

# COUNCIL FRAMEWORK DECISION 2009/829/JHA OF 23 OCTOBER 2009

*The use of European Supervision Order during criminal investigation  
Challenges and solutions.*

**CEP Expert Meeting**

**Enhancing the Implementation of Framework Decisions 2008/JHA/947 & 2009/JHA/829**

## CONTENT

- Difficulties arising from different European approaches
  - Concerned person shows up to be supervised before certificate arrives
  - Certificate comes very late, after approx. 6 months and incomplete
  - The concerned person never shows up in Romania
  - Uncertain duration of the supervision measures
  - Essential information missing
  - Essential conditions were not met
  - The certificate sent before issuing the order regarding supervision measures
  - Communication issues between MS authorities
- EJM assistance
- Statistics
- National transposition of the COUNCIL FRAMEWORK DECISION 2009/829/JHA
  - Competence:
    - Romanian central authorities
    - Romanian authorities for recognizing and executing
    - Romanian issuing authorities
- Conclusions

# 1. THE CONCERNED PERSON SHOWS UP AT THE POLICE OR AT THE PPO, BEFORE THE CERTIFICATE IS SENT FROM THE ISSUING STATE

- the person becomes impatient and starts to be afraid of being considered guilty for non-show, or even re-arrested
- Impossibility of exercise supervision at the request of the concerned person

## 2. CERTIFICATE COMES VERY LATE

The certificate and decision arrived to the Romanian authorities months after the person was released from pre-trial detention

The person stayed completely free in Romania , without the authorities to have any idea both about the criminal proceedings in another EU MS and about the supervision measures ordered regarding that person

Eurojust / Europol crime areas

Finally : the certificate was incomplete so it was sent back. Another period of time for the person to be completely free

### 3. THE CONCERNED PERSON NEVER COMES BACK TO ROMANIA

- As it is
- In one case the person revealed to a family member that he was ordered supervision measures after he stayed in provisional detention until it was reached the maximum of the penalty provided by the law in the issuing state for the crime he had committed, and was accused of
- so he thought he couldn't be re-arrested

4. Requesting authorities order the supervision measure for an uncertain duration, expressed generically : *“until the criminal trial is finished”* or *“at least until 2027 (E.g.)”*

- conflict with the Romanian Criminal Procedural Code (*max 60 days, possibility to extend; maximum duration while investigation 1y/2y*)
- conflict with human rights
- conflict with Romanian Constitutional Court 's view and jurisprudence

## 5. ESSENTIAL INFORMATION MISSING

- the maximum duration of the measure in the issuing State;
- the maximum punishment provided by the law of the issuing state for the committed crime
- date of the release from custody
- period of time spent in custody
- date when the order entered into force

# 6. ESSENTIAL CONDITIONS WERE NOT MET

- Missing original or certified copy of the decision taken in the issuing state
- Missing signature on the certificate



## 7. THE CERTIFICATE WAS SENT BEFORE THE PERSON WAS RELEASED FROM CUSTODY AND EVEN BEFORE THE SUPERVISION ORDER WAS ENFORCEABLE

The judge only wanted to be sure that his order would be recognized before releasing the person , so he ordered supervision measures under the condition of prior recognizing his order by the Romanian authorities

As a result, the order wasn't enforceable until after recognizing

# 8. COMMUNICATION ISSUES BETWEEN MS' AUTHORITIES

No answer to requests for supplementary information

# EJN ASSISTANCE :

- EJN site, at least for:

- Atlas

-Judicial library for

Full text of the Legal Instrument

Status of Implementation

EU Notifications and Declarations

EU Forms for Mutual Recognition Instruments

- Fishes Belges

to compare the legislation from different MS

- Contact Points

## ▶ Requests:

- ▶ 2018 – 2022 : issued -
- ▶ received 25
- Netherlands 1
- Portugal 1
- Spain 4
- France 19

- ▶ recognized and executed 20
- ▶ Portugal, France
- ▶ sent by a PPO to a Court 1, Portugal
- ▶ sent to the Ministry of Justice 3,
- ▶ Spain
- ▶ Sent back – informal - 1 Spain

## STATISTICS:

**National Transposition of the COUNCIL FRAMEWORK DECISION**  
2009/829/JHA of 23 October 2009  
Law 302/2004

**Romanian central authorities**  
ART. 185 par 1

Requests submitted shall be sent through the following central authorities

- a) The Ministry of Justice, if they refer to the activity of judgment;
- b) The Public Prosecutor's Office attached to the High Court of Cassation and Justice, if they refer to activities from the stage of investigation and criminal prosecution (pre – trial);

## **Romanian executing authorities**

Recognizing and executing: ART. 185 par 2

The competence of Romanian authorities for recognizing and executing such a request is given to the PPO attached to the Tribunals / Tribunals where the person has its legal regular residence

If no legal residence : PPO attached to the Bucharest Tribunal / Bucharest Tribunal

## Romanian issuing authorities

Issuing Romanian authorities: ART. 189 par 1

All PPOs and all courts

Issuing the certificate and transmitting it :

the PPO/ court which adopted the measure,  
directly to the competent executing authority in the  
executing state

# CONCLUSIONS(1):

There are still things to be improved, for example:

- improve communication between authorities
- improve the knowledge of languages among judicial authorities
- set up a shorter time limit to send the certificate, for the issuing state
- ensuring proper budget for translation
- give the initiative of starting the recognizing process also to the concerned person
- give some powers to the executing state to react if the person fails to respect the imposed supervision measures
- set up dedicated statistics to this kind of requests
- training and rising awareness among prosecutors, judge and lawyers
- training for clerks of the courts and of the PPOs, including training in languages



# CONCLUSIONS(2):

- It is a great idea to have legal instruments for recognizing and executing supervision measures between Member States
- There are still different approaches
- Legislation in different EU MS should be harmonized (house arrest E.g.)
- EJM should remain properly financed in order to maintain its support for practitioners
- We need new legal instruments in order to achieve the objective of the EU as an area of freedom, security and justice whilst replacing provisional detention

# Thank You!



Stefania Stan  
EJN Contact Point  
Prosecutor

Service for International Judicial Cooperation and Programs  
Prosecutor's Office attached to the High Court of Cassation  
and Justice, Romania

Tel.: 004 021 319 39 11

Fax: 004 021 319 39 33

e-mail : [stan\\_stefania@mpublic.ro](mailto:stan_stefania@mpublic.ro) ,  
[ejncp\\_piccj@mpublic.ro](mailto:ejncp_piccj@mpublic.ro)