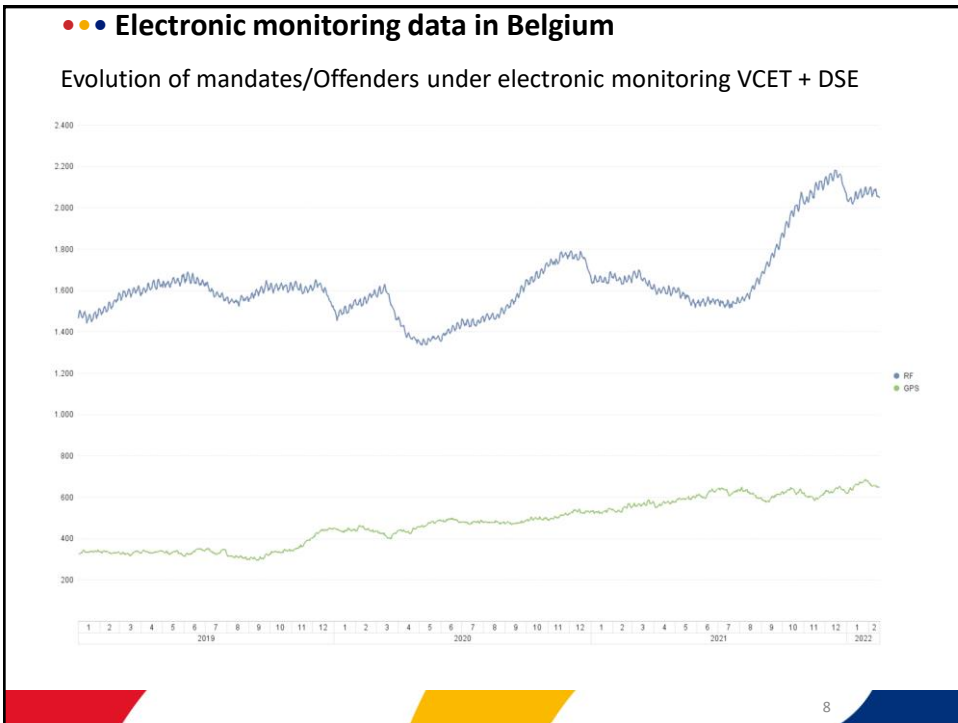


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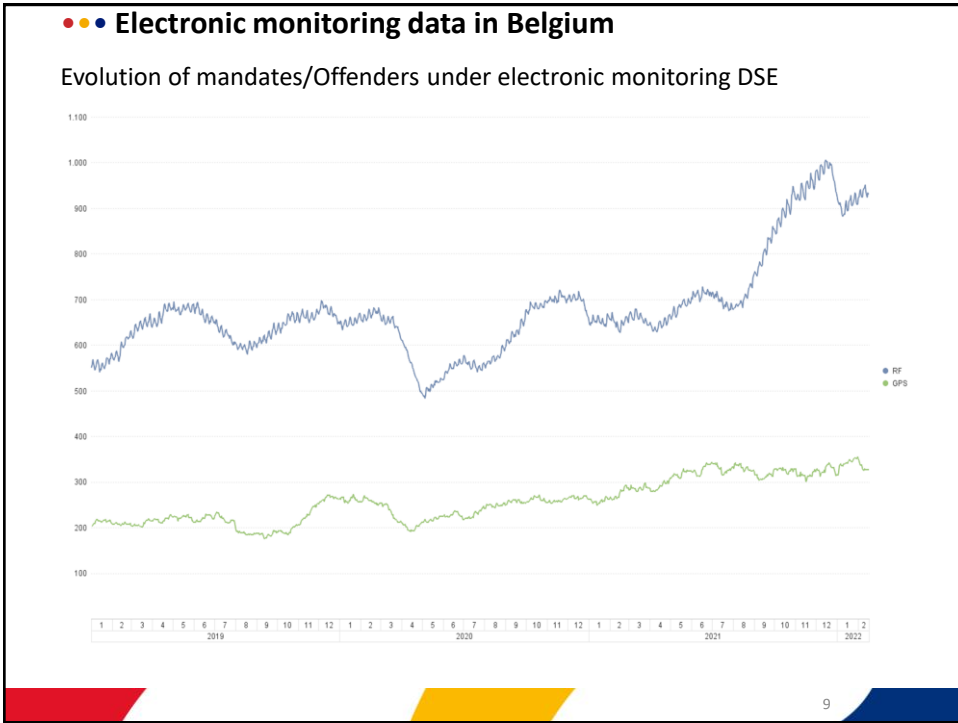
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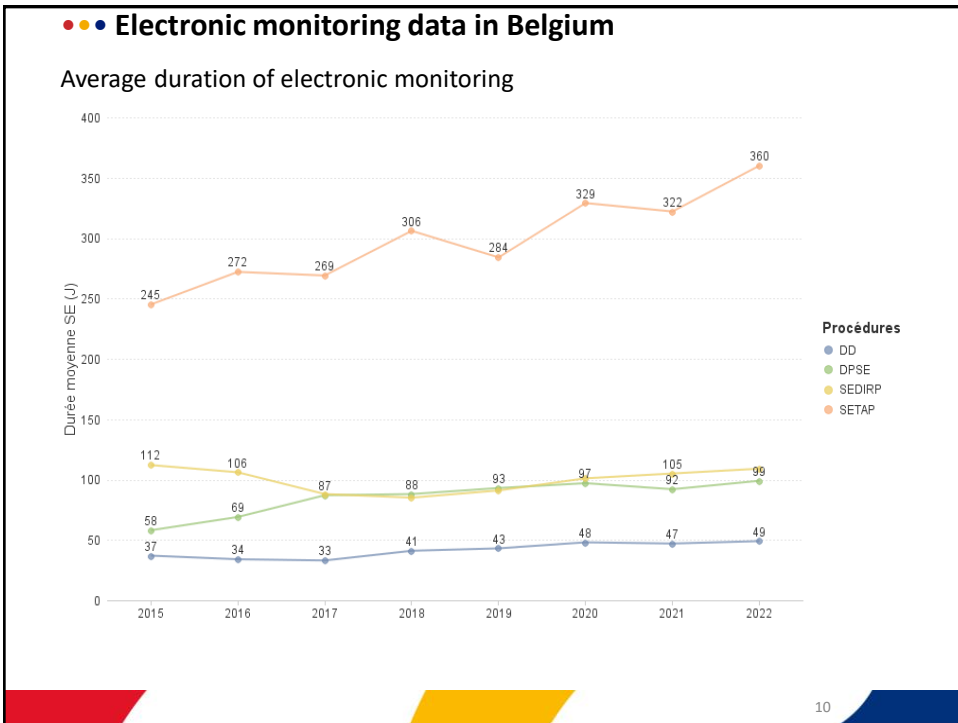
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••• Objectives of the Electronic monitoring Directorate (DSE)

The Electronic Monitoring Directorate is responsible for the implementation and monitoring of electronic monitoring of defendants with three main objectives:

- Providing the judicial and prison authorities and the community with an effective alternative to imprisonment
- Providing the judicial and prison authorities and the community with an efficient alternative to imprisonment
- Centralising, analysing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers
- Supporting social inclusion and aiming for responsabilisation

11

••• Providing the judicial and prison authorities and the community with an effective alternative to imprisonment

- Limiting prison overcrowding
- Respecting legal time limits for incarcerated offenders
- Short deadlines for the placement of convicted offenders who are released pending electronic monitoring
- Quality information for offenders and short placement times for a low activation failure rate
- 24/7 monitoring of offenders

12

••• **Providing the judicial and prison authorities and the community with an efficient alternative to imprisonment**

- 4 to five times cheaper than prison.
- Organizational management reporting tools, paperless,
- Semi-automated tasks through computer workflows,
- A route planner to optimise the missions of the mobile team in charge of the technical interventions
- All the document are digitised on our electronic monitoring system Siset (paperless)

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••• **Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers**

