

THE ELECTRONIC MONITORING SYSTEM USING THE ELECTRONIC BRACELET IN LIGHT OF LAW 18-01

Dr. SAIDA BOUGUENDOUL

Faculty of Law and Political Science, Mohamed Lamine Debaghine, University of Setif 2, Algeria

Email: s.bouguedoul@univ-setif2.dz

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Abstract:

The use of modern technologies is one of the matters imposed by the technological revolution in various aspects of life, both internally and externally. It was necessary for the criminal law to benefit from these modern technologies to achieve its goal in the field of combating crime. One of the forms of this benefit is the electronic monitoring system through the electronic bracelet as an innovative and alternative mechanism to implement custodial sentences outside penal institutions. This mechanism was adopted by the Algerian legislator and included in the Prison Organization Law No. 08/01, where this study specifically defines the provisions related to this system.

Keywords: *Electronic surveillance - Electronic bracelet - Adaptation of punishment - Punitive treatment.*

INTRODUCTION:

Electronic surveillance is one of the novel and alternative mechanisms for the execution of custodial sentences outside the walls of penal institutions. It is considered a method of modern penal treatment, which was adopted by the Algerian legislator under Law 18/01 of 30 January 2018 on the organization of prisons and the social reintegration of detainees. This method serves as an innovative means of rehabilitation, integration, and reform on the one hand, and reducing the burden and manifestations of overcrowding and recidivism in prisons on the other hand, as well as rationalizing expenses on the third and final hand.

As for Algeria, this mechanism was introduced to ensure the implementation of the judicial control obligations established by Order No. 15/02 of July 23, 2015, amending the Code of Criminal Procedure. Algeria then introduced this technology as a measure for the execution of custodial sentences under the aforementioned Law 18/01, with the aim of rehabilitating and reintegrating convicted persons socially as a system of sentence adaptation. This is achieved by giving the convicted person the possibility to serve all or part of the sentence outside the penal institution with monitoring through the electronic bracelet.

Since this is the case, **to what extent has the Algerian legislator managed to cover all the legal aspects related to the electronic surveillance system using the electronic bracelet under the provisions of Law 18/01?**

First topic: The conceptual framework of the electronic surveillance system using an electronic bracelet

Like most comparative legal legislations, the Algerian legislature has adopted a new and novel system in the field of penalization, called the electronic bracelet. This system allows the execution of custodial sentences, especially short-term ones, outside the walls of high prisons, in a free environment outside penal institutions. Therefore, our study of this topic requires us to first define this system, then determine its legal nature, and thirdly, indicate its characteristics and distinguishing features from other similar systems.

Firstly: Defining the electronic monitoring system using an electronic bracelet

Since the electronic monitoring system is one of the modern and innovative methods as an alternative to short-term custodial sentences outside prison, it has been defined from several perspectives:

As for the technical definition, the electronic bracelet is defined as “an electronic device similar to a wristwatch with a larger size designed from special materials that give it resistance to shocks, vibrations, breakage, and water resistance. It is usually installed on the wrist or lower leg, where



this bracelet sends radio signals to the monitoring unit within a certain range. These signals are interrupted if the convicted person leaves the specified area, triggering alarms for the authority to intervene.”

As for the jurisprudential definition, there are those who defined it as “leaving a person sentenced to a custodial sentence free while subjecting him to several obligations and monitoring him electronically, through signals that are recognized by a device known as an electronic bracelet, which is placed on the wrist or foot of the subject of surveillance in the geographical area specified for him.”¹

Others define it as “a system of remote monitoring by which the presence or absence of a person from the place designated for his residence can be ascertained, according to a court ruling, allowing the convicted person to remain in his home, but his movements are limited and monitored by a device attached to his wrist or under his foot.”²

Others defined it as “the obligation of the convicted person to be present in a specific place, often the home, during specific times, while being allowed to lead a normal life during the rest of the day, within a specific legal framework. The obligation of the convicted or subject to be present at the specified place and time is verified through devices prepared for this purpose.”³

As for its legal definition, the Algerian legislator defined it in the text of Article 150 bis of Law No. 18/01 containing the Law on the Organization of Prisons and Social Reintegration of Detainees that “electronic surveillance is a measure that allows the convicted person to spend all or part of the sentence outside the penitentiary institution.

