

GENERAL CONSIDERATIONS REGARDING ELECTRONIC MONITORING SERVICES AND PROGRAMS¹⁾

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Abstract

In this study the author presents the main characteristics of the services and programs of electronic monitoring of culprits and convicts, at the same time revealing both the strong points and the shortcomings thereof, found in the implementation process.

Furthermore, the author pleads for the organization of a serious debate at national level on the necessity and timeliness of implementing such services and programs in Romania, in the context of the present criminal reform.

Keywords: *electronic monitoring; curfew; house arrest; electronic monitoring system; probation; consent; monitoring; labeling; legal supervision; imprisonment; parole; preventive detention; alternative preventive measures*

Introduction

In the context of the increase of the imprisoned population and as the prisons become overcrowded, the legal practice brings into debate innovating ideas and methods of delinquency management. The offender electronic monitoring services and programs are a result of this reasoning.

Electronic monitoring of offenders caught the attention of specialists over 30 years ago. Developed on the concept that less grave offences can be served outside the prison system, electronic monitoring became an instrument in the hand of the courts, probation and monitoring services and other offender management responsible entities.

The concept of electronic monitoring is based on the capacity of the probation officers, policemen and/or parole management officers to manage and control the activities of an offender in the community as a consequence of the offender's inclusion into an alternative program to preventive detention or imprisonment.

There are several worries regarding the implementation of electronic monitoring services and programs. One of them refers to the fact that the extension of the eligibility to offenders with a significant social risk can change into an attack to public security. On the contrary, restriction of the services to subjects who perpetrated relatively minor offenses and having an adequate social-

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professional profile does not justify itself economically and electronic monitoring may be considered an intrusion in the private life of the person and his/her family.

The wager *custody* versus *alternative restrictions and obligations* with electronic monitoring consists in identifying the eligibility criteria of the offense and offender, capable to suggest and sustain the decision of imprisonment, application of alternative measures or penalties in the community, respectively, supplemented as the case may be, by the obligation of implementing other legal control, treatment, education of professional training programs.

Prison overcrowding is a frequent argument used to justify electronic monitoring services, but not the only one. To sustain control programs and services by electronic system, appeal is made yet to other supporting themes, such as the responsibility of the individual, family and society, freezing of the recurrence rate, and not last, the cost of custody management. In a wide acceptation, electronic monitoring of culprits and convicts contributes to the materialization of community partnerships which aim at, and maintain the hope of, a just, real and secure society, by the integration of a balance between political, legal and social actions of criminality prevention, operative and efficient intervention and reintegration of the individual in the community³⁾.

The content and complexity of the services belonging to the electronic monitoring program differ according to the nature of the offence, profile of the offender and budget allotted to that action.

Extension of the use of these categories of services and programs at international level brought to light a series of non-homogeneous particularities of political, social, administrative and ethical nature, issues which should be solved before the initiation of the said actions or implementation of a new normative framework. It is also the case of Romania.

Imminence of the implementation of the new criminal normative framework⁴⁾ rises, in our opinion, to the rank of priority, the provocation of a debate on the theme of the necessity and timelines of implementing the electronic monitoring services in Romania. What is it? What are the characteristics which define the notion of electronic monitoring? And, moreover, what has to be done in the direction of implementing such services and programs in the legal act are a few of the issues we propose to present and, as far as possible, clarify.

³⁾ American Probation and Parole Association: *Electronic monitoring in intensive probation and parole programs* (Monograph). Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice, 1989.

⁴⁾ See: Law no. 286/2009 on the *Criminal Code*, published in the Official Monitor of Romania, part I, no. 510 of July 24, 2009; Law no. 135/2010 on the *Criminal Procedure Code*, published in the Official Monitor of Romania, part I, no. 486 of July 15, 2010.

1. Electronic monitoring – a complex and controversial notion

Complex because it brings together heterogeneous activities from various spheres: criminal justice, economy, technical research, psychology, sociology, pedagogy, administration etc. Controversial because it brings into debate and offers different answers on themes related to criminal legislation, fundamental human rights, criminality control, protection, security and social reintegration, costs and efficiency of the justice act. From the procedure point of view, it represents a means of remote control of the persons involved in a criminal suit, by the imposition of movement restrictions, practicable as a rule in a certain hourly bracket.

