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Electronic Monitoring in Poland in the Light of the Research

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Abstract

The research conducted in this paper has led to the identification of many interesting variables which - as the author hopes - may contribute to the development of specific postulates regarding the functioning of EM in Poland. It should be noted, in this work, the author referred to the effectiveness of the Electronic Monitoring System. The above-mentioned effective operation of this system is evidenced by many factors. In this regard, reference was made to the concept of evaluation research aimed at verifying the goals. It is not advisable at this point to recall the reasons for undertaking this research. It is only necessary to point out those elements of electronic monitoring (EM) which show its basic goals in the space of today's criminal policy. First, there is a noticeable conceptual role of EM in the fight against the phenomenon of penitentiary overcrowding and the penalty of imprisonment in general. Secondly, electronic Monitoring is to minimize the pathological impact of isolation on an individual in terms of reducing the phenomenon of recurrence to crime. Third, the role of EM in minimizing the operating costs of the system is important.

Keywords: Criminal policy, Electronic Monitoring, Criminal law, Criminology, Penology

Introduction

The main aim of the paper is to introduce readers around the world to the results of research on the effectiveness of the polish electronic surveillance system. The research was conducted by the Author under funding from the National Science Center (pol. Narodowe Centrum Nauki) under the "Preludium 10" program No. 2015/19/N/HS5/03314. This text was published by the Author as part of a book released by the University of Gdansk Publishing House in 2021 under the title pl. Efektywność systemu dozoru elektronicznego w Polsce w świetle badań empirycznych (ISBN: 978-83-8206-227-4).

Research description.

The research conducted for the purposes of this study focused on the formal "segment" of ES in the form of the system of executing the imprisonment sentence.The reason for this is the fact that, in terms of absolute numbers, the application of EM in the present procedure completely obscures the applicability of this measure in other procedures. Consequently, in the realities of today's criminal policy, EM plays a leading role as a system for executing a sentence of imprisonment. In the context of this study, it was considered, taking into account the overall EM, that the most important determinant of systemic effectiveness is the return to crime rate.

This happens for several reasons.Firstly, an effective fight against overcrowding in prisons must be permanent, i.e., the use of EM as a sanction that determines a relatively high recidivism rate will each time lead to feeding the penitentiary system to people who were only temporarily excluded from incarceration, previously in the e-prison system.A possible replacement of an extremely ineffective mass measure in the form of a conditional suspension of the execution of a sentence of imprisonment would be an unjustified procedure in the light of the criminal policy needs highlighted in the doctrine.Secondly, a high recidivism rate may indicate erroneous design assumptions of the system, i.e., failure to achieve the punishment objective.It is worth pointing out again that EM has a purpose similar to the penalty of imprisonment, i.e., individual-preventive influence.A possibly higher recidivism rate will prove that the sanction is ineffective in itself. Thirdly, the repeated execution of the sentence of imprisonment in EM with a mass phenomenon of return to crime will lead to a cyclical increase in the operating costs of the entire system.In this light, re-offending will be an overriding problem that EM should solve, otherwise all the program objectives will turn out to be irrelevant.

It is not possible to make an unequivocal assessment of the impact of EM on overcrowding in Polish penitentiary establishments. It is obvious that the simple statistical analysis carried out here indicates rather no influence of EM on the percentage of people deprived of liberty.The drastic decrease in recorded crimes in Poland is not related to the number of people deprived of liberty.Taking into account the fact that the decrease in the number of recorded crimes relates mainly to the most serious crimes, threatening the life and health of people, as well as public safety, it is incomprehensible to keep such a large number of people in penitentiary institutions.The author recalled that in 2001 there were approximately 1.5 million crimes against approximately 58,000 persons deprived of their liberty (without pretrial detention).In 2017, there were approximately 0.5 million crimes against 66,000 persons deprived of their liberty (without pretrial detention).Additionally, the growing policy in the field of creating alternative measures to imprisonment, the culmination of which in Poland should be considered the period of the February 2015 amendment, did not bring the desired results. It is difficult to say whether the problem lies in the scope of utopian thinking about the effectiveness of the legislative change, or in the legislative "confusion" that occurred after 2016 in the criminal law area. The fact is that K. Krajewski's thought about the paradox of alternative measures created in Poland is still valid. The creation of alternative measures is counterproductive.

