

## **Updates in the Situation Under Electronic Surveillance in Accordance with Law No. 24-06 Amending and Supplementing Decree No. 66-156, which Includes the Algerian Penal Code**

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**Abstract---**No one denies that, in keeping pace with scientific developments in the field of modern technology, the idea of using technology to modernize and rationalize the penal system has emerged. This is a necessary response resulting from the worsening negative effects of short-term imprisonment, on the one hand, and to alleviate the pressure on penal institutions, on the other. The search for modern penal methods as an alternative to short-term imprisonment has become a necessity, and this is what the Algerian legislator has sought to achieve by introducing electronic monitoring pursuant to Law No. 24-06 amending and supplementing the Penal Code. This law aims to strike a balance between society's interest in deterrence and the convict's interest in protecting their rights and freedoms.

**Keywords---**Electronic monitoring, penal system, convict, custodial sentence, judge enforcing the penalty.

### **Introduction**

Punishment is a form of criminal sanction imposed by the state on anyone who violates social values and individual freedoms. This aims to reform the convict and thus reintegrate him or her socially. Punishment is therefore one of the most important tools of penal policy to combat crime, according to research in penology specializing in this field.

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However, in light of the rapid scientific developments witnessed by countries around the world in various fields, the idea of using it in the modernization of the justice sector has emerged, particularly within the penal system. Among the new developments is the electronic monitoring system, which involves the execution of the sentence outside the penal institution but in a technologically-driven manner, allowing the convict to be electronically monitored by remaining in the designated location. This is a method adopted by Algeria to relieve pressure on penal institutions, on the one hand, and to limit the disadvantages of custodial sentences, on the other.

Although Algeria has previously adopted the penalty of electronic monitoring in the Prisons and Social Reintegration of Prisoners Law, specifically Articles 150 to 150 bis 15, it is used as one of the systems for adapting the sentence. Adopting electronic monitoring as an alternative to custodial sentences has become imperative in the context of the quest to humanize punishment. This is the issue we seek to explore in this article, especially since two interests conflict. It is necessary to enshrine the state's right to punish, in accordance with the principle of criminal legality, by imposing a penalty on the perpetrator of an act or omission when it violates a social value protected by criminal law. It is also necessary to implement the sentence for its punitive and reformatory purposes through social reintegration programs, on the one hand. On the other hand, it is necessary to address the disadvantages of short-term imprisonment by seeking a punitive outlet that reduces the economic burden on the state and prevents the emergence of new criminals.

Thus, we faced the following problem: **Has the Algerian legislator succeeded in regulating the provisions for electronic monitoring as an alternative to short-term imprisonment?**

To answer this problem, we adopted the descriptive and analytical approaches, according to the following plan:

**- Axis One: The concept of the penalty of placing under electronic surveillance**

**- Axis Two: Provisions for the penalty of placing under electronic surveillance**

### **Axis One: The concept of the penalty of placing under electronic surveillance**

To clarify the concept of electronic monitoring as a new approach in the Algerian penal system, with the aim of reducing the disadvantages of short-term custodial sentences, it is necessary to address its definition (first), then determine the reasons or benefits of adopting this alternative punishment (second).

#### **First: Definition of the penalty of placing under electronic surveillance**

From a jurisprudential perspective, there are multiple definitions of the penalty of electronic surveillance. Some define it as: "A means of enforcing the sentence using electronic means without the convict being in custody, based on the convict agreeing to house arrest at home or in his place of residence instead of moving."<sup>1</sup>

It has also been defined as: "home detention."<sup>2</sup>

Referring to Law No. 24-06 amending and supplementing the Penal Code, we find that the Algerian legislator created Chapter 1 bis 1, which is dedicated to electronic surveillance in Part One, entitled "Penalties Applied to Natural Persons," of Book One, entitled "Penalties and Security Measures," specifically Articles 5 bis 7 to 5 bis 12. When discussing electronic surveillance, the legislator initially only defined this alternative penalty by granting the judicial authority the power to replace the prison sentence imposed by placing the convict under electronic surveillance, provided the legally specified conditions are met.<sup>3</sup>

<sup>1</sup> Ezzedine Douadi, Abdelrahman Jelfi, Punishment Science, Belkis Publishing House, Algeria, p. 202.

<sup>2</sup> Ratiba Ben Dokhan, Electronic Surveillance (Electronic Bracelet) in Algerian Legislation, Journal of Legal and Economic Research, Volume 1, Issue 2, University Center, Aflou, Algeria, 2018, p. 247.

