

# PLACEMENT UNDER ELECTRONIC MONITORING

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## ABSTRACT

*By virtue of the technical progress and the unprecedented development of information means, what was only fiction half a century ago has now become tangible reality. Being everywhere around us and mainly meant to improve the quality of our lives (as the video surveillance systems inside public institutions, supermarkets, stadiums etc.), the surveillance systems have become invisible intruders in our daily lives.*

**Keywords:** *placement, electronic monitoring, electronic bracelets, transmitter, surveillance centre.*

## § 1. Introduction

In the current context of overcrowded prisons – a global problem, faced not only by Romania – alternative solutions are sought to the measures of the conventional criminal policy, according to whose principle, a prisoner – convicted and under arrest – must be isolated inside a cell so that it is guaranteed that such prisoner be present before judicial authorities or be rehabilitated.

The placement under electronic monitoring (hereinafter called PEM) is another measure meant to change the dominating image of an obsolete and traditional legal system and to emphasize the need of change in accordance with the evolution of the modern society and of the general penal system.

Of course there are also other solutions besides this, meant to guarantee proper judicial individualization, and it is worth to be mentioned particularly the issuance of some Certificates of Judicial Resilience, as recent doctrine suggests.<sup>1</sup>

## § 2. Origins of PEM

The first experiences of remote individual tracking took place in 1964.<sup>2</sup> They were coordinated by the Professors Ralph K. Schwitzgebel and his brother, Robert, members of

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<sup>1</sup> See Nasty Vlădoiu , The new concept of judicial emotional resilience, article published in “The Second World Congress on Resilience: From Person to Society, Secțiunea XVII. Resilience and Justice. Delinquency”, Medimond – Monduzzi Editore Publishing House, indexed in Conference Proceedings Citation Index published by Thomson Reuters – Philadelphia formerly Institute for Scientific Information ISI, ISBN 978-88-7587-697-5, Bologna, Italy, 2014, p. 953

<sup>2</sup> See Cristophe Cardet, Le placement sous surveillance électronique, Ed. L'Harmattan, 2003, p. 12.

the Scientific Committee for Psychological Experiments at Harvard University. The two researchers dedicated their lives to the study of technologies associated to human behaviour and may be rightly considered as the creators of electronic monitoring at home.

The purpose of the research was to develop the mechanisms that should allow the caption of a series of physical and neurological signs of human presence in a given place.<sup>1</sup> At the end of the research a portable radio-telemetric monitoring system was created, which was rudimentary as compared to the monitoring electronic bracelets used nowadays. This system was then piloted with the participation of 16 volunteering repeat offenders from Boston, who were on probation.<sup>2</sup>

Another similar experiment was carried out in 1971 in Saint-Louis, as part of a programme meant to lower the percentage of suicides among young inmates.

The development of the PEM to its current form is due to the efforts of a judge from Albuquerque, New Mexico. Starting with 1977, the judge Jack Love became more and more interested in the technical means used for animal tracking, as well as in a certain episode of a famous cartoon – Spiderman – where the main character is located due to an electronic bracelet on his wrist. After four years of efforts, the judge succeeded in convincing a manufacturer of electronic equipment to make such a device, as well as the assembly of the reception and control system necessary to ensure the efficiency of the monitoring measure.

This measure was applied for the first time by its initiator in 1983 to five convicts released on parole.

Later, the PEM was taken over and spread to the United States of America by means of some pilot programmes, first in Washington, then in Virginia, Florida, Michigan, California and Alabama.

### **§ 3. Objectives of the PEM**

In order to allow an individual (a defendant or definitively convicted defendant, usually for short-term incarceration) to avoid the deprivation of liberty and stay in their own residence, at the same time observing the constraints imposed by the judicial bodies, the PEM was seen from the very beginning as a measure which, by preventing the de-socialising effects of imprisonment, preserves an individual's social and professional life, as it is obvious that keeping such individual involved in their family and community life reduces the risk of relapse and raises the chances for reinsertion.