- **Electronic monitoring in Belgium**

RF monitoring for sentenced offenders



The RF - set

GPS monitoring for pre-trial detention

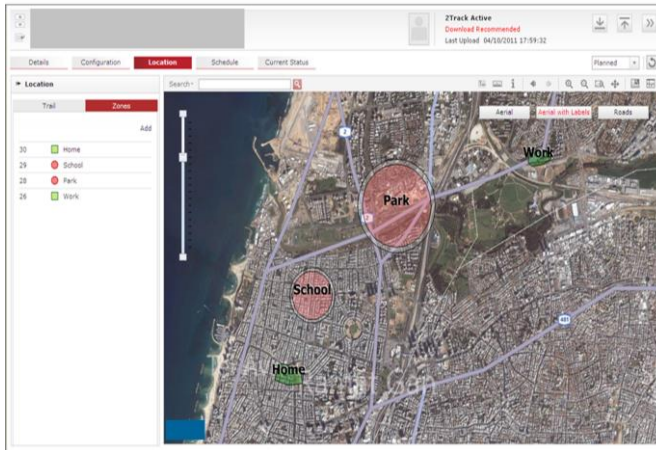


The GPS - set

14

●●● **Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers**

• **Software for GPS monitoring**

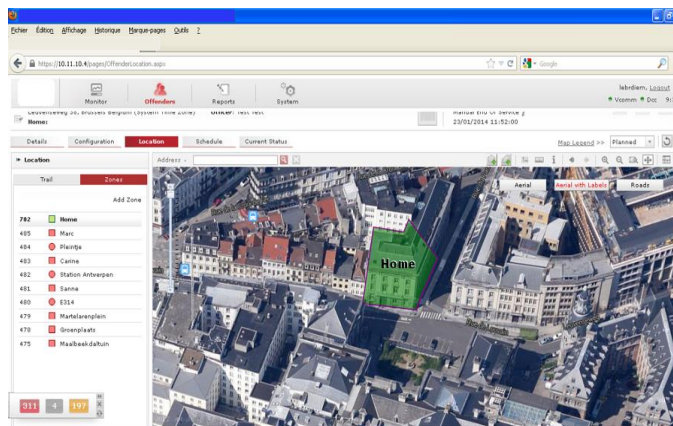


Use of a circular
 - inclusion zone (green)
 - Exclusion zone (red)
 - with buffer zone (grey).

15

●●● **Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers**

• **Software for GPS monitoring**

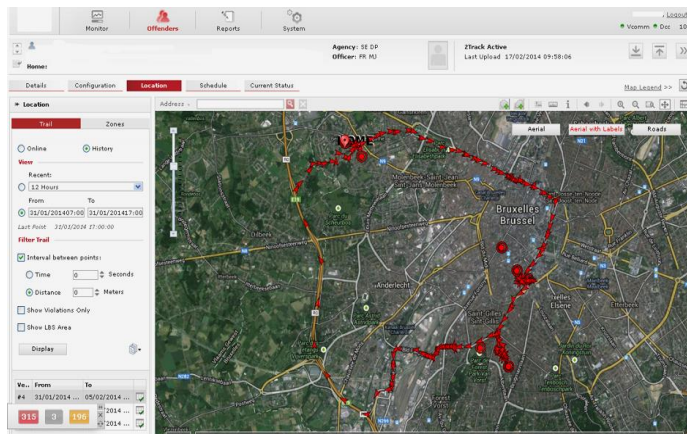


Example of a polygon
 shaped inclusion zone

16

●●● **Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers**

• **Software for GPS monitoring**

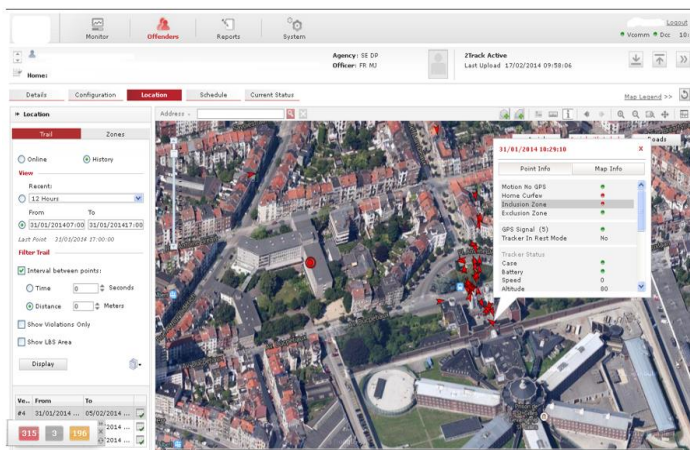


Example of a trail with GPS and LBS points

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●●● **Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers**