<sup>3</sup> Article 5 bis 7 of Law No. 24-06 of April 28, 2024, amending and supplementing the Penal Code, Official Gazette of the Algerian Republic, No. 30, issued on April 30, 2024

However, according to Paragraph 5 of Article 5 Repeating from the same law, we find that the penalty of placing under electronic surveillance is defined by the following: "Putting the person under electronic surveillance consists of wearing, throughout the term of the sentence, an electronic bracelet that allows the person to be identified in the place specified by the judge enforcing the penalties, which the person must not leave except with his permission."

Leaving, then, must be for serious reasons, examples of which are specified in Article 5 bis 10 of the same law, particularly passing an exam or continuing treatment.

The penalty of placing under electronic surveillance, or as some call it, house arrest, is based on the use of an electronic bracelet, a device with a continuous reception that enables communication via a central digital device between a transmitter placed in the convict's home and a receiver placed in the monitoring center<sup>4</sup>. This bracelet is equipped with an electric battery that ensures its operation for a specified period and triggers an alert in the event of a battery drain or malfunction.<sup>5</sup>

Therefore, the penalty of placing under electronic surveillance requires the availability of several electronic devices, namely:<sup>6</sup>

- A transmitter attached to the body of the person subject to the penalty of electronic surveillance, whether it is attached to the wrist or the ankle, which is most often attached for 24 hours. 24-hour security against all external shocks.
- A receiver placed at the residence and connected to a telephone line.
- A central computer allows the convict to be tracked under electronic surveillance and restrict their movements within specific limits. Whenever they exceed these limits or attempt to damage the device, a signal is automatically sent to the central computer, enabling the necessary action to be taken against them.

It should be noted that this penalty requires the convict to have a landline at home, which is relative, as some do not have one. This further emphasizes the inequality among convicts. Therefore, in our view, the state must grant the convict a landline until the end of the sentence, if it becomes apparent that they are unable to afford one.<sup>7</sup>

## **Second: Reasons for adopting electronic monitoring as an alternative punishment to the stated prison sentence**

The use of modern technology in combating crime is considered one of the most important achievements of modern penal policy in its quest to humanize punishment. Therefore, electronic monitoring can be an alternative to short-term imprisonment, given its negative effects. It is thus a rational punishment for reintegrating the convict by removing him from the hidden confines of prisons. Perhaps the most beneficial reasons for adopting it include the following:

### **1- Moving towards a penal system that keeps pace with technological developments:**

In order to keep pace with the rapid scientific developments in the field of technology in various fields, the idea of using the penalty of electronic surveillance emerged to develop the penal system by exploring modern penal methods as an alternative to short-term imprisonment, which has proven unsuccessful in combating crime when it is short-term. Placing the convict under electronic surveillance was an alternative that allows the convict to be monitored and remain in the location designated by the

<sup>4</sup> Omar Salem, *Electronic Monitoring: A Modern Method for Implementing Liberty-Depriving Sentences Outside Prison*, Second Edition, Dar Al-Nahda Al-Arabiya, Egypt, p. 9.

<sup>5</sup> Asmaa Maghraoui, Abdel Latif Fasla, *Procedural Provisions for the Electronic Monitoring System in the Law on the Organization of Prisons and the Social Reintegration of Prisoners*, Journal of Judicial Reasoning, Special Issue, Laboratory of the Impact of Judicial Reasoning on the Legislative Movement, University of Mohamed Khider, Biskra, Algeria, 2021, p. 535.

<sup>6</sup> Sara Maash, *Liberty-Depriving Sanctions in Algerian Legislation*, Al-Wafa Legal Library, Egypt, 2016, p. 266.

<sup>7</sup> Lina Bouzitouna, *Criminal Protection of Children in Algerian Penal Legislation*, a thesis submitted for a doctorate degree, specializing in Criminal Law, Faculty of Law and Political Sciences, University of Batna 1, Hadj Lakhdar, Algeria, 2021-2022, p. 393.

judicial authority, i.e., his home, using an electronic device attached to his body in the form of a bracelet, keeping him in his social environment and outside the prison environment.<sup>8</sup>

The penalty of placing him under electronic surveillance has become a punitive outlet, like some of the penalties introduced by the amendment to the Penal Code, as it embodies the objectives of contemporary penal policy, which aims to achieve a balance between the interests of society in combating crime and the interests of the convict in ensuring and respecting his rights.

