

APPLICATION ELECTRONIC MONITORING SYSTEM A COMPARATIVE STUDY BETWEEN JORDANIAN AND FRENCH LEGISLATION"

Dr. Mohannad Walid Al-Haddad¹

¹Associate Professor of Criminal Law, Department of Public Law, Faculty of Law, Jerash University, Jordan

M11haddad@yahoo.com¹

Abstract

The electronic monitoring system is one of the most prominent developments in the criminal legal system in the Hashemite Kingdom of Jordan. It was introduced as part of the digital transformation program in the criminal judicial sector, repeated article (25) of the Jordanian Penal Code and repeated Article (114) of the Code of Criminal Procedure granted the criminal judge the authority to implement it. It was first adopted as a measure to enhance the implementation of certain judicial oversight obligations, and then as an alternative to the penalties affecting freedom, this was done to encourage the judiciary to implement this type of punishment and avoid short-term custodial sentences, this is in keeping with the modern penal policy that relies on alternative punishments for minor crimes.

Keywords: Authority, Judge, Criminal, Monitoring, Electronic

Introduction

Jordanian legislation defined the electronic monitoring system for the first time in 2017 under Amended Law No. (32) of the Jordanian Code of Criminal Procedure. In 2022, Jordanian Penal Code No. (10) also stipulated this, granting the Magistrates' Court in misdemeanor cases the right to replace imprisonment with electronic monitoring. Article 25 of the Penal Code provides for placing the convict under electronic monitoring for a period of no less than one month and no more than one year, this is stipulated in repeated article 25 of the Penal Code. The Code of Criminal Procedure also grants the public prosecutor or the court, in cases where detention is permitted in misdemeanor cases, the right to replace detention with electronic monitoring, this is stipulated in the repeated article 114 of the Penal Code, these are the only two legislative texts regulating electronic monitoring in Jordanian legislation.

Electronic monitoring is one of the alternative measures to imprisonment for social rehabilitation adopted by Jordanian lawmakers as part of a modern penal policy based on avoiding short-term custodial sentences and empowering judges to replace them with alternative punishments, given the negative effects of short-term imprisonment on both the convict and society.

The importance of this topic lies in examining the scope of application of this punishment by posing the following question: If electronic monitoring is one of the alternative punishments that the criminal judiciary and the public prosecutor have the authority to apply to the convict, what is the extent of this authority under the principle of criminal legality? Is it absolute or relative?

We will answer this question by examining the concept of electronic monitoring and the extent of the criminal judiciary's authority to apply it, we will study the conditions and mechanisms for its implementation, relying on a comparative approach between Jordanian legislation and some legislation that has adopted the electronic monitoring system, as well as

an inductive and analytical approach to all legal texts related to the electronic monitoring system as an alternative to the custodial sentence.

BRANCH ONE

The Concept of Electronic Monitoring

Electronic monitoring, or electronic bracelets, is one of the most prominent modern systems in the field of punishment. It is an advanced technological technique that aims to achieve the private interests of the defendant or convict by allowing them to lead a normal family and social life without imprisonment. It also aims to address the negative effects of imprisonment, the problem of prison overcrowding, and the phenomenon of recidivism. The concept of electronic monitoring is derived from the parole system, with electronic monitoring as an innovative idea (Al-Haddad, Muhannad, 2019, p. 184)

Next, we will discuss the concept of electronic monitoring and then the application of electronic monitoring.

First: The meaning of electronic monitoring

The concept of electronic monitoring is defined by its method of application and its intended purpose. This requires this study to first clarify the concept of electronic monitoring in terms of its use, and then to secondly clarify the concept of electronic monitoring in terms of its purpose.

judicial application

1. Defining electronic monitoring in terms of its

The judicial applications of electronic monitoring have varied, and on this basis, legislation has defined it. In this regard, we will discuss the definition of electronic monitoring through its most important judicial applications.

A. The concept of electronic monitoring as a measure accompanying judicial oversight.

The French legislator included electronic monitoring as an enhanced obligation of judicial oversight under the Law of September 9, 2002. This is the first form adopted by the Jordanian Code of Criminal Procedure in repeated article 114 The Public Prosecutor or the Magistrate may order electronic monitoring arrangements to verify the defendant's compliance with the aforementioned judicial oversight measures, provided that the actions attributed to the defendant could subject him to a misdemeanor prison sentence.