• **Software for GPS monitoring**



Screen provided in trail with technical information about the equipment on the offender (e.g. battery level). The system indicates that the offender is outside his inclusion zone (home).

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●●●Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers

- Electronic monitoring system (EMS) to monitor RF and GPS equipment alarms

Event Time	Offender ID	Full Name	Message	Event ID
26/01/2022 22:15:00	M101506-1	[REDACTED]	Present - must be out	3647...
26/01/2022 22:14:13	M104425-1	[REDACTED]	Tracker Missed Call	3647...
26/01/2022 22:06:13	M105043-1	[REDACTED]	Tracker Missed Call	36471
26/01/2022 21:29:35	M98447-1	[REDACTED]	Left during curfew	36471
26/01/2022 21:10:14	M103859-1	[REDACTED]	Tracker Missed Call	36471
26/01/2022 21:10:14	M103592-1	[REDACTED]	Tracker Missed Call	36471
26/01/2022 19:45:01	M92599-1	[REDACTED]	Did not return	364701
26/01/2022 18:19:53	M104632-1	[REDACTED]	Tracker Power Disconnect	364701
26/01/2022 13:14:13	M104632-1	[REDACTED]	Tracker Missed Call	364677
26/01/2022 08:40:02	M102913-1(M)	[REDACTED]	Tracker Power Disconnect	364647
26/01/2022 07:12:24	M97971-1	[REDACTED]	Left during curfew	364638
24/01/2022 22:37:02	M91650-1	[REDACTED]	Left during curfew	364525
23/01/2022 20:00:00	M104026-1	[REDACTED]	Did not return	3644002
23/01/2022 14:13:08	M99925-1	[REDACTED]	Strap Tamper	3643726

Main screen with new alarms generated from the equipment and schedules of the offender

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●●●Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers

- Electronic monitoring system (EMS) to monitor RF and GPS equipment alarms

Agency: VCET
Procedure: SETAP ETSURB/

Details Configuration Schedule **Current Status**

System: Recent Day

From: 25/01/2022, 22:28 To: 26/01/2022, 22:28 Go

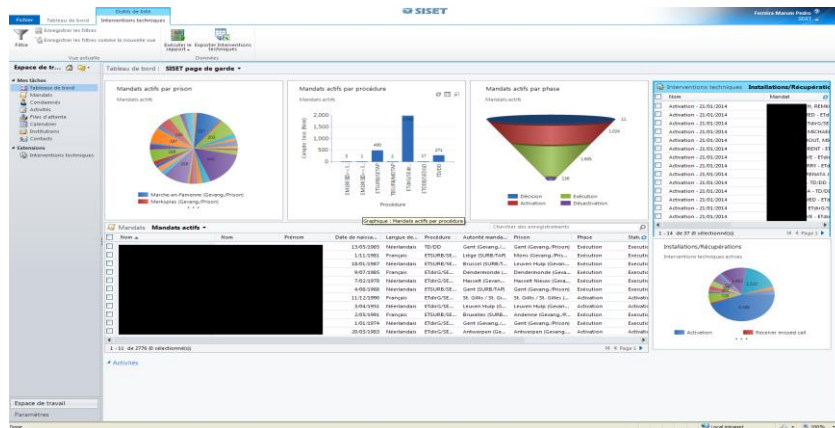
Event Time	Message
26/01/2022 19:45:15	Status -----
26/01/2022 19:45:01	Did not return
26/01/2022 19:25:14	Sanity -----
26/01/2022 16:26:56	Download Offender successful
26/01/2022 16:26:56	Download Receiver successful - 00505
26/01/2022 16:26:36	Offender is out
26/01/2022 16:20:20	Status -----
26/01/2022 16:15:05	Left after return early
26/01/2022 16:07:34	Status -----
26/01/2022 16:05:41	Status -----
26/01/2022 16:05:26	Returned early

When clicking on a specific alarm, the system opens the offender file with all the information (alarms, movements,...). These alarms (violations) can lead to disciplinary sanctions for the offender (managed in Siset).