The states that adopted this measure justified the PEM by means of three reasons:<sup>3</sup> a decrease in the number of prisoners, the need of reducing the risk of relapse while criminality is constantly on the rise around the world and the reduction of the costs of prison systems.

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<sup>1</sup> See Cristophe Cardet, *Le placement sous surveillance électronique*, Ed. L'Harmattan, 2003, p. 14.

<sup>2</sup> The American Probation and Parole Association – General Report on Electronic Monitoring, [www.appa-net.org](http://www.appa-net.org).

<sup>3</sup> The American probation and Parole Association – General Report on Electronic Monitoring, [www.appa-net.org](http://www.appa-net.org).

Since its experimental implementation in the early 80s in North America, the PEM has been capitalised for its capacity of customising the punishment. By means of this measure, the incarceration negative effects are avoided – particularly for first-time offenders – and family bonds and the practising of a profession are preserved. At the same time, the prisons are offloaded by releasing prisoners with short-term punishments. By sparing the people under electronic monitoring of the promiscuity and precarious hygiene in prisons, this measure does not apply the stigmata associated with incarceration and ensures an „ordinary” life under the eyes of family or employers.

This control method is also a modern and effective way of serving a punishment. It is modern because it allows in an open environment a „smart” enforcement of the criminal sanction, combining in the same space and time, the constraint by the society and social reinsertion. It is effective because, at least theoretically, electronic monitoring is infallible: computer-driven, it cannot be subjective and random.

In fact, the electronic monitoring is limited to warranties meant to ensure the respect of personal life beyond the measures needed to reach its objectives, as well as the respect for human beings, who are the subject matter of this measure.

Therefore, this measure means installing an electronic bracelet on the convict’s wrist, with their consent, which allows, by means of technical devices, to check for their presence at the place of residence or at another place at preset times.

Except for these checks, the monitored person is free to perform their professional activity, to live freely in their family, to have fun etc.

Furthermore, most of the legislations of the states having adopted the PEM have also set forth the interdiction of a monitoring implant. Therefore, the control can only be achieved by means of an external and customised device.<sup>1</sup>

At the same time, data takeover is not carried out nominally, as the person under monitoring is assigned an unalterable customised algorithm at the centre for the control and analysis of electronic data.<sup>2</sup>

#### **§ 4. Technical device of the PEM**

The technical device of the PEM has four components:

- a minute transmitter (a),
- a transceiver (b),
- a surveillance centre (c) and
- a control terminal (d).<sup>3</sup>

a) The bracelet containing the minute transmitter is worn permanently during PEM enforcement and its purpose is to automatically emit radio signals, which allows one to verify the presence of the monitored person in a designated place.

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<sup>1</sup> Cristophe Cardet, op. cit., p. 28.

<sup>2</sup> *Ibidem*, p. 30.

<sup>3</sup> John Howard Society of Alberta, 2000 Report on Electronic Monitoring Results, [www.johnhoward.ab.ca](http://www.johnhoward.ab.ca); Cristophe Cardet, op. cit., p. 33.

b) The transceiver is connected to a telephone line and located in the designated place for compulsory presence of the monitored individual (usually the home, sometimes the workplace or place of education). The device records the signals of the transmitter and sends them, by means of the telephone line, to a master computer.

c) The surveillance centre consists of a master server that contains software meant to check automatically the transmission of the signal of the individual under monitoring at preset times to their personal file.

d) The control terminal is located in an operational station within the control service (usually in a prison). It shows all the alarms received by indicating the person and the time when the monitored individual failed to prove their presence at the designated place.

## **§ 5. Use of the PEM in practice**

### *5.1. The USA<sup>1</sup>*

The federal legislation sets forth that the PEM is an alternative to the release under supervision (which, in the Romanian criminal law, in terms of effects and the time of application during criminal proceedings, could be the equivalent of the temporary release under judicial review and of probation), but there are states within the federation whose laws list it among punishments or methods of serving a punishment in the residence.