Electronic Monitoring is just one of many alternative measures introduced into the Polish criminal system. However, it is unique in its own way. This uniqueness is evidenced by the absolute numbers showing that every day in e-incarceration there are about 4,000. people, which is about 6% of the number of people isolated in a classic way. Can it be said, however, that electronic Monitoring led to a drop in the number of people deprived of liberty by this indicated group? The answer to this question is not clear. People who took part in the research under GR I were convicts who were sent to EM under the *back-door* system. This means that they were released from penitentiary units due to meeting the formal conditions of EM (of course with the consent of the court). In this context, it should be stated that EM directly led to a decrease in the number of people deprived of liberty. Another argument showing the positive impact of EM on the penitentiary system is the formal structure of EM. It should be recalled (which is a truism) that in Polish conditions, EM is applied in a sort of successive way. In the first place, we are dealing with the perpetrator being sentenced to imprisonment, what is more, a final conviction. Additionally, the Polish legislator did not provide for a formal link between the procedure requiring the perpetrator to serve a sentence of imprisonment and the procedure for consenting to serving a sentence

of imprisonment in EM. In other words: a final sentence of imprisonment of up to one year without a conditional suspension of its execution obliges the perpetrator to serve it, and the state, within its empire, has the power to force the convict to serve this sentence. The submission of an application by this convict to be allowed to serve a sentence of imprisonment in EM does not suspend the enforceability of the absolute penalty of imprisonment. Therefore, such a formal structure of the system will always result in the fact that the person sentenced to the penalty referred to in Art. 32 point 3 of the Polish Criminal Code (PCC), will not take place eventually. Moreover, the low percentage of people whose applications are positively recognized by the penitentiary court proves the lack of mass use of EM. These circumstances may sketch the image of EM as an effective way of limiting the number of people deprived of liberty.

However, on the other hand, there are arguments that will recognize sentences of up to one year's imprisonment as transitional sentences. The right was, among others S. Lelental, who argued that ruling by the trial court in the scope of an absolute penalty of deprivation of liberty is burdened with uncertainty.

A total of 3,015 people took part in the study. These convicts served imprisonment sentences in the years 2009–2014. The study analyzed the results of two convict subgroups - GR I and GR II. The first subgroup consisted of convicts who served (were in the process of serving) imprisonment in EM in the years 2009–2011, a total of 1,015 people. The second group (GR II) consisted of 2 thousand people. The data used in the study come from various electronic databases, accessed with the consent of the Minister of Justice and the Director General of the Prison Service.The creation of a database that was a direct source of information for the purposes of the study required the correlation of many variables. In general, it was possible to obtain equivalent variables covering both studied groups. Both groups are dominated by relatively young convicts, between 25 and 40 years of age, male convicts. In both groups, the percentage of women did not exceed 5%. In both groups, the vast majority of convicts had the possibility of taking up paid work. A significant difference between the analyzed results appeared in the territorial aspect, which is related to the unconstitutionality of EM in terms of its operation in the first phase of its functioning. Group I includes convicts from the first period of EM applicability. At a time when it was a technological limited measure only for use in technologically adapted districts. Inmates from GR II are persons who served a sentence of imprisonment in EM as part of a measure that is *de facto* general in nature. Hence, a comparative analysis of the activity of individual judicial districts seems unjustified. In both groups, there is no dominance of specific electronic Monitoring, taking into account the duration of supervision. The results show that the scope of electronic monitoring is significantly diversified and none of the periods (with the 50-day interval) dominates. In both groups, similar prohibited acts related to the sentence of imprisonment, which were then carried out in EM, come to the fore. The dominant elements are actions related to drunk driving, theft, fraud and the offense of non-alimony. The indicated prohibited acts constitute over 50% in both groups, and even almost 70% in GR I. In both groups, the convicted persons under Art. 64 § 1 of the PCC, although it should be noted that the share of one-time special recidivists is significantly higher than in the case of the general percentage in terms of the structure of penal sanctions in Poland (from about 5 to about 10%).

A significant difference between the GR I and GR II populations appears on the grounds of the conditional suspension of the execution of the imprisonment sentence and the issues of orders to execute the previously suspended sentence. Furthermore, when in GR I about 64% of perpetrators were transferred to EM as a result of ordering the execution of a previously suspended sentence, in GR II it

was a percentage of 99%!In both groups, about 10% of cases of revocation of consent to serve a sentence in EM due to the need to serve the rest of the sentence in solitary confinement were recorded. In other words: in approximately 90% of cases, the sentence of imprisonment served in EM was until the end or until the application of the institution of conditional early release.