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- Centralising, analyzing and transmitting relevant information on electronic monitoring to the mandating authorities, police and probation officers

- Electronic monitoring system (SISSET) to manage creation of mandates, offender's schedules, disciplinary sanctions, automatic e-mailings, reporting BI



These two electronic monitoring systems (EMS and SISSET) are synchronised

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- Supporting social inclusion and empowerment of offenders

- 5 basic principles : non-normativity, non-substitution, responsabilisation, empowerment, damage limitation
- Social guidance by probation officers for all electronic monitoring mandates except for pre-trial detention. Probation officers work with the offenders on the risks and resources present in their situation.
- Social Permanence for pre-trial detention, service offer and occasional help
- Orientation to partner support services specialising in social and psychological support.

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••• The prospects for innovation

- Technological developments of electronic monitoring :
 - Less-intrusive equipment (e.g. wristband/watch)
 - Increased possibility of interaction with the offender from the electronic monitoring equipment or via a web application on the smartphone (schedules (communication and reminders)
 - Limitation of the number of pieces of equipment,
 - Possibility to switch from RF to GPS system without changing the material
 - Biometric identification of the offenders
 - Development of AI to support the monitoring process :

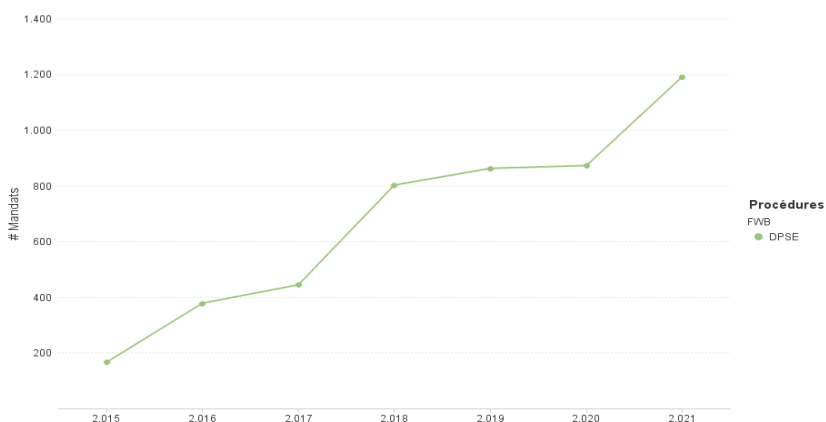
Interpretation of events, visualization of trends (e.g. visualization of the shortest path on the electronic watches under GPS), recurring patterns of loss detection, automatic reports on non-compliance with the electronic monitoring regime

- Not yet in Belgium but our legal framework could evolve and promote the implementation of these innovations: Victim protection system, electronic monitoring for minors, electronic monitoring equipment with breathalyzer.

