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THE ELECTRONIC MONITORING IN THE POLISH PENAL LAW SYSTEM

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SUMMARY

The presented doctoral dissertation includes considerations on the issues related to the electronic monitoring, which is a new solution under the Polish penal legislation. It should be noted that in the Polish legal publications there have been several attempts to discuss this institution comprehensively. Previous research has focused primarily on selected issues related to electronic monitoring. In this dissertation, the space for detailed analysis is normative threads about solutions relating to this institution of broadly understood penal law.

It should be emphasized that despite the advanced technological progress, the use of electronic monitoring became possible only through the adoption of the Act of 7th September 2007 about serving a sentence of imprisonment outside the prison in the system of electronic monitoring (Dz. U. 2007, No. 191, item. 1366; hereinafter: the SDE Act). Initially, this normative act was to enter into force on 1st July 2008. The need to prepare and create appropriate technical resources forced the legislator to extend the vacatio legis until 1st September 2009.

However, the need to improve the analyzed institution resulted in undertaking further legislative works. The dynamic development of electronic monitoring, which was dictated by the many reforms of penal law and the constantly appearing bills of normative acts justifies the statement that the legal nature and shape of the analyzed institution in the Polish penal law system may still raise doubts and require clarification. The main goal of the dissertation is to try to answer the question about the essence of electronic monitoring. Is the shape of the currently functioning legal solution appropriate, and – is their change not required in the course

of any further legislative work? These issues seem important because they allow us to determine the perspectives of this institution and possible directions of its evolution in the future.

The dissertation consists of five chapters, an introduction and a conclusion. The doctoral dissertation takes into account the legal status as of 28th March 2022.

The first chapter of the dissertation *„The genesis of the institution of electronic monitoring in the world"* contains a general introduction to the issue of electronic monitoring by showing the historical outline of the creation of this institution with particular emphasis on the activities of its precursors. It must be remembered that the concept assuming the use of this solution was developed on the American continent already in the 1960s–1980s century, and the sources of inspiration for foreign precursors – were often unconventional.

In connection with the more and more frequent attention paid to respect for the fundamental rights of convicted persons and the need to search for alternative measures to imprisonment, selected acts of public international law were also analyzed, trying to determine whether and to what extent they refer to electronic monitoring.

To complete the discussed threads, the contemporary legal issues related to this institution have been extended to include the characteristics of electronic monitoring compared to the solutions which exist in particular European countries.

The second chapter *„Evolution of the institution of electronic monitoring in Poland"* presents the ersatz of this institution in the light of the penal legislation of the inter- and post-war period, the first bills aimed at implementing electronic monitoring into the Polish penal law system and assumptions of fundamental normative acts, such as the aforementioned the SDE Act.

Considering the dynamic development of electronic monitoring in Poland, over just a dozen or so years, it turned out to be indispensable to introduce the legal solutions that were a result of subsequent reforms of the penal law. Entry into force of the Act of 20th February 2015 amending the Penal Code and some other laws (Dz.U. 2015 item 396) was crucial, because the experimental nature of this institution was abandoned, and the regulation of electronic monitoring has become an integral part of the Executive Penal Code. The amendment of 20th February 2015 led to a radical, but only short-time, change in the perception of electronic monitoring in the Polish penal law system. However, the return to the previous legal solutions has become possible based on the provisions contained in the Act of 11th March 2016 amending the Penal Code and the Executive Penal Code (Dz.U. 2016 item 428).

The Act of 12th April 2018 amending the Executive Penal Code and the Act on the Prison Service (Dz.U. 2018 item 1010), which extended the competencies of the Prison Service,

was also important. This gave rise to the need to refer to issues such as, for example, the selection of a supervisory entity before 2018, the basic differences between the realization of its tasks by an entity from the private sector and the public sector, or bringing an action by Impel Security Polska against the State Treasury – the Ministry of Justice. In addition, it turned out to be necessary to approximate the legal solutions that were forced by the extraordinary situation caused by the spread of the coronavirus and were adopted by the Act of 31st March 2020 amending the Act on special solutions related to the prevention, counteraction, and fighting of COVID-19, other infectious and crises situations caused by them and some other acts (Dz.U. 2020 item 5). At the same time, the dissertation drew attention to the proposed changes included in the bill of 13th June 2019, which was finally declared unconstitutional by the Constitutional Tribunal, and to the assumptions of the „Modern Prison System" program. In this part of the dissertation, a quantitative analysis was also made, showing the image of contemporary supervision based on statistical data provided by the Electronic Supervision Office.