It is promoted as a real alternative to imprisonment. The electronic monitoring services and programs are less costly than the imprisonment; they cut down the need for detention spaces and contribute to the relaxation of overcrowding the reviewed locations.

Although it is sometimes perceived as a form of punishment which restricts the freedom of movement, it provides the required flexibility to continue current activities in the community and maintain the family life.

The electronic monitoring programs protect the public by inhibition of the criminal possibilities; they emphasize the impact of social actions of reintegration and rehabilitation of the criminals and represent a solid support for the enforcement of punishment in the community.

At social and individual levels, the electronic monitoring services contribute to the *control and normalization of the life style* of the subjects and, in many instances, of those in their entourage, as well as the consolidation of a healthy relational system.

Electronic monitoring, as an efficient way of monitoring the freedom of movement of the offenders in the community, can be applied in all stages of the criminal suite and, in certain cases, after having served the time, for instance in the case of sexual offenders.

Furthermore, it is assimilated ever more as a viable alternative option to the imprisonment of persons with a moderate social threat and as an efficient possibility of solving aspects generated by illegal immigration or deviant social behavior of young people. According to individual impact, *electronic monitoring is considered to be more punitive than the classical probation services and less strict than imprisonment.*

The existence and development of a monitoring system ease promotion of modern policies of criminal procedure and time serving and provide the adequate technical support for the increase of the weight of preventive obligations, non-privative of freedom, as opposed to preventive detention and punishment executed in the community as opposed to imprisonment.

Substitution of the classical alternatives of punishment prevention and time-serving by electronic monitoring is conditioned by the guaranteeing of an efficient justice act, with reduced costs, under conditions of individual and public security.

2. Electronic monitoring – weakness, mercy or controlled trust.

The offender electronic monitoring institution is found under multiple acceptations.

Some people perceive it as a punishment measure or an act of mercy, consciousness and responsibility. Others perceive it as a complementary and efficient means of control and real substitute of custody. Some opinions support the thesis of controlled trust and the necessity to grant a second chance, while others support the alternative of using it as an instrument of alleviating disordered life.

There are opinions which promote the idea of using it as a weapon against the shortcomings and negative emotional impact of the life in jail, especially on young people and a complement supporting the cognitive-behavioral treatment of actions in the case of adults.

There are opinions which disapprove the use of such means, while others declare themselves surprised by their cleverness and efficiency.

Some jurisdictions enforce or experiment electronic monitoring as a solution of efficient management of budgetary resources, while others aim at reducing the recurrence index amplifying the role of the family, social counseling and professional formation of the subjects in the community.

Other programs of electronic control have a strictly operative character, the declared targets being focused on the seeking, localization, apprehension and presentation of the offenders in front of the investigation and/or judicial organisms.

International expertise connects the notion of electronic monitoring with two fundamental coordinates:

✓ *efficient riposte – from the economic and social points of view – to imprisonment*; budgetary constraints consolidate the thesis according to which addition and modernization of imprisonment capacities are not the only paths to follow;

✓ *mode of control of criminality based on the responsibility of the subjects and community*; usage imposes implementation of a dual system of treatment of the delinquency: imprisonment for the cases which need it and harsh penalties and/or restrictions in the community for those which do not require express custody.

3. Curfew – essence of the electronic monitoring system

The contents of the electronic monitoring program express a form of remote control of persons involved in a criminal suite, selected according to some precise eligibility criteria, through several verification modalities of the restrictions of leaving the residence within a certain time span (radio frequency or biometric systems) or permanent recording of the movements inside the community⁵.

The electronic monitoring program focused on curfew departs evidently from the strictly operative approaches.

⁵ Provided by satellite localization systems with Global Positioning System (GPS) technology.

Electronic surveillance, currently met in the specialized literature under the name of *electronic monitoring*, is a relatively recently approved in judicial practice. In fact, electronic monitoring services are aimed at recording and certifying the conformity of observing the obligations imposed by the curfew.