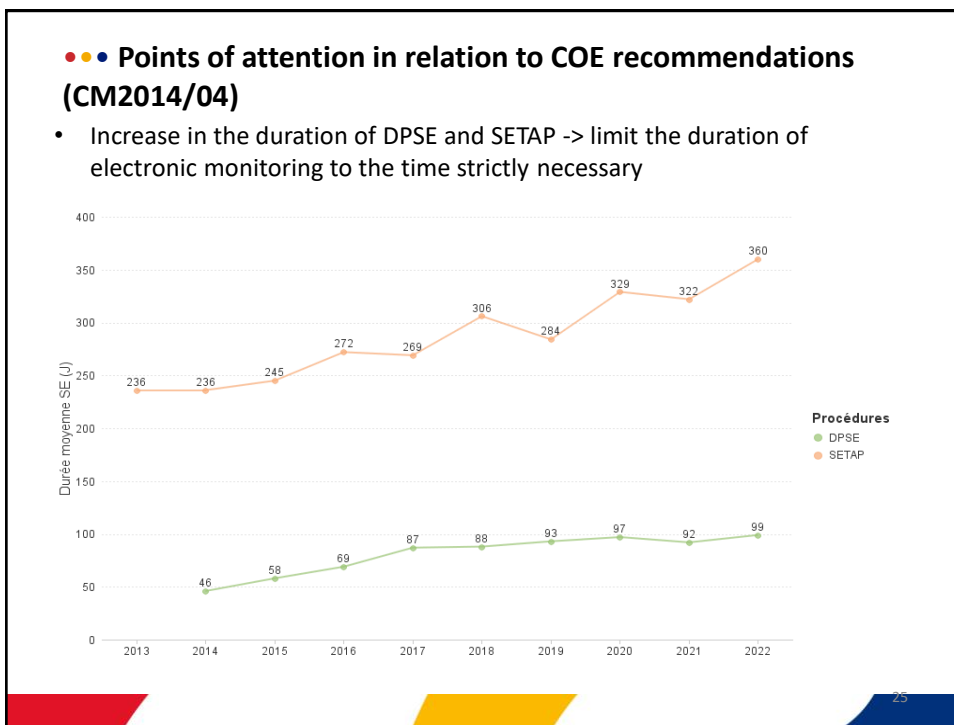
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••• Points of attention in relation to COE recommendations (CM2014/04)

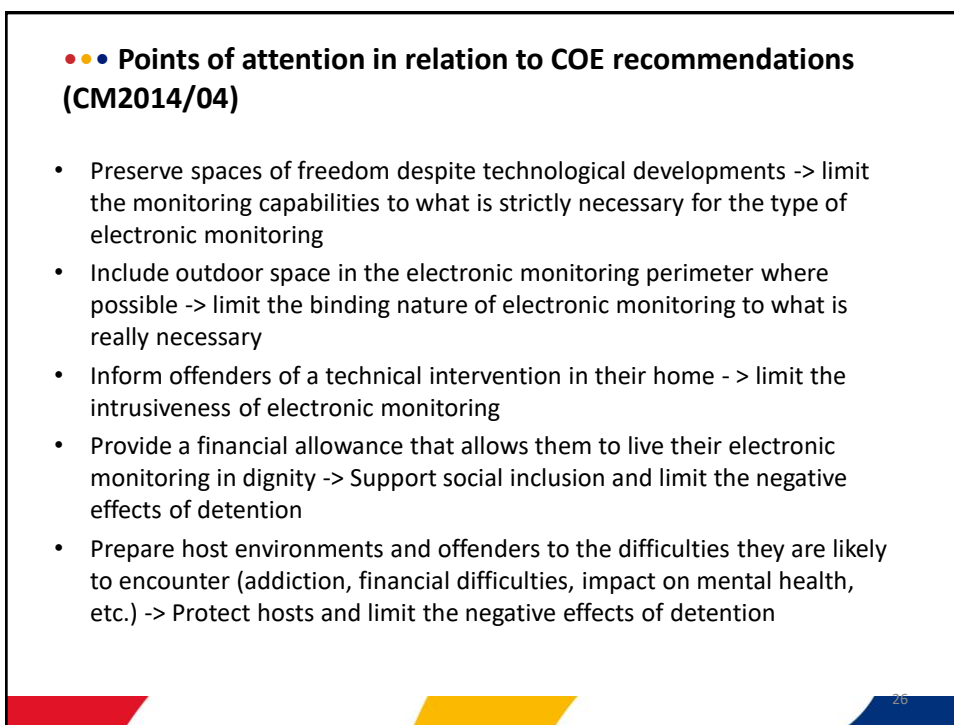
- Increase of electronic monitoring for pre-trial detention -> limit electronic monitoring for pre-trial detention to situations that really require and if not using another alternative to prison without electronic monitoring.



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••• Contact

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