Throughout the 20 years of implementation approximately 100,000 people have been part of this measure. Most of the monitored people committed less socially dangerous offences (usually, road traffic offences, domestic violence etc.) or who, being addicted to narcotics or alcohol, needed the support of the community and the careful guidance by insertion counsellors.

Generally, the electronic monitoring programmes are accompanied by intensive social and educational programmes, delivered by insertion counsellors with the support of local communities or non-governmental organisations and do not represent only a control instrument, as one may think at a glance.<sup>2</sup>

Furthermore, supervised people are carefully selected, the offenders showing violence including inside the prison, as well as psychologically unstable offenders being excluded from such programme.<sup>3</sup>

### *5.2. Canada<sup>4</sup>*

The Canadian federal government was hostile towards PEM and did not encourage its adoption at a national level. From this reason, only four of the ten Canadian provinces are

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<sup>1</sup> The statistic data have been taken over from the following websites: [www.michigan.gov](http://www.michigan.gov) the official website of the prison system in the state of Michigan, [www.moep.uscourts.gov](http://www.moep.uscourts.gov) the official website of the prison administration of the Eastern District of Missouri, and [www.civiresearchinstitute.com](http://www.civiresearchinstitute.com).

<sup>2</sup> See Thomas J. Haring, Ph.D., *The Juvenile electronic Monitoring Project – The Use of Electronic Monitoring Technology on Adjudicated Juvenile Delinquents*, Division of Criminal Justice Services Report 2000.

<sup>3</sup> See National Law Enforcement and Corrections Technology Center – Bulletin October 1999, *Keeping Track of Electronic Monitoring*, published under the aegis of the Department of Justice of the USA, [www.justnet.org](http://www.justnet.org).

<sup>4</sup> See Matt Black, Russel G. Smith, *Electronic Monitoring in Criminal Judicial System, trends and Issues in Crime and Criminal Justice*, no. 254/2003, p. 56.

currently using or piloting this measure. The British Columbia was the first to introduce this method of serving a punishment, followed by Saskatchewan, Ontario and Terra Nova. The PEM may be mainly applied to those categories of convicts whose sentencing to prison is longer than 7 days and shorter than 6 months or to those released on probation, provided that the remaining punishment is no longer than 4 months.

As in the United States,<sup>1</sup> such measure does not apply to sex offenders or violent offenders, or to those who have never had a permanent activity (education, workplace).

Due to this strict selection, as well as to the programmes of social reinsertion and „destigmatisation-devictimisation” (by raising awareness of the public opinion on the benefits of tolerance towards the people enrolled in such programmes), the reinsertion and reinclusion percentage (meaning both the lack of relapse and the moral rehabilitation of those under supervision) has risen, in Canadian programmes, to 94 %.<sup>2</sup>

Although this experience was considered successful in the provinces mentioned above, their example has not been followed by other provinces. Particularly Quebec strongly opposed the adoption of the PEM, which they considered a useless and expensive measure that cannot provide a viable alternative to the conventional means of monitoring and social reinsertion.

### *5.3. The experience of the European States*

#### **Section 1. England and Wales**

The decision of using this measure in England and Wales was made following a visit by the British Minister of Interior, John Patten, to the United States in 1987, when the American model was cloned<sup>3</sup>.

The first programmes started in 1989, in Nottingham, Newcastle and London and were delivered for a period of 6 months. The PEM was applied as an equivalent of release under judicial review for the defendants older than 17, as well as a method of serving the punishment of incarceration no longer than 6 months.

As the period spent under supervision could not be deducted from the punishment later applied, the programmes for the defendants proved to be a failure.

Regulated by the Criminal Justice Act – 1991, the legal status of the PEM was relatively amended in 1994, by virtue of Criminal Justice and Public Order Act.

As of 1995, new programmes have been delivered in Manchester, Reading and Norfolk, which have been extended to the areas of Greater Manchester, Berkshire and Norfolk, and since 1997 to Cambridgeshire, Middlesex, Suffolk and West Yorkshire. As a result of their success, by means of the Crime and Disorder Act – 1998, the PEM has also got the status of probation.