Electronic surveillance consists in the wearing, for the duration of the period mentioned in article 150 bis 1, of an electronic bracelet that allows the presence of the convicted person at the place of residence specified in the placement decision issued by the judge for the enforcement of penalties.”⁴

Secondly: The legal nature of the electronic surveillance system using an electronic bracelet

The electronic surveillance system through the use of an electronic bracelet raises controversy and debate about determining its legal nature. This raises the question of whether it is merely a precautionary measure, a criminal punishment in itself, or a method of implementing a custodial sentence.

1- Electronic surveillance as a precautionary measure

According to some jurisprudence, the electronic surveillance system through the electronic bracelet is only a precautionary measure, aimed at preventing crime, rehabilitating and reforming convicts, and reintegrating them back into society. This is achieved through the execution by the convicted person of his obligations resulting from the electronic surveillance.⁵

2- Electronic surveillance as a criminal punishment

On the other hand, another side of criminal jurisprudence believes that electronic monitoring through the electronic bracelet is a new form of response to crime, combining deterrence and rehabilitation. It is based largely on trust, as it allows the convicted person to become an active part in the execution of the sentence. Electronic monitoring imposes several obligations on him that include coercion and coercion, which is the basis of punishment.

3- Electronic surveillance as a means of implementing custodial sentences

While another side of the jurisprudence believes that electronic surveillance through the electronic bracelet is a means of implementing custodial sentences, as it shows the state’s authority in punishment and emphasizes it. However, in this case, it is not through prisons with high walls and tight security, but through a technical means produced by modern technology called the electronic bracelet that ensures the same purpose achieved by the walls of prisons.⁶

Hence, this system allows for the replacement of imprisonment either fully or partially within penal institutions with a system of electronic surveillance using an electronic bracelet in a free and open environment. This utilizes modern technological data in penal enforcement, avoids the disadvantages of entering penal institutions, and facilitates the social reintegration process for some categories of detainees.⁷



Thirdly: Characteristics of the electronic monitoring system using the electronic bracelet

The electronic monitoring system is characterized by several characteristics that can be highlighted in the following points:

1- “Technical” in nature

The use of modern technology in combating crime is one of the most important achievements of modern penal policy in its quest to develop the penal system and to benefit from the results of technological development in achieving this. The electronic bracelet is a modern and alternative method of implementing custodial penalties outside prison, or what is expressed by home detention. It serves as a method of reviewing the short-term custodial penalty by re-adapting it according to certain conditions decided by the judge applying the penalties.

One of the main features that characterize the electronic surveillance system is the requirement for the availability of special technical devices. This involves utilizing modern technological tools and employing them in surveillance, such as the electronic bracelet, which is placed on the offender’s hand or foot, a transmitter, and a receiver and retransmitter linked to a computer for monitoring and data processing.

2- “Consensual” in nature

The electronic monitoring system through the electronic bracelet can only be applied after the person’s consent or the consent of the guardian if the person concerned is a minor. This is the direction taken by the French legislator in the field of applying the electronic monitoring system, and the Algerian legislator, as this feature represents, on the other hand, a new addition to the cases of recognizing the consent of the convicted person.⁸

3- “Restrictive” in nature

Electronic surveillance through the electronic bracelet represents one of the measures to restrict the freedom of the convicted person, and this makes it valid as an alternative to custodial penalties. This is achieved through the obligation of the person subject to it not to leave a specific spatial area. Therefore, it is a system that involves a restriction of the freedom of the convicted person, whether it is by requiring the person subject to it to remain in his home or place of residence. This makes it characterized by specificity both in terms of space and time.

4- Issued by a judicial authority

The decision to place a person under electronic surveillance through an electronic bracelet must be issued by a competent authority, namely the judiciary through a judicial ruling. The jurisdiction is vested in the judge for the application of penalties, as Article 150 bis 01 of the aforementioned Law 18/01 stipulates that “the judge for the application of penalties can decide, spontaneously or at the request of the convicted person personally or through his lawyer, to implement the penalty under the electronic surveillance system, in case of conviction for a custodial sentence not exceeding three years or in case the remaining sentence does not exceed this period.”

The penalty enforcement judge issues the decision to place the person under electronic surveillance, after taking the opinion of the public prosecution. He also takes the opinion of the Penal Enforcement Committee for detainees.

5- Time-bound

This means that it is a time-limited system, which ends after the convicted person has served his sentence, so it is only a temporary and non-continuous measure. Article 150 bis 01 of Law 18/01 specifies the duration of the application of the electronic fence, which is in the case of a conviction for a custodial sentence that does not exceed 03 years or if the remaining term does not exceed 03 years.⁹

6- Detectability

The electronic monitoring system through the electronic bracelet is a detectable system that allows the competent authorities in charge of the electronic monitoring process to locate the whereabouts of the convicted person with extreme accuracy. The electronic bracelet sends every 15 seconds a specific signal to the receiving device, which automatically transmits signals to an information system equipped with high-precision technologies that can record these signals.



Second topic: Provisions related to the electronic surveillance system using an electronic bracelet

In order to benefit from the electronic monitoring system using an electronic bracelet, it must be issued by a competent authority. In addition to this, there are a number of conditions, including technical conditions. Some of these conditions relate to the person who will be subject to this system, namely the convicted person, and some of these conditions relate to the punishment itself, which we will explain in the following details:

Firstly: Authorized Authorities for Electronic Surveillance with the use of an electronic bracelet

Although the electronic surveillance system relies on the latest technology, the human element remains an indispensable link to ensure its operation and application on the ground. The Algerian legislator referred in Law 18/01 to the authorities entrusted with the task of monitoring the operation and success of this mechanism. Below, we will identify the authorities competent to place the electronic surveillance system using the electronic bracelet.

1. Judicial supervision of the enforcement of penalties

The supervision of the judicial authority over the implementation of penalties, including electronic surveillance, represents a necessity and a fundamental guarantee of the rights of convicted persons, especially since this system involves significant interference in the private life of the persons subject to it, and thus the supervision of the judiciary ensures intervention to the extent necessary and necessary to implement electronic surveillance, without compromising the minimum fundamental rights and freedoms that must be respected regardless of the circumstances and conditions.

Therefore, the Algerian legislator has entrusted the task of issuing the electronic surveillance decision to the penalty enforcement judge, similar to the French legislator. According to the provisions of Article 150 bis 1 of Law 18/01, the penalty enforcement judge can either spontaneously or at the request of the convicted person personally or through his lawyer, decide to implement the penalty of electronic surveillance using an electronic bracelet, where the penalty enforcement judge issues a decision after obtaining the consent of the convicted person and taking the opinion of both the Public Prosecution and the Penal Enforcement Committee in accordance with the provisions of paragraph 1 and 2 of Article 150 bis 1, a decision called the electronic surveillance decision, as follows :

The penal enforcement judge may also subject the person under the electronic monitoring system using an electronic bracelet to one or more of the following measures:

- Practicing an activity or pursuing education or vocational training.
- Not going to certain places.
- Not meeting with certain convicted persons, including the original perpetrators or accomplices of the crime.
- Not meeting with certain persons, especially victims and minors.
- Commitment to health, social, educational, or psychological care aimed at social reintegration.¹⁰

The judge supervises the monitoring process, keeping in constant contact with the external services of the prisons to inform him of any violation or issue that may occur during the monitoring process. The judge has the discretion to change the obligations of the decision either on his own initiative or at the request of the concerned person. The judge may cancel the order permanently if the convicted person does not respect the electronic monitoring obligations without legitimate justifications, in the case of a new conviction, or at the request of the concerned person.

2. The external departments of the Prison Administration in charge of the social reintegration of detainees

This department is responsible for monitoring the implementation of electronic monitoring using an electronic bracelet, under the supervision of the judge for the application of penalties remotely, through field visits and monitoring him by phone, as prisons have departments that work outside their walls to ensure the reintegration and monitoring of prisoners.



Article 113 of Law No. 05-04 on the organization of prisons and the social reintegration of detainees is the organizational framework that ensures the reintegration of released prisoners and prevents them from reoffending.

Article 113 stipulates that the external services of the prison administration are in charge of implementing social reintegration programs for detainees in cooperation with the competent services of the state and local communities.

Two years after the establishment of these services, Executive Decree No. 07-67 was issued on 19-02-2007, which includes the modalities for the organization and functioning of the external services of the Prisons Administration. These services are responsible for monitoring the situation of persons subject to various systems, especially conditional release, semi-freedom, or temporary suspension of the application of the sentence. They also ensure the continuity of the social reintegration program for persons released at their request and take special measures to facilitate the social reintegration process of persons under their care. Additionally, they provide the competent judge, upon his request or automatically, with all information that enables him to make informed decisions.

This system carries several obligations that the convicted person must respect, as stipulated in Article 150 bis 5 of Law 18/01. These obligations mainly consist of not leaving the home or the place designated by the judge of the application of penalties outside the periods specified in the placement decision. These times and places are determined taking into account the exercise of professional activity, study, training, internship, employment, or follow-up treatment of the convicted person.¹¹

Secondly: Technical conditions

The method of implementing electronic surveillance with an electronic bracelet relies on a set of technical means. This is mainly represented in the installation of an electronic bracelet on the wrist or lower leg of the subject of surveillance. This bracelet sends radio signals in the geographical area specified for surveillance. Another device is placed in the designated place for surveillance, whose task is to receive the signals sent from the electronic bracelet and retransmit them through a telephone line connected to a centralized device. These signals express the presence of the subject of electronic surveillance in the designated place for surveillance.¹²

The monitoring center is the main center that receives all signals sent from the electronic bracelet to the monitoring unit. It includes the necessary radio communication devices to ensure the proper functioning of the monitoring process. The type and nature of the warning signals sent are determined, whether they are related to the failure of the monitored person to comply with the specified spatial range, tampering and attempting to evade the device, or simply a technical malfunction beyond their control.¹³

Thirdly: Personal and physical conditions related to the convicted person

The legal legislations that adopted the electronic surveillance system differed in terms of the scope of persons subject to this system. Some legislations expanded this scope, such as the French legislator who authorized the application of electronic surveillance regardless of the person subject to it, his nationality, or the crime he committed. Other legislations adopted a narrow approach to electronic surveillance. As for the Algerian legislation, the conditions related to the convicted person can be defined in the following points:

- Pursuant to the provisions of Article 150 bis 1 of Law 18/01, the Algerian legislator authorizes the application of electronic surveillance to any person who has reached the age of 18 years (male or female). In this case, the law requires the consent of the convicted person. However, if the person is a minor, he is not subject to this modern scientific technology unless he is between 13 and 18 years old, and his guardian must consent to being placed under electronic surveillance.¹⁴

It is worth noting that the electronic monitoring system using the electronic bracelet can only be applied to natural persons, and it is impossible to apply it to legal persons. The Algerian legislator did not require the convicted person to have a criminal record because the electronic bracelet system is suitable as a penal treatment more suitable for low-risk persons and juvenile offenders who need special criminal treatment commensurate with their criminal seriousness.



- The person concerned must prove the place of residence, which is the place of electronic surveillance, as it must be stable. The person subject to electronic surveillance must provide documents that prove his place of residence, such as a property contract, a receipt for payment of rent or real estate fees, or any other document.
- The residence must be equipped with a telephone line, and the monitored place must be connected to a fixed telephone linked to the signals transmitted by the monitoring unit to the monitoring center, which determines the status of the convicted person in relation to this system.
- The application of the electronic bracelet system in the field of penal enforcement as a novel means resulting from the technological revolution protects the personal dignity of the convicted person and does not compromise it.¹⁵
- The operation of the electronic bracelet must not harm the health of the person concerned, and this must be confirmed by a medical certificate issued to ensure that the condition of the person to be monitored allows the electronic bracelet to be worn without risk to his health.¹⁶
- Taking into account the family situation of the person concerned or his/her follow-up to medical treatment, professional or academic activity, or training, when placing him/her under the electronic surveillance system using an electronic bracelet.

Fourthly: Conditions related to the imposed sentence

Pursuant to the amendment of the Law on the Organization of Prisons and Social Reintegration of Detainees and pursuant to the provisions of Articles 150 bis 1 and 150 bis 3 of Law 18/01, the system of electronic surveillance is applied if the following conditions are met:

- Article 150 bis 3 of Law 18/01, which stipulates that the accused must have been sentenced to a final judgment, i.e. all ordinary and extraordinary means of appeal have been exhausted, and that he was convicted of a custodial sentence in accordance with Article 150 bis 1 of the same law¹⁷, and therefore electronic monitoring using an electronic bracelet is not applied if the sentence imposed is a fine, work for public benefit, or confiscation.
- The duration of the sentence imposed does not exceed 3 years. This measure can also be applied if the remaining period of the sentence imposed does not exceed 3 years. In this last case, the offense can be a felony¹⁸.

This is contrary to what the French legislator decided, where the duration of the sentenced or remaining sentence does not exceed two years. In this regard, the French legislator divides the application of electronic surveillance into two parts : The first is fixed electronic surveillance, and the second is mobile electronic surveillance.

As for the fixed, it is a measure applied to less serious criminals who have been sentenced to a short-term deprivation of liberty, the duration of which does not exceed two years, or the remainder of it does not exceed that period. As for the mobile, it is applied to persons who have committed serious crimes and have been sentenced to a long-term deprivation of liberty, which does not exceed seven years. It is a precautionary measure placed after the expiration of the sentence or before its expiration, and the duration varies according to the severity of the crime.

CONCLUSION:

To draw our paper to a close, we can say that the electronic monitoring system using the electronic bracelet is an innovative system in the field of punishment adaptation. It transfers the implementation of custodial sentences outside the walls of high-security prisons to other free places, often the home of the convicted person. The aim is to reduce the pressure on penal institutions on the one hand, and to facilitate the process of reform, rehabilitation, and reintegration of convicted persons on the other hand in a smooth and flexible manner. This has made the system a contemporary penal model with clear importance in improving and pushing the Algerian system forward steps to reform, modernize, and develop the justice sector.

We also have reached a number of findings and suggestions, the most important of which are summarized below:



Firstly: Findings

- The electronic monitoring system using an electronic bracelet is a new and inevitable trend in contemporary criminal policy as a modern method of implementing custodial sentences, especially short-term ones.
- The electronic monitoring system using an electronic bracelet is a modern and sophisticated means of implementing punishment outside penal institutions, to avoid the negative effects of punitive execution in these institutions, and to facilitate the task of reintegrating convicts back into society.
- The electronic surveillance system through the use of an electronic bracelet is a consensual system that requires the consent of the convicted person, which makes this system a new addition to the legal legislation in the scope of recognizing the consent of the convicted person.
- The idea of electronic surveillance using an electronic bracelet is based on creating a kind of harmony between protecting society on the one hand by punishing the offender, and reconnecting the offender with society.
- The introduction of electronic monitoring with the use of an electronic bracelet aims to reduce the burdens and expenses spent by the state on convicts in penal institutions.

Secondly: Suggestions

- The need to train people in the field of electronic bracelet repair in order to avoid the heavy expenses required to replace an electronic bracelet that has suffered a malfunction or damage.
- The need to sensitize convicts to the importance of the electronic bracelet as a new system in the field of penal enforcement, in terms of its effectiveness in the field of their reform, rehabilitation and reintegration into society.

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