The decision for confinement, arrest or curfew places the subjects in a program of control in the community which restricts the freedom of movement and institutes at individual level the obligation to refrain from leaving the declared residence during a certain time bracket.

In principle, the sum of restrictions imposed by the program does not restrict the right to work, education or medical treatment.

The considerations presented above induce two essential issues in the administration of a service of electronic monitoring, i.e.: *legislative permissivity and institutional capacity to furnish and manage such special services*.

4. The mission of electronic monitoring programs and services remains a philosophy durable in time

The history of electronic monitoring begins in the 60' of the 20th century and is the effect of a non-homogenous mixture of values, requirements and conditions favorable for political, economic, ideological and technical changes, all focused and turned into account by various social forces, interests and processes to the benefit of community standard development⁶⁾.

The father of the concept of monitoring the offenders by technical means is considered to be Ralph K. Schwitzgebel, PhD, a psychologist at Harvard University. He sustained that acceptance of certain measures of judicial control and social re-education of the offenders in the community is preferable in the present stage of human development and a more permissible, more tolerant and less costly alternative than custody of the persons imposes itself as necessary and timely solution. Dr. Schwitzgebel considered that monitoring by technical means, associated with other judicial control measures, could be a substitute of long term imprisonment, especially in the case of a category of *chronical recidivists*. Offender's responsibility is considered an essential condition while the technical equipment, a servant and therapeutic process⁷⁾.

The huge qualitative leap recorded in the field of electronic technique did not affect Dr. Schwitzgebel's philosophy, recognized even today. In spite of continuous improvement of the technical performances and miniaturization of the devices attachable to persons, electronic monitoring preserved its *raison d'être*:

⁶⁾ See: S. Mainprize, *Electronic monitoring in corrections: Assessing cost-effectiveness and the potential for widening the net of social control*, Canadian Journal of Criminology, 34(2), p. 161-180, (1992).

⁷⁾ M. Renzema, *Electronic Monitoring's Impact on Reoffending*, (revised) 2003. faculty.kutztown.edu/renzema/EM/april 05/2003 protocol.pdf, p.2.

confirmation of the presence of a subject at a certain location at a given time or during a certain time bracket.

Initiation of electronic monitoring programs, in the sense of the motivations expressed by Dr. Schwitzgebel, is attributed to judge Jack Love of Albuquerque, New Mexico. Inspired by an episode of the *Spiderman* comics series, in 1977 he convinced Michael Gross, an electronics specialist, to design and build an electronic device for the control of offenders. The experiment started in 1983, when judge Jack

Love decided to include the first offender into an electronic monitoring program, pronouncing a measure of curfew.

The success of the project laid the basis of development of a public service destined to alleviate the act of managing criminality, to depressurize the effects generated by jail overcrowding, re-socialization and reintegration of offenders with moderate social risk.

The electronic monitoring programs experienced a significant development and spread at the level of the United States of America and, then, the whole world. From 2300 subjects registered in 1988 in 32 states of the United States of America, their number reached 95,000, ten years later⁸⁾. Remarkable results made it possible for the American experience to be exported to Great Britain, Canada, Australia, New Zealand, Singapore, South Africa, Sweden and Holland. There, as a consequence of undergoing some pilot projects with various degrees of complexity, operational structures were built, managed by both the public and the private sectors⁹⁾.

The constitution and development of the monitoring services are to a great extent the consequence of the will of political factors, which, under the pressure exercised by certain social and economic vectors, ascertained the real contribution of the electronic monitoring programs to rendering the justice act more flexible and efficient.

The appearance and development of satellite positioning equipment allowed the enriching of the contents of the programs and enlargement of the monitoring area by furnishing a permanent control over the subjects' movements.

The increase of the freedom of movement of the offenders, a facility provided by the implementation of programs based on GPS devices, fuels certain worries with regard to potential perils determined by the global behavior of the individual in the society.