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<sup>1</sup> See John Klein-Safram, *Electronic Monitoring vs Halfway Houses: a Study of Federal Offenders, Alternatives to Incarceration*, Ed. Prometheus Books, New York, 1995, p. 24-28.

<sup>2</sup> See the Ministry of Community Safety and Correctional Services of the State of Ontario, A Report on the PEM application, 1999, [www.mpss.jus.gov.on.ca](http://www.mpss.jus.gov.on.ca)

<sup>3</sup> National Probation Service, [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk); Christophe Cardet, *Le contrôle judiciaire socio-éducatif. Substitut à la détention provisoire entre surveillance et réinsertion*, Coll. Sciences criminelles, Ed. L'Harmattan, 2000, p. 400.

In 2001, by amending the Bail Act – 1976, the Criminal Justice and Police Act authorises the use of PEM for underage defendants (between 12-16 years of age) repeat offenders or offenders of serious crimes.

However, the British experience is regarded with some reservations by the other European states that have adopted the PEM, for the limits of control have been pushed to the people under supervision being permanently checked, and not maintained to their being called at preset time and in a place designated beforehand.

### **Section 2. Sweden**

The application of the PEM started in this country in August 1994, in a few regions, later being spread nationwide as of 1 January 1997.

The legal status of the PEM in the Swedish version<sup>1</sup> is that of a method of serving incarceration punishments shorter than 3 months and may be applied only to those convicts that can prove a permanent residence and the existence of a telephone line. The candidates must prove they have a permanent professional activity or that they are enrolled in a relatively long form of education (longer than a semester), and at the same time they must contribute financially to ensure the technical side of the PEM.

Furthermore, the monitored people shall be enrolled in programmes delivered with the support of local communities, meant to raise their awareness on the social damage of their misdemeanours, of their drug addiction etc.

The violation of the monitoring conditions is immediately signalled by the control centre located in Stockholm, and the personal information of the people in question are also sent to the reinsertion counsellor, on their mobile phone. The culprit may be incarcerated for the period of the remaining punishment.

### **Section 3. The Netherlands**

The first experimental programmes took place in 1995 in the departments in the north of the country.

The PEM has the legal status of an alternative for community service, as well as for probation for definitively convicted individuals who have served for at least half of the punishment period<sup>2</sup>.

As is the case with Sweden, the candidates must prove a stable residence, a professional activity or education and are selected based on volunteering.

The probation service charged with performing of checks must obtain the consent of the family members of the individual in question to apply the PEM.

### **Section 4. Other European states**

The PEM has been implemented in Belgium since 1998. The measure is meant for people definitively convicted to incarceration for at least 6 months, or in case of concurrent offences, if the time of punishments is no longer than 3 years.

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<sup>1</sup> Ch. Cardet, *Le placement sous surveillance électronique*, Ed. L'Harmattan, 2003, p. 44; Rita Haverkamp, *Attitudes towards Electronic Monitoring in Sweden and Lower Saxony – comparative study 1997-2001*, in *Max Planck Institute for Foreign and International Criminal Law Review*, 5, 2002, p. 71.

<sup>2</sup> See Rita Haverkamp, *op. cit.*, p. 89.

In Switzerland, six cantons adopted the PEM in 1999 as a method of serving punishments of incarceration ranging between one month and 6 months or as an equivalent of probation for those sentenced to incarceration no longer than 2 years and 6 months, provided that they have served half of it. This measure cannot apply to repeat offenders, and the candidates must participate in complex programmes (professional activities, civic activities, therapies).<sup>1</sup>

Also as an experiment, the PEM was taken over by Italy, Germany, Spain, Portugal, Scotland and Andorra.

Likewise, the PEM has constantly developed in France, being regulated in detail and proving very successful so far.<sup>2</sup>

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<sup>1</sup> See Christophe Cardet, *op. cit.*, p. 27.

<sup>2</sup> *Ibidem*, p. 2.