# 5. ГІСТЬ НОМЕРА.

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## MODELS OF ELECTRONIC SUPERVISION SYSTEM IN POLISH PENAL EXECUTIVE LAW

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One of the most important and modern solutions implemented into the Polish penal executive law system is the electronic supervision. In this paper the history of its implementation will be discussed as well as the current position in legal system.

Firstly, it is necessary to present when the concept of electronic supervision of offenders occurred. It came into the light in late 60s., based on the research from the Harvard University [3, 416]. The debate on the pros and cons of the newly proposed system was continued through 70s and 80s (see del Ingraham B., Smith G., 1972 [6]; Carmen R, Vaughn J., 1986 [4]; Huskey B., 1987 [5]). In the late 80s in the USA the electronic surveillance system became popular and ongoing practice [3, 416]. One of the first European Countries, where the system was implemented, was the United Kingdom (known there as «tagging»), later joined Sweden (1997), the Netherlands (1999), France (2000), Portugal (2002), Denmark (2005) and Estonia (2007) [7, 167]. The electronic supervision has been recommended by the the Committee of Ministers of the Council of Europe by the Recommendation No. R (99) 22E concerning prison overcrowding and prison population inflation. It was underlined that it is the best way to reduce the prison population [8, 21].

Secondly, the definition of the subject of the article should be outlined - what the electronic supervision is in the light of the Polish legal system. In accordance with binding regulations, electronic supervision is a control of the behaviour of the convict when using technical means. Currently it is used for executing penalties, penal measures and preventive measures. According to the Penal Executive Code, the penalty of imprisonment can be executed in such a way. Prerequisites will be elaborated more in the following sections of the paper. Electronic supervision is distinct, on the ground of the Code, from the electronic supervision system which is the total of methods and technical means used to perform electronic supervision.

The electronic supervision was firstly introduced into the Polish legal system in 2007 by the temporarily binding act – Act on the execution of the penalty of imprisonment outside the penitentiary in the system of electronic supervision. The Act had been planned to be in force for 5 years – since the end of August 2014 [1]. In 2013 the validity of the Act has been extended for an indefinite period [1]. In this way the Act was deprived of an episodic character [1].

The new system of executing the penalty of imprisonment was implemented step by step. Firstly, it was Warsaw appeal district where the system had been enforced – since 1 September 2009 [2]. Than, the whole country had become involved in it - since the beginning of the year 2012.

It is essential to point out the main aims of adopting the Act on electronic supervision. The very first one was the necessity to reduce both the number of prisoners in prison and, the second one, the number of persons who, after the final termination of legal proceedings (and being found guilty and sentenced for an imprisonment), awaited admission to the prison for the purpose of enforcing the sentence [2]. Also economic issues were taken into consideration and were in favour of implementing the new solution [7,168].

The very first attempt of introducing the electronic supervision was connected directly with executing the penalty of imprisonment. It was completely new solution for executing short-term incarcerations [12]. The system

consists in controlling the behaviour of a convict staying outside the penitentiary using monitoring equipment, i.e. electronic devices, installations and systems containing electrical or electronic components used for this control (technical means). In 2011, a new possibility has been added, according to which the conditions for performing, organising and controlling as well as supervision over the enforcement of the obligation to stay in the place of permanent residence during a mass event pronounced in connection with the ban on access to a mass event [12].

In July 2015 a major change occurred – the institution of the electronic supervision was transposed from the temporarily binding Act to the Penal Executive Code. The explanatory memorandum of the amendment indicated that currently the electronic supervision system had become a recognised institution of Polish criminal law, losing its experimental nature, and therefore there is no longer a need to have it adjudicated on the basis of a separate act of law [1].

The other model was adopted in the amendment to the Penal Executive Code in 2015. Permanent embedding of the electronic supervision system in the case-law practice causes that the institution has been regulated under the Code provisions [1]. As it was stated before, under the currently binding provisions it is used for executing penalties, punitive measures and precautionary measures. Pursuant to the amendment of the Penal Executive Code (2015), the only penalty that could be ruled and performed in the electronic surveillance system was the penalty of restriction of liberty [1]. According to Art. 34 § 1a point 2 of the Criminal Code the penalty of restriction of liberty consisted in i.e. the obligation to stay in the place of permanent residence or in another designated place with the use of an electronic supervision system. The introduction of the possibility of executing a penalty of restriction of liberty with the use of electronic supervision, and the elimination of the penalty of imprisonment from this system proved in practice highly ineffective [13]. So it was concluded that the diametric drop in the number of people covered by this system, although the development of the electronic supervision system, both in terms of system capacity and organisational and technical level, enables wider use of it under criminal law, in particular through re-use at the stage of imprisonment [13].