Comparing the results in terms of the percentage of people returning to crime is inconsistent to some extent. When referring to the absolute numbers, the percentage of persons returning to crime is incomparably higher in GR I, where 49% of general recidivism was recorded within 5 years after serving a sentence of imprisonment under EM. Within the framework of GR II, during the analyzed period of 4 years after serving the sentence of imprisonment in EM, 30% of general recidivism was recorded (the difference of one year does not make the comparison impossible).This is due to the fact that the phenomenon of re-offending has intensified in the first years after the end of serving a sentence. The conducted research clearly confirms this known manifestation of recidivism. In the case of GR I, in the fifth and sixth years, a relatively significantly lower percentage of return to crime was recorded than in the preceding years. In both groups, the effect of the supervision period on the recurrence of offenses was observed. Both in GR I and GR II, the extension of the electronic control period was related to a decrease in the recidivism rate. In other words: the longer the Monitoring time, the lower the recurrence of crime.

In both groups, a significantly higher rate of return to crime was noticed in men - in the ratio of 1: 2. (men: women).

Conclusions

The percentage of people returning to crime after serving a prison sentence in EM is relatively higher than in the case of a conditionally suspended sentence, but comparable with the percentage of people returning to crime after serving an absolute imprisonment sentence. This comparison was made taking into account the results of this study and general statistics on penalties in Poland, with particular emphasis on the research of the Institute of Justice. In view of the above, considering enabling the functioning of the so-called *low-risk offenders*, with the simultaneous application of criminal punishment, the Polish ES should be assessed positively. It should be remembered that persons executing the sentence of imprisonment in EM are initially obliged to serve the sentence of imprisonment. Changing the method of executing a sentence from isolation to non-custody excludes the risk of negative consequences of isolation.

1. A higher proportion of overall re-offenders was observed in relation to the group of convicts released to EM (*back door*), i.e. those who had already served an absolute prison sentence and then carried out the rest of their sentence under EM.
2. Electronic Monitoring in Poland is not an alternative to an absolute penalty of deprivation of liberty understood as a penalty imposed in criminal proceedings, but an alternative to deprivation of liberty with a conditional suspension of their execution and alternative penalties of imprisonment. In this context, the whole idea of creating alternative measures to imprisonment is questionable. It can be compared colorfully to a snake starting to bite its tail. Moving onto the scientific ground, it can be observed that electronic Monitoring is an "alternative to the alternative".
3. Electronic Monitoring is a measure used mainly in relation to perpetrators of four types of prohibited acts: related to driving while drunk or after using substances similar to alcohol, theft, not alimony, fraud. At the same time, despite a fairly wide range of obligations that can be applied as part of

electronic supervision, EM does not contain separate regulations on the method of limiting these crimes, e.g., by simultaneously introducing technological monitoring of driving a motor vehicle and the driver's sobriety status.

4. There is a relationship between the time of supervision and the intensity of the number of people returning to crime. The longer the electronic control time, the lower the recidivism rate was recorded. The shortest ones, those lasting a month or two, where the percentage of return to crime exceeds even 60%, are particularly ineffective.
5. A much higher percentage of return to crime was recorded in the case of male convicts. Men, on average, twice as often as women were sentenced after serving a prison sentence in EM.
6. Penitentiary recidivism was recorded relatively less frequently in relation to recidivism that did not have the attribute of an absolute penalty of imprisonment.
7. Convicts under the conditions of Art. 64 § 1 of the PCC they returned to crime much more often. In the case of the indicated group, the general recidivism rate was always above 50%.
8. There was a higher rate of return to offense in the case of convicts who ended EM as a result of the application of the institution of conditional early release.
9. A higher rate of re-offense was recorded in relation to persons who were covered by EM after the issuance of the decision ordering the execution of the imprisonment sentence, than in relation to persons sentenced to imprisonment by the trial court.
10. The study also confirmed the strong relationship between the level of education and professional competences and the risk of recidivism. It is noticeable that people who had professional competences were less likely to return to crime. In bothcases, the difference was over 10%.
11. In the four main (most frequently recorded) groups of offenses, the percentage of people returning to a similar crime is inconsistent. Higher convergence was noted among the offenses related to drunk driving and the theft offense.
12. From 2011 to the end of the study (2018), there was no significant impact of EM on the number of people detained in prisons.
13. Generally, EM should be positively assessed in terms of its applicability as a way of implementing the penalty of imprisonment. Electronic Monitoring does not show a tendency to increase the number of cases of return to crime in relation to the absolute penalty of deprivation of liberty.
14. In the context of the costs of executing a penalty of deprivation of liberty in EM, it should be assumed, mainly following the indications of the Supreme Audit Office, that the individual execution of this measure is cheaper than the execution of the sentence in the traditional - isolation system. However, this conclusion is too simplistic. The presented statistics showed that ES did not cause a drastic decrease in the number of people isolated. In view of the increasing number of pre-trial detainees and the maintenance of the number of people deprived of liberty at a similar level, the overall increase in the cost of the penitentiary system should be assumed. Hence, EM as such cannot act as a panacea for the penitentiary system and it certainly will not improve the budgetary situation of the criminal justice system on its own.