## **2- Avoiding the negative effects of short-term custodial sentences and the possibility of recidivism:**

Another reason for adopting this alternative punishment is to avoid the negative effects that result from short-term custodial sentences, including the prisoner acquiring bad behaviors, as the prison houses criminal prisoners with varying degrees of criminal danger, and due to the mixing, this will lead to the acquisition of serious criminal behaviors, making them professional criminals. Thus, the prisoner becomes a school for teaching crime instead of re-educating those who have not been to prison before, thus becoming a government health clinic for transmitting the criminal infection<sup>9</sup>. In addition, the application of this punishment will reduce recidivism, as the convict gains a strong incentive in the future to not make mistakes again, especially since he was saved from a state prison to a home prison, which remains better, although they both have the same effect on the convict, as entering prison causes the prisoner to lose his job, which results in him not finding one in the future, in addition to the psychological disorders he will suffer as a result of a life of isolation from society, thus making it difficult for him to integrate in the future, in addition to his family being affected by his behavior.<sup>10</sup> The closed environment in which custodial sentences are implemented sometimes does not allow for the achievement of reintegration goals. Although custodial sentences remain effective against the dangers of some criminals, their removal is a measure of their effectiveness.

This is because the call to abandon this sentence, or at least replace it, when it is short-term, becomes justified, as it causes harm not only physical, but also moral, as it affects the reputation of the convict and their family.

## **3- Avoiding additional burdens on the state:**

The penalty of placing them under electronic surveillance is a rational punishment for social reintegration programs for prisoners, as the protection of rehabilitation and reintegration institutions costs the state huge financial resources, in addition to the large amount of expenditure on prisoners, which states are no longer able to secure due to the large number of convicts. Overcrowding also poses a burden from a health perspective, through the treatment of the convict, in addition to food and water, and the need to provide means to maintain the discipline of prisoners for their reintegration through programs that also cost the state treasury. Therefore, this penalty works to rationalize expenses through a humanitarian perspective by reducing the burdens on the state.

## **Axis Two: Provisions for the penalty of placing under electronic surveillance**

Law No. 24-06 amending and supplementing the Penal Code includes provisions relating to the conditions for benefiting from the penalty of electronic surveillance instead of imprisonment (first), in addition to the procedures for its implementation and the penalty for violating it (second).

### **First: Conditions for benefiting from the penalty of being placed under electronic surveillance**

In order for a convict to benefit from the penalty of electronic surveillance, the Algerian legislature granted the judge discretionary power to replace the prison sentence imposed with this penalty, provided that the following conditions are met:<sup>11</sup>

**1- The accused must not have previously been sentenced to the penalty of electronic surveillance and failed to fulfill the obligations arising therefrom:** Whenever a convict has previously been sentenced

<sup>8</sup> Ezzedine Wadrai, Abdelrahman Khalfi, op. cit., pp. 200-201.

<sup>9</sup> Sara Maach, op. cit., p. 160.

<sup>10</sup> Sara Maach, op. cit., p. 165.

<sup>11</sup> Article 5 bis 7, Law No. 24-06 Amending and Supplementing the Penal Code, op. cit.

to the penalty of electronic surveillance and failed to fulfill the obligations arising therefrom, such as disabling or removing the electronic bracelet or failing to adhere to the boundaries of the place specified for him by the judge enforcing the penalties, he cannot benefit from electronic surveillance again, as he has previously benefited from it. Therefore, whenever a convict has benefited from it and did not fail to fulfill its obligations, he may benefit from it again as an alternative penalty.

**2-The penalty prescribed by law for the crime committed does not exceed five years in prison:** The legislator stipulated that, in order to benefit from the penalty of placing the accused under electronic surveillance, the penalty prescribed for the crime committed by the accused does not exceed five years in prison. Accordingly, according to Article 5 of the Penal Code, we find that its classification is a misdemeanor, not a felony. Although the term "imprisonment" is prescribed for misdemeanors and violations, the limits for a violation are imprisonment for a period of at least one day to a maximum of two months. The limits for a misdemeanor are imprisonment for a period exceeding two months to five years, except in cases where the Penal Code or special laws stipulate other limits.

**3-The sentence imposed shall not exceed three years in prison: To place the convicted person under electronic surveillance instead of the imposed imprisonment,** the legislator stipulated that the trial shall issue a sentence not exceeding three years, to be fully enforceable.

**4-The judgment shall be final: The legislator also stipulated that, in order to** benefit from the penalty of placing the accused under electronic surveillance, the judgment shall be final. A final judgment is one that has exhausted all ordinary and extraordinary appeals, or has been lapsed.

## **Second: Procedures for the penalty of placing someone under electronic surveillance and the penalty for violating it.**

Law No. 24-06, amending and supplementing the Penal Code (Order 66-156), includes procedures for implementing this alternative penalty to imprisonment. If the aforementioned conditions are met, the sentencing judge must, in order to replace the prison sentence with the electronic monitoring penalty, do the following:<sup>12</sup>

**1-Before pronouncing the electronic monitoring penalty, the sentencing judge** must inform the convict of his right to accept or reject it. Therefore, the legislator has allowed the convict to participate in selecting the penalty to ensure its effective implementation, provided it is based on the convict's conviction.