Electronic monitoring is defined as a measure accompanying judicial supervision, as a procedure taken by the investigating judge to ensure the presence of the person under monitoring during specific periods at the designated place and time (Obaid, Osama, 2019, p. 6)

B. The Concept of Electronic Monitoring as an Alternative Punishment

Electronic monitoring is established as an alternative punishment in repeated article (25) of the Jordanian Penal Code, which includes keeping up with the growing criminal phenomenon. As a general principle, it allows the judge enforcing the sentence to issue a ruling for electronic monitoring as an alternative to a short-term custodial sentence. This method includes an electronic system for remote monitoring, through which the presence or absence of the person from the place designated for their residence by a judicial ruling (Al-Balushi, Rashid, 2022, p. 244)

Therefore, electronic monitoring is defined as an alternative punishment, whereby the judge obligates the convict, instead of imprisonment, to reside in his home, place of residence, or any other place specifies for him, during specific times, the times, which specifies, take into account the hours of professional activity, educational training, or any temporary work aimed at reintegration or effective contribution to family life, or the need to undergo medical treatment, this is verified through electronic monitoring, this is achieved by placing an

electronic bracelet on the convict's wrist, allowing a central monitoring center to determine whether the convict is present at the specified time and place (Salem, Omar, 2000, p. 9)

C. The concept of electronic monitoring as a security measure

This means that the convicted person is subject to a custodial sentence of no more than seven years, or on a convict who wears an electronic bracelet, for a period of two years, renewable once for misdemeanors and twice for felonies, subject to the defendant's consent. The defendant is warned that if they fail to comply with the obligations imposed on them, subject to a custodial sentence will be applied (Froment, Charles, 1996, p. 184)

he French Penal Code of December 12, 2005, regarding the fight against recidivism, stipulated, under Article 12-36-131, an electronic monitoring system for serious offenders. It called it "mobile electronic monitoring" (PSEM), distinguishing it from fixed electronic monitoring (PSE), which is electronic monitoring as an alternative punishment (Froment, Charles, 1996, p. 184)

Second: The concept of electronic monitoring in terms of its purpose

Electronic monitoring is a mechanism that seeks to balance the state's punishment and prosecution of the offender, while achieving the interests of the offender, who is, above all, a human being whose dignity must be respected. This is achieved through the system allowing the convict to engage in professional activity, pursue their education, seek employment, and participate in a fundamental way in their family life, among other activities that are likely to prevent them from repeating the crime (Arouch, Sufyan, 2017, p. 438)

Second: Methods of electronic monitoring

Comparative penal legislation notes the existence of three methods of electronic monitoring (Al-Balushi, Rashid, 2022, p. 245) which are:

1. The precise investigation method

In this method, a telephone is used to verify that the convict is actually present in a specified location or area. A programmed computer randomly calls the convict's location, who must answer the call. A pre-determined password must be provided and verified using specific voice prints (Arshush, Sufyan, 2017, p. 446).

This type of method is used to monitor phone conversations, track phone locations, and record their data, many crimes have been uncovered and criminals' locations identified by monitoring and tracking the locations of phone networks and towers, using the signals emitted and received by that device (Al-Mutlaq, Munir, 2022, p. 2223)

2. Continuous monitoring.

This is the common method adopted by most legislations that have adopted this system, under this method, the convict is continuously monitored. It requires advanced technical devices, such as an electronic bracelet, a receiver, and others (Sharifi, Sara, 2021, p. 743).

Jordan appears to have adopted the second approach, whereby the defendant, under electronic monitoring, is obligated not to leave the designated territorial boundaries except with the permission of the judge to carry out the sentence.

3. Satellite electronic monitoring.

This method is applied in the United States of America, whereby the competent authorities monitor the convict's compliance with their obligations via satellite at any time. It is worth noting that these chips may be implanted in the body; for example, they are implanted in the bodies of prisoners to monitor them or track their movements. Electronic chips may also be placed in cars to track their movements and determine the locations of their owners via satellite (Al-Mutlaq, Munir, 2022, p. 2223).