Postulates.

1. Electronic Monitoring should be adapted to fight specific types of crime. In the case of persons convicted of offenses related to driving under the influence of alcohol *de lege ferenda* the obligatory linking of DE with a technological anti-alcohol system (blockade), adjudicated under a

criminal measure, should be considered.Such a penal measure would apply after serving a prison sentence in EM for a period of 5 to 10 years.

2. *De lege ferenda*, it is possible to consider the extension of EM in relation to imprisonment sentences not exceeding 2 years, due to the fact that a longer period of supervision has a positive effect on the percentage of return to crime.
3. The main problem of EM as an alternative to imprisonment is the fact that it is not an alternative to absolute imprisonment. This system is used much more frequently in relation to penalties and alternative measures, which creates an obvious paradox in the application of institutions. It is worth proposing that, as part of the procedure for ordering the execution of a previously suspended penalty of deprivation of liberty, pursuant to Art. 75 of the PCC there could be an automatic decision on the execution of the imprisonment sentence under EM. Such an arrangement of the procedure complies with the postulates of procedural economy; two decisions would be taken in one proceeding. At present, the executive court first decides to order the execution of a previously suspended sentence. After the decision becomes final, the convicted person gains the right to apply for permission to serve the ordered sentence in EM. In the light of the needs of the judiciary, including those of a financial nature, the current shape of the procedures seems unjustified.
4. *De lege ferenda*, it should be considered what was reported in the doctrine, the transfer of the decision on ES to trial courts. This can be done in several ways. It seems that the right solution is an intermediate solution, which may boil down to the possibility of determining by the criminal court the manner of executing the imprisonment sentence. For example, if a criminal court would sentence a given person to a penalty of 7 months' imprisonment without conditional suspension of its execution, it could, within its competence, order the execution of this sentence in EM. Although such a solution will still not lead to an increase in the catalog of penalties under Art. 32 of the PCC but will solve the problem indicated by S. Lelental in terms of uncertainty as to the imposition of a penalty of less than one year. Moreover, such a solution may lead to the unification of the procedure for performing EM. The separation of two procedures will be eliminated - the executive one in the field of absolute imprisonment and for consent to the execution of the imprisonment sentence in EM.
5. *De lege ferenda*, the possibility of EM ruling in relation to convicted persons under the conditions of Art. 64 § 1 of the PCC, due to the relatively high rate of recidivism and the systemic inconsistency in this respect, taking into account the premises set out in Art. 43la of the Polish Executive Penal Code (PEPC). In the case of proceedings for granting consent to serve a sentence of imprisonment in EM, the penitentiary court in the case of a convicted person under the provisions of art. 64 § 1 of the PCC is faced with the necessity to answer the question whether the penalty performed in ES will achieve its goal (the goal specified in Art. 67 of the PEPC as the goal of imprisonment), since the convict has already served a prison sentence and committed another offense within 5 years from its end. The answer is not simple, and from a formal perspective, the legislator contradicts himself in such a construction of premises.
6. *De lege ferenda* it is recommended to use DE as a preventive measure. Such a measure, which is a kind of alternative to pre-trial detention, will, to a certain extent, allow some suspects to be subject to a preventive measure that is much milder.This postulate, supporting those previously reported in the doctrine, is updated in particular with regard to the recent practice in the application of the institution of a preventive measure in the form of pre-trial detention.

7. The Polish EM should *de lege ferenda* be equipped with other instruments for assessing the possibility of applying the measure. A high percentage of recurrence to similar crimes, in particular while driving under the influence or theft, should condition the wider use of control technologies to prevent driving a motor vehicle in conditions of freedom.
8. The assessment of penitentiary courts in terms of the risk of recidivism should be based on modern prognostic measures determining the factors conditioning or reducing the level of recidivism. Such an assessment should also include methods of dealing with specific offenders, which methods are additionally neutralizing the risk of a repeat offense.
9. In the context of the CoE recommendation on electronic supervision, the database of the Electronic Monitoring Office should be modified. *De lege ferenda*, the provision of art. 43x of the PEPC, specifying the method of archiving the information of the office. Nothing stands in the way of shaping the system in such a way as to remove only information allowing for personal identification of the convict 2 years after the end of imprisonment in EM. Leaving the remaining information will be a valuable source of information in the context of conducting scientific research and will allow legislative decisions to be made based on the material drawing a picture of reality about EM in Poland. Complete deletion of information on the execution of a sentence or measure in EM after 2 years from their end is harmful from the perspective of the penal system.

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