Changes, in accordance to the postulated alternations, were implemented in 2016. Article 34 § 1a point 2 and Art. 35.3 of the Criminal Code, concerning the imposition of a penalty of restriction of liberty consisting in the obligation to stay in the place of permanent residence or another designated place with the use of electronic supervision, have been repealed as well as the provisions of the Penal Executive Code regarding the execution of a penalty of restriction of liberty in this form [13]. According to the current legal status, the electronic surveillance system can be used to execute:

– an imprisonment for a term not exceeding one year, an aggregate penalty, amenable penalties not exceeding the period of one year and substitute imprisonment,

– penal measures: a ban on approaching certain people (3 to 12 months), the obligation of a convicted person to be present during certain mass events covered by the ban in the place of permanent residence or in another designated place (2 to 6 years),

– preventive measure ordered in the course of jurisdiction or in enforcement proceedings in the form of the perpetrator's place of residence control (without specifying the duration).

There is one exemption connected with intertemporal criminal law norms – it is the case of the penalty of restriction of liberty in relation to persons who, before April 2016, served this penalty in the form of an obligation to stay in permanent residence or in another designated place with the use of electronic supervision.

What is a binding element of the first and third model is a type of penalties to which execution the electronic supervision might be used – the possibility to execute the short-term penalty of imprisonment [for a term not exceeding firstly 6 months, than amended to one year]. To be precise, there is one exemption – Article 64 § 2 of the Criminal Code. Other prerequisites are also common:

– it is sufficient to achieve the purpose of the punishment,

– an offender has a specific place of permanent residence,

– the consent of adults who live together with the offender and,

– technical conditions does not preclude it.

Only the total fulfilment of all conditions allows the court to grant the offender permission to serve a penalty of imprisonment in an electronic supervision system [11, 16–17]. The doctrine [9] indicates the division into two groups of necessary conditions to use the electronic supervision. The first one is connected with its objective nature, i.e. those whose existence (or lack thereof) is clear from the evidence available to the penitentiary court [9]: the length of sentence imposed by the court (not exceeding one year), the place of permanent residence, the consent of adults who live together with the offender and existence of technical conditions. The second group is connected with more evaluative issues [9]. Their existence (or lack thereof) is determined by the court as part of a

free assessment of the conditions arising from the held evidences [9]. These are circumstances related to the characteristics of a criminal – his/her attitude, properties and personal conditions, which are as follows: an assessment whether electronic supervision is sufficient to achieve the purpose of the penalty, no contraindications in the form of security reasons, the degree of demoralisation, as well as other special circumstances and previous attitude and behaviour of an offender (applies only to the one who began serving the imprisonment) [9].

To conclude, it is possible to outlined that the electronic supervision on the grounds of the Polish criminal law system is one of the most modern solutions. It is definitely the most libertarian way of executing a penalty of imprisonment. The evolution of the model of the system is still under discussion and there are supporters and opponents of the current solution. The system is highly effective - the efficiency measured by the lack of appeals by the courts of execution of penalties in this system is 94% [10]. The criteria of effectiveness and economic efficiency are in favour of maintaining electronic supervision in the currently adopted form. An important factor to measure aforementioned will be the level of recidivism [11]. So further analysis should be carry out.

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**Legislation**


1. *Recommendation No. R (99) 22E concerning prison overcrowding and prison population inflation adopted by the Committee of Ministers on 30 September 1999,*
2. *Act of 6 June 1997 on the Penal Executive Code; Official Journal of Laws of 2017, item. 665 - consolidated text,*
3. *Act of 7 September 2017 on the execution of the penalty of imprisonment outside the penitentiary in the system of electronic supervision; Official Journal of Laws of 2010, No. 142, item. 960, as amended.*


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