BRANCH TWO

Limits on the Freedom of the Criminal Judiciary to Order Electronic Monitoring

The Jordanian Penal Code and Criminal Procedure Code authorize the criminal judiciary to issue a decision to order electronic monitoring as an alternative to a short-term custodial sentence, this is also permitted by the French Penal Code, issued on March 9, 2004, in Articles 132-26-1 to 132-26-3, provided that the conditions and requirements for electronic monitoring are met, these conditions include limits on the freedom of the criminal judiciary to apply this penalty.

First: Conditions for Ordering Electronic Monitoring

1.Conditions relating to the convict.

Under the legal texts regulating electronic monitoring, three conditions are required for its application to the convict ;

A. Electronic monitoring applies to adults and juveniles

The fact that electronic monitoring prevents the convict from being imprisoned has prompted French lawmakers to apply it to both adults and juveniles. The law has defined the category of juveniles who may be subjected to electronic monitoring as those between the ages of 12 and 18, in accordance with Article 20-8 of Law 97-1159 on French Juvenile Delinquents, subject to the consent of the person with parental authority, we note here that the Jordanian legislator in repeated Article A/1/25 of penalty stipulates that the convicted person, with his consent, is obligated to perform unpaid work in community service for a period determined by the court of not less than (40) hours and not more than (100) hours. Also, the Jordanian Juvenile Law in Article (C/24) stipulates "obligation to serve for the public benefit in a public benefit facility or a voluntary civil society institution for a period not exceeding one year.

B. Consent of the Convict

The electronic monitoring system in Jordanian law requires the consent of the person under monitoring, a criminal judge may not issue a ruling placing the convict under monitoring without his consent, this is confirmed by Article 25/1/A of the Penal Code, which stipulates that the convict, with his consent, is obligated to perform unpaid community service for a period determined by the court, not less than (40) hours and not more than (100) hours. Article 24/C of the Jordanian Juvenile Law also stipulates "obligation to perform public service in a public benefit facility or a voluntary civil society organization for a period not exceeding one year.

French law also requires the consent of the person subject to monitoring, as the criminal judge may not issue a ruling placing the person under monitoring without his consent, this indicates that the electronic monitoring ruling is originally intended for the convict's benefit to support their social rehabilitation needs.

Therefore, it is not permissible to put under monitoring , in accordance with Article 132-26-1, paragraph 2, of the French Code. However, the convict's consent to electronic monitoring differs somewhat from his consent to any other alternative penalty, this is because the French legislator has stipulated an essential condition when requiring consent to be given in the presence of the person subject to monitoring's lawyer, The legislator also requires that a lawyer be automatically assigned if the convict is absent or unable to attend. If the convict is a minor who is not incarcerated, the ruling to place him under electronic monitoring cannot be issued without the consent of his guardian or any other person with guardianship over him. Perhaps the French legislator's requirement of the convict's consent is evidence of its strict respect for the privacy of the convict, which constitutes a restriction. This justifies the convict's explicit consent to it, otherwise it would be excluded, under no circumstances should monitoring procedures violate the convict's dignity or privacy.

The French legislature has authorized the application of this system at the request of the convict, the public prosecutor, or the sentencing judge, this gives this system a dual character, conferring both a right and a punishment, the convict can request electronic monitoring instead of serving a short-term custodial sentence, If this system is imposed, they are obligated to abide by its terms, and any violation thereof makes them liable to the execution of the custodial sentence, It goes without saying that the convict must be placed outside prison under supervision, by demonstrating that he is engaged in a professional activity, or educational training, or working in a temporary position for social reintegration, or that his or her contribution to family life is essential, or that he needs medical treatment. In other words, imprisonment in a penal institution will hinder his rehabilitation and reintegration into social life, in accordance with Article 132-26-1, paragraph 1, of the French Penal Code.

C. Respect for the convict's dignity, safety, and private life

In fact, the Jordanian legislator did not stipulate this condition, unlike the French legislator, which explicitly stipulated it, by referring to the provisions of Article 723-8, Paragraph 2 of the French Code of Criminal Procedure, the ruling on electronic monitoring must be based on respect for the dignity and sanctity of the convict's private life. In this regard, if this method allows for verifying the person's presence in the designated place, it does not open the way to determine where the person is and what he is doing, the matter here is not related to monitoring the movements and actions of the convict. Likewise, observers are prohibited from entering the convict's residence except after obtaining his consent, although the monitoring method is represented by placing an electronic bracelet on the convict's wrist, it must be small enough that no one can detect or see it, given the negative effects that could result from its appearance, which prevents the convict's integration into society, to support this trend and in an effort to protect the convict's body from being affected by this modern tool, Article 723-12 of the French Code of Criminal Procedure stipulates that the judge enforcing the sentence may, either automatically or at the request of the concerned person, appoint a doctor for the convict at any time to ensure that this device does not constitute a threat to the latter's health, In all cases, the medical certificate shall be placed in the convict's file, the repeated Article 150 2Q of Law 18-01 stipulates that the dignity, safety, and private life of the concerned person must be respected when placing the convict under electronic monitoring, repeated Article 150 , 3 adds that the convict's health must not be harmed, we also note that the Jordanian legislature did not make electronic monitoring linked to the accused's criminal recidivism.

.2.Conditions related to the penalty

The most important condition for applying the electronic monitoring system is that the penalty be a custodial sentence, therefore, it cannot be applied to other penalties such as the death penalty, fines, or public service work. In order for electronic monitoring to be applied, the convict must have been sentenced to one or more custodial sentences for a period equal to or less than one year. It can also be applied to persons who have been sentenced to a long-term sentence with only one year remaining (Salem, Omar, 2000, p. 132).

This confirms the text of Article (25 repeated), which authorizes the court in misdemeanor crimes to rule, even if the ruling has become final, with one or more alternatives, among these alternatives is electronic monitoring, which requires placing the convict under electronic monitoring for a period of no less than one month and no more than one year. It also authorizes the court in felonies not committed against persons, when using mitigating factors and reducing the sentence to one year, to replace the sentence with one or more alternatives to custodial sentences.

According to Article 132-16-1 of the French Penal Code, when the sentencing judge issues a sentence not exceeding one year in prison, the criminal judge may subject the convict to electronic monitoring in whole or in part.

According to the logic of French legislator, the term of the custodial sentence imposed may not exceed one year. If it exceeds one year, the convict must serve the custodial sentence until a maximum of one year remains.

Jordanian and French legislators did well to set a maximum period for the implementation of electronic monitoring, as leaving it unspecified or setting it beyond that limit will lead to dissatisfaction with the system. It should be noted that, in addition to the custodial sentence, which must not be exceeded, convicts are classified to assess their potential benefit from the electronic monitoring system, based on each convict's behavior and their specific social and economic circumstances.

Second: The necessity of meeting the material requirements for electronic monitoring.

The issuance of an electronic monitoring order requires a set of material conditions that the criminal judge must ensure are met before it can be implemented. These conditions include those related to the convict and those related to the system itself.

1. Material Requirements Related to the Convict

The material requirements related to the convict when implementing electronic monitoring do not differ from those required for traditional monitoring, except for those related to the electronic aspect, namely;

A. A permanent place of residence

Some legislation stipulates that the convict must have a permanent residence and a stable domicile in order to implement electronic monitoring as an alternative to short-term imprisonment. This is perhaps due to the fact that the electronic monitoring system, when initially implemented, was based on the concept of house arrest, in addition to the system of conditional or parole release, which entails release for good conduct before the end of the sentence (Al-Nahwi, Suleiman, 2014, p. 132).

Perhaps the most prominent example among Western legislation requiring such a condition is the French Code of Criminal Procedure, Article 7/723 of which stipulates that the convict must have a stable and known place of residence. This place is determined by the judge enforcing the sentences, while verifying the convict's family, living, and social situation through a preliminary investigation conducted by the "Integration and Testing Assistance Department" (Otani, Safaa, 2009, p. 143).

Electronic monitoring is then implemented at the designated residence, and the convict must respect the area designated for monitoring and not leave it for another location.

B. Obtaining the consent of the property owner or landlord

The place of residence does not have to be the convict's own; it can be shared, if the person resides outside his home (Sharifi, Sara, 2021, p. 749). He may also not own the property but rather merely rent it, in which case the law requires him to obtain the consent of the owner or landlord. However, if the place of residence is a public place, consent is not required (Otani, Safaa, 2009, p. 142).

2. Material requirements related to the system itself

The electronic monitoring system relies on a set of technical means, such as installing an electronic bracelet and a device responsible for monitoring.

A. Electronic Bracelet

A small electronic device placed around the wrist or ankle of a convict subject to electronic monitoring. This device emits specific waves that are picked up by another device installed by

the monitoring officer (Obaid, Osama, 2009, p. 74). The installed device connects to a central computer located at the monitoring center via a telephone line specific to the location designated for the implementation of this system. It is not permitted to be used for other communications (Sharifi, Sara, 2021, p. 749)

Electronic monitoring via an electronic bracelet, used in most countries around the world, is a continuous broadcasting method that involves the electronic bracelet sending signals to a receiver connected to a telephone line at the person's place of residence (Metwally, Rami; Salem, Omar, 2020, p. 410). These signals are then automatically transmitted to a central information system maintained by the entity supervising the convict (Otani, Safaa, 2009, p. 144)

B. Receiver

A receiver is installed by probation officers, after placing the electronic bracelet, with the consent of the convict, they travel to the convict's residence to install the receiver box, conduct tests related to warning signals, and establish geographical boundaries for transmission and reception. The convict is responsible for protecting this device and preventing any potential damage to it (Mashri, R.; Maqlati, M., 2022, p. 419).

This device is a central computer, in addition to other electronic devices and equipment that are connected to it. It is usually located in the penal administration, and its use is supervised by technically qualified employees. This computer must necessarily be equipped with programs and technologies that allow it to communicate with the electronic bracelet, and to receive the signals sent from it, such as GPS technology for searching and determining locations via satellites, and to resend these signals via the telephone line that connects it to a central device. These signals sent are to indicate the presence of the person under monitoring in the designated location, and they may be warning signals when trying to damage the electronic bracelet or damage the receiving and resending device (Obaid, Osama, 2009, p. 74) It goes without saying that a ruling for electronic monitoring depends on the availability of both legal and material requirements. If either of these conditions is absent, the criminal judge is unable to issue it, as it is the basis for the ruling for electronic monitoring. Therefore, one of the requirements for successful electronic monitoring is the convict's consent. It ends upon the expiration of the period decided by the judge and determined by law. After verifying the successful completion of the electronic monitoring period, the judge enforcing the sentence removes the receiver from the convict's residence and then removes the electronic bracelet from the convict's ankle or wrist, thereby allowing him to be free.

Conclusion

In this study, we conclude that the electronic monitoring system is based on implementing the sentence in an innovative manner outside the confines of correctional and rehabilitation centers. This method includes an electronic remote monitoring system, which enables the presence or absence of a person from the place designated for their residence by a court order. The convict is allowed to remain in his house, but his movements are restricted and monitored using a device attached to his wrist or the sole of his foot. Based on the above, the study reached several conclusions and recommendations, as follows.

First, the most important conclusions

1. Electronic monitoring may be imposed either by the public prosecutor or the magistrate judge when deciding to conduct judicial oversight, or as an alternative during the execution of the sentence, as decided by the sentence execution judge. This has the potential to reduce overcrowding in correctional and rehabilitation centers and support the social reintegration policy of convicts, these are the only two forms adopted by Jordanian law. This is in contrast

to French law, which, in addition to these two forms, allows the sentencing judge to pronounce it as an alternative sentence, provided the sentence does not exceed one year of imprisonment.

2.The French legislator is to be commended for his courage in defining the concept of alternative punishment, as he seeks, as much as possible, to spare the accused from the negative effects of imprisonment, especially since it is inherently diverse and suitable for many categories of criminals, particularly the elderly, housewives, and juveniles.

3.Regarding the issue of the convict's consent, without which this system, like other alternative systems, cannot exist, it is of paramount importance, the criminal judge cannot ignore this consent, as it is the basis for the legitimacy of this sentence and consent, once ratified by the convict, includes two elements: acceptance of being subject to this system in lieu of a short-term custodial sentence, and acceptance of a home visit by the enforcement officer at any time for the purpose of monitoring.

4.Furthermore, the criminal judge's decision to impose electronic monitoring does not end with the mere fulfillment of the legal requirements for electronic monitoring. Indeed, its material requirements may constitute an obstacle to its implementation, as it cannot be imposed on someone without a fixed place of residence or a home without a telephone line.

5. In response to the raised problem, the criminal judge does not issue an order for electronic monitoring based on his absolute discretion, rather, his freedom remains relative and depends on the extent to which it falls within the legislative framework, which is the legal text that includes the penalty.

Second, the most important proposals

1.The implementation of electronic monitoring requires the provision of certain material requirements, which is a difficult condition given that many convicts do not have these requirements, this, therefore, poses an obstacle to the criminal judiciary when determining this penalty, therefore, coordination with the relevant authorities is necessary to provide these requirements.

2.Activating the role of the accused's defense by enabling them to request this penalty, ruling out the possibility of imprisonment, and restricting the court's ability to address these requests. This will enable the judge to take them into account and prevent the judge from issuing a prison sentence.

3.Working to change the doctrine of criminal judges by intensifying forums, lectures, and meetings within a short period of time, thus changing the legal trends and ideologies entrenched by years of issuing custodial sentences. Furthermore, the most important guarantee that criminal judges will be held accountable for their rulings when exercising their freedom is that they be specialized.

References

1. Al-Balushi, Rashid, (2022) The Electronic Monitoring System Using Electronic Bracelets as an Alternative to Liberty-Depriving Sanctions: A Comparative Study, Kuwait International Law School Journal, Issue 4, Serial No. 40, September.
2. Al-Haddad, Mohannad Walid, (2019) Principles of Criminology and Punishment, Dar Al-Warraq Publishing and Distribution, Second Edition, Jordan.
3. Al-Mutlaq, Munir,(2022) Electronic Monitoring: An Applied Jurisprudential Study, Faculty of Sharia and Law Journal, Tifhana Al-Ashraf, Issue 25, Part 3, Egypt, pp. 2205-2260.

4. Al-Nahwi, Suleiman Mukhtar,(2014) Alternative Electronic Monitoring , Law Journal, Institute of Legal Sciences, Ahmed Zabana University Center, Belguizan, Algeria.
5. Al-Sharifi, Sara, (2021) The Extent of the Freedom of the Criminal Judiciary in Implementing the Electronic Monitoring System: A Comparative Study with the Most Important Arab and Western Legislation, Journal of Legal Studies, Yahya Fares University, Medea, Algeria, Volume 7, Issue 2, pp. 737-755.
6. Arshoush, Sofiane,(2017) Electronic Monitoring as an Alternative to Liberty Sanctions, Journal of Law and Political Science, Khenchela University, Issue 8, Part 1, June.
7. Froment, Charles, (1996) Domestic Legislation under Electronic Surveillance: The Execution of Prisoners and Public Liberty; R :P :D :P.
8. Meshri, Radhia; Maqlati, Mouna,(2022) The Situation Under Electronic Monitoring in Algerian Penal Policy, Journal of the Kuwait International Law School, Tenth Year, Issue 3, Serial Issue 39, pp. 397-435.
9. Metwally, Rami; Salem, Omar,(2020) Non-Custodial Sanctions in Comparative Penal Legislation, Arab Studies Center for Publishing and Distribution, Egypt.
10. Safaa Otani,(2009) The Status of Electronic Monitoring: The Electronic Bracelet in French Penal Policy, Damascus University Journal of Economic and Legal Sciences, Faculty of Law, University of Damascus, Volume 25, Issue 1.
- Obeid, Osama Hassanein (2009), Electronic Criminal Monitoring, Dar Al Nahda Al Arabiya, First Edition, Cairo.
11. Salem, Omar,(2000) Electronic Monitoring (A Modern Method for Implementing a Custodial Sentence Outside Prison), Dar Al Nahda Al Arabiya, First Edition, Cairo.