**2-The electronic monitoring penalty is pronounced in the convict's presence and** with his consent. Therefore, the pronouncement of this alternative penalty is carried out in the convict's presence, so that he cannot claim ignorance of it. With his explicit consent, this alternative penalty serves as evidence that if the convict breaches his obligations, he will be reverted to the original penalty.

**3- Noting in the ruling the replacement of the prison sentence with the sentence** of electronic monitoring, if the ruling stipulates, is important because it serves as conclusive evidence against the convicted person.

**4-The judge must warn the convicted person that if they fail to fulfill the** obligations resulting from the sentence of electronic monitoring, the prison sentence replaced by electronic monitoring will be implemented, provided that this is noted in the ruling.

Therefore, the sentencing judge must inform the convicted person that if they fail to fulfill the obligations of this sentence, the original penalty, which is the custodial sentence, will be implemented. This must be noted in the ruling to prevent the plea of ignorance. Once the electronic monitoring sentence is approved and the aforementioned procedures are carried out, the final judgment is issued. The sentencing judge then refers the convict's file to the penalty enforcement judge. **The latter oversees the implementation of this sentence and resolves any resulting issues:**<sup>13</sup>

**The penalty judge performs the following:**<sup>14</sup>

<sup>12</sup> Articles 5 bis 8, 5 bis 9, Law No. 24-06 Amending and Supplementing the Penal Code, op. cit.

<sup>13</sup> Article 5 bis 10, paragraph 1, of Law No. 24-06, op. cit.

<sup>14</sup> Article 5 bis, paragraphs 2 and 3, op. cit.

- Ensures that the convict must remain in the place where he or she must reside for the duration of the sentence. He or she specifies the location and route the convict must travel, such as his or her home or neighborhood.
- Ensures that the electronic bracelet does not harm the convict's health, given that it can cause allergies. The state ensures that the bracelet is made of healthy materials when purchasing it.
- The penalty enforcement judge may authorize the convict to leave the designated place of residence, particularly if passing an exam or continuing treatment. Under these two motives, all those who benefit from this sentence are equal.

Therefore, the convict must adhere to these procedures throughout the period of electronic monitoring. If the convict violates these obligations, he or she is deemed to have failed to fulfill his or her obligations under this penalty, and the remainder of the term must be served in the penal institution, provided there is no serious excuse. The judge enforcing the penalties shall then notify the Public Prosecution Office to take the necessary measures to implement the prison sentence imposed on him or her after deducting the period of electronic monitoring<sup>15</sup>. A convict who evades electronic monitoring, particularly by removing or disabling the electronic monitoring mechanism, is subject to the penalties prescribed for the crime of escape under the Penal Code<sup>16</sup>, specifically the penalty stipulated in Article 188, which is imprisonment from two months to three years as a minor penalty. However, if the convict uses violence or threats against persons, or by breaking or destroying the door of the penal institution or detention center, the penalty shall be reduced to three years.

If the person is wearing a circumstance, means of transportation, or electronic bracelet, the penalty is imprisonment from two to five years. This penalty is added to the temporary penalty of deprivation of liberty imposed on him for the crime that imposed this situation under electronic surveillance.<sup>17</sup>

## Conclusion

At the end of this study, we note the legislator's great attention to this penalty, attempting to identify all means necessary to ensure its success as a new approach in the Algerian penal system. This alternative penalty is considered an alternative to short-term imprisonment, but in an innovative manner, relying primarily on the use of modern technology and implementing it outside the walls of penal institutions. The adoption of this alternative penalty, as previously noted, stems from the negatives of custodial sentences, which have proven ineffective when the offender is a recent offender. Furthermore, this penalty is a penalty the legislator has designated as an alternative to the original penalty, which is a misdemeanor. Furthermore, it is necessary to pronounce a sentence not exceeding three years in order to benefit from it.

We also note that the mere thought of breaching the imposed obligations leads the convict to return to the original penalty. Furthermore, it is possible that he may fall under the crime of escape, and thus his sentence may be increased by combining the latter with the previous one, after excluding the period spent under electronic monitoring.

Therefore, it can be said that the legislator has succeeded to some extent in establishing this alternative punishment, which awaits its implementation on the ground in order to make a final judgment on its effectiveness or lack thereof. He should expedite the issuance of regulatory texts for it in order to ensure the unification of the proper application of this punishment, which is considered an alternative penal outlet to the penalty of deprivation of liberty.

<sup>15</sup> Article 5 bis 11, of Law No. 24-06, op. cit.

<sup>16</sup> Article 5 bis 12, op. cit.

<sup>17</sup> Article 189 of Order No. 66-156 containing the Penal Code dated June 8, 1966, Official Gazette of the Algerian Republic, No. 49, issued on June 11, 1966, as amended and supplemented.

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