These worries are fully justified. The guarantee of permanent and operative control may lead to an attenuation of the vigilance and, why not, of the reticence of the decision factors with regard to the extension of such programs to deeds and individuals with a higher social danger, a result which could deteriorate the social climate.

⁸⁾ A. Schmidt, *Monitorizarea electronică: Ce ne spune literatura de specialitate? în "Probațiunea Federală"*, 62 (2), 1998, p. 10-19.

⁹⁾ K. Dodgson, E. Mortimer, *Home detention curfew - The first year of operation*, in „Research Findings”, 2000, p. 110.

5. The concept of electronic monitoring triggers important debates of legal and ethical nature

The themes brought into debate are connected to the artificial expansion of the legal and social control in the community, the danger of attenuating the role of the punishment in the act of criminal justice, the risk of breaking into certain individual and/or collective rights and the constitution or imposition of certain discriminatory selection criteria.

5.1. Electronic monitoring “extends the net”¹⁰⁾. This idea is based on the fact that the first ones targeted are the offenders with insignificant social risk, who, as a rule, are tried in freedom or are placed in routine traditional probation programs. Enforcement of the programs on these categories of persons represents, after all, an arbitrary escalation of the legal control in the society, under the pretext of a minimum charge of criminality. The manifestation of such situations places under the uncertainty sign the veracity of the economic advantages aired in the support of monitoring services.

5.2. Electronic monitoring eases the coercitive effect of the punishment. The oponents say that electronic monitoring is a much to lenient decision. In their opinion, substitution of imprisonment leads to the diminution of the discouraging role of punishment, propagation of the negative effects derived from here. It is also affirmed that the electronic monitoring programs do not have the capacity and mission eliminate the repetition. The arguments presented above are partly shadowed by the results obtained by the monitoring services which record conformity rates of up to 95 percent. The risk of repetition exists and must not be minimized. An efficient monitoring solution is based on solid selection criteria and takes into consideration, in the case of complex situations, the alternative of monitoring the offenders by the electronic system, at the same time with the permanent or occasional implementation of a specialized human control.

5.3. Legality of the electronic monitoring decision. Enforcement of an electronic monitoring program creates controversies over issues of constitutional law. Installation of technical control equipment in the residence of the person places under a cone of shadow the right of the individual to privacy. Integration of the notion of monitoring in the category of criminal investigation instruments, aimed at finding, locating, apprehending and bringing the offenders to justice, triggered disputes with regard to the protection of the individual against abusive search and impounding. The existence of a selection system with inflexible

¹⁰⁾ National Institute of Correction, *Designing an Electronic Monitoring Program: A Guide to Program Design, Implementation, and Management*, “The Experience of Clackamas County”, Oregon/2006, p.10, <http://nicic.gov/pubs/pre/008745.pdf>.

eligibility criteria, raises serious barriers against the admission of all categories of criminal deeds and offenders, fact which contributes to the strengthening of the suspicions related to the observation of the equal protection of the individuals in front of the law.

Under such conditions, the solution is to obtain the consent of the person for the technical and legal decisions foreseen to be made, a requirement which becomes a determining element of the program. In other words, *electronic monitoring has legal coverage as long as it imposes itself as a consensual approach.*

5.4. Electronic monitoring interpreted as a discriminatory facility. Deviation from the principle of equality in rights derives from the mode of designing and building the system of eligibility requirements, and, implicitly, from the typology of adopted programs.

Selection of the subjects according to race, social standing, age criteria or other norms springing from the nature of the offenses and the profile of the offender places under discussion the mode of observing the fundamental rights regarding the equality of the individuals in front of the law.

Collection of a fee from the beneficiary limits the access of young people and persons with reduced resources. The obligations to have a stable residence, a secure place of work and a land phone line can amplify the issue of discriminatory criteria. Wherever a material incentive of the subjects is pursued, it is recommended to use flexible scales of fees, corresponding to the financial possibilities of each individual.

Orientation of the programs exclusively in the direction of the offenders with moderate social risk and without priors, or of minors and youth consolidates the baggage of arguments supporting the discrimination thesis. Guiding the eligibility process towards such criteria restricts the area of selection and produces a narrowing of target group to a segment of persons coming from the median area of the social risk or with a non-violent behavior, an approach in obvious contradiction with the mission of the electronic monitoring services, the rights and aspirations of the rest of the offending population.

5.5. Electronic monitoring does not bring social rehabilitation. The electronic monitoring program is focused on the diminution and control of the subject's freedom of movement. Fulfillment of the movement restrictions does not contribute to the improvement of the social contacts and, as such, the reintegration effect may be annihilated. This is one of the reasons for which recommendations flow in the direction of completing the electronic monitoring programs with actions of social contacts, education and professional training. This way, the subject has the possibility to access groups of social services and superior quantitative and qualitative traditional probation activities.

The socialization potential of any reintegration program is assessed by comparing the contributions of the three options: probation, electronic monitoring and imprisonment. Electronic monitoring, through flexibility and making aware of the responsibilities, offers the highest chances.

6. Preventive detention – new aspects

Use of the electronic monitoring services in the preliminary stage of the trial act became a common practice at the level of many international jurisdictions.

The discussions around the use of electronic monitoring as an alternative to preventive detention do not exceed the general framework of the issues and are oriented towards the clarification of the aspects related to the legality and contents of the proceedings, the level of the social risk attributed to offenses, the profile of the eligible offender, the impact on social security, the agreement between the requirements of the act of justice and technologic answers, the observation of the fundamental human rights etc. The weight is held by normative permisiveness and technologic monitoring performances.

The measure of preventive detention can be ordered when there is evidence or serious indications that a deed provided for in the criminal law was perpetrated (art. 143 C, criminal procedure). The instances in which there exists the danger of evasion, influencing of the criminal investigation or perpetration of other offenses are recognized as general circumstances to order detention. In the case of serious offenses it is stipulated a special reason for preventive detention, existence of a concrete risk for the public order, respectively. As an absolute novelty, the new Criminal Procedure Code institutes the measure of house arrest (art. 218-222).

At the principle level, custody of the person receives the character of exception, subsidiary in relation to the other preventive measures non-privative of freedom.

In order to guarantee and preserve the character eminently preventive of the custody pronounced in a criminal trial and in order to fluidize the act of justice, the new Criminal Procedure Code provides for the measure of preventive detention maximum terms for the periods of enforcement of the measure, according to the trial stages. In this context, preventive detention acquires new characteristics as compared to the other preventive measures.

In the preliminary stages of the trial act, it is required that the enforcement of electronic monitoring programs is not linked with the instances which exceed the requirements regarding the presentation of the offender to the criminal investigation organisms or the courts and not perpetrate other offenses. The penalty is not relevant at this stage of the criminal trial.

International practice brings to the fore other two reference fields attributed to the investigation stages. The first refers to the monitoring of asylum applicants by right, while their applications are under way of verification and solution. In this interval, in the majority of jurisdictions, the asylum applicants are held in custody, in specially arranged places, with severe restrictions of movement inside the

community. Inclusion of this category of persons in monitoring programs with fixed devices or voice verification means may be a more humane solution and, at the same time, cheaper and more efficient.

The second refers to victim protection. The programs of victim protection have a relative reduced enforceability in the stages of criminal investigation and trial, but enjoy an ascendant evolution in stages like post-sentencing, parole, or after having served time. It is the case of sexual aggressors, obliged in certain jurisdictions to wear various positioning devices for the duration of their lives¹¹⁾.

Re-dimensioning of the preventive detention institution, as a rule in procedural exception, brings again to the fore the theme of culprits monitoring by electronic system and imposes it as an adequate means of legal control.

7. Legislatively permissive and functionally efficient framework – fundamental condition to build a new system of electronic monitoring

The notion of monitoring by electronic system is not an innovation in the Romanian criminal legislation. Implementation of such a service was attempted by adoption of the Government Emergency Ordinance no. 60/2006 for the modification and supplementation of the Criminal Procedure Code as well as the modification of other laws¹²⁾.

In order to solve the issues related to the finding, positioning, apprehension and bringing the offenders in front