The third chapter of the dissertation *„Axiological attributes of electronic monitoring"* presents the main assumptions that accompanied the legislator during the implementation of electronic monitoring into the Polish penal law system. Moreover, an attempt was made to answer the question of whether they had been realized. The legislator's decision was based on the problem of overpopulation, familiar to the Polish prison system, for which electronic monitoring was to become a kind of remedy. Considerations regarding the impact of the analyzed institution on the mentioned phenomenon were preceded by, inter alia, an attempt to reconstruct the definition of the terms „overcrowding" and „population rate", a presentation of the negative consequences of this phenomenon or information about the capacity and population of organizational units of the prison system. It should also be added that the arguments raised during the legislative work referred to the general directives of the penalty. Therefore, some considerations concentrate on those aspects of electronic monitoring that reflect the preventive elements to a greater or lesser extent. The last of the assumptions was the legislator's aspiration to take into account the international standards contained in the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) – UN General Assembly Resolution 45/110 of 14th December 1990 and Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation. However, the analysis of these provisions leads to the conclusion that, during the implementation of the examined institution, they were unfortunately omitted.

The fourth chapter of the dissertation *„Electronic monitoring - considerations on the essential practical problems"* was dedicated, not only to the analysis of the statutory requirements for the use of electronic monitoring but also to other selected legal provisions that raise doubts in interpretation within the context of the possibility of eliminating possible obstacles to the proper functioning of this institution.

This chapter presents the main line of considerations, concerning the legal nature (essence) of electronic monitoring in Poland. In the first place, it was necessary to consider whether electronic monitoring realized in a stationary form corresponds better to the restriction of liberty or imprisonment. It turned out to be necessary to refer to the meaning of these terms in the constitutional approach and the jurisprudence of the European Court of Human Rights. It should be noted that doubts about the legal nature of this institution also appeared in the jurisprudence of common courts. Therefore, it was equally important to refer to the judgment of the Supreme Court on 21st June 2017 regarding the resolution of a legal issue. It should be added that the definition of the essence of electronic monitoring would not be possible without an analysis of the regulations contained in the aforementioned SDE Act and the Act of 6th June 1997 – Executive Penal Code (Dz.U. 1997, No. 90, item 557; hereinafter: Executive Penal Code).

In addition, this part of the dissertation presented technical aspects related to the execution of measures of penal law reaction using electronic monitoring, which may cause some controversy.

In the last, fifth chapter *„Electronic monitoring in the Polish penal law system – remarks de lege lata and de lege ferenda"* the considerations concentrate on the potential possibilities of introducing changes to the existing legal solutions and on the prospects for further development of this institution and its role in the future. In particular, the issues related to the use of the so far underestimated potential of this institution in enforcement proceedings and at other stages of criminal proceedings, were analyzed.

This chapter presents comments on the possibility of using electronic monitoring concerning selected preventive measures in the preparatory proceedings. Moreover, the need to change the legal solutions that currently refer to this institution was noticed and postulates were formulated, inter alia, resignation from the implementation of the „obligation to stay" adjudicated under the ban to enter a mass event (Article 41b § 3 of the Penal Code), electronic control of a criminal offender's location (Article 93e of the Penal Code) or a substitutive imprisonment (Article 43lb of the Executive Penal Code), and also some modifications regarding the control of the restraining order (Article 41a § 1 of the Penal Code). At the same

time, it was proposed to extend the catalog of Article 39 of the Penal Code and covering with electronic monitoring of convicts, against whom a penal measure of a ban on being in certain communities or places (Article 41a § 1 of the Penal Code) and a ban on entering gaming centers and participation in gambling (Article 41c of the Penal Code), and also to merge this institution with conditional early release (Article 77 of the Penal Code). Electronic monitoring could also be applied to convicted taking a break in serving the sentence of imprisonment, and also as a tool used to control the behavior of persons posing a threat, against whom preventive extensive supervision is adjudicated.

Considerations in this respect have been limited only to the fundamental normative acts, for example, the Act of 6th June 1997 – Penal Procedure Code (Dz.U. 1997, No. 89, item 555), the Act of 6th June 1997 – Penal Code (Dz.U. 1997, No. 88, item 553), the Executive Penal Code and the Act of 22nd November 2013 on dealing with persons with mental disorders who pose a threat to other life, health or sexual freedom (Dz.U. 2014 item 24).

The *„Ending"* contains conclusions on the issues discussed in all chapters of this dissertation. In this part, reference is made to the implementation of the basic assumptions that primarily accompanied the legislator when designing and implementing electronic monitoring into the Polish penal law system through the prism of the applicable legal regulations.

Attempting to define the legal nature (essence) of the analyzed institution and the place it should occupy in the constantly amended Polish penal law system has led to the conclusion that electronic monitoring is only a technical method of executing punishment and other measures of penal law reaction. It is unjustified to equate electronic monitoring with the system of executing imprisonment or to perceive this solution as a separate criminal penalty, penal measure, or preventive measure.

The assessment of the examined institution leads to the conclusion that the legislator's decision on the implementation of electronic monitoring in the Polish penal law system was correct. However, the multiplicity of changes and many doubts regarding technical aspects and legal regulations lead to the conclusion that this institution is still an imperfect tool. For these reasons, it is necessary to undertake further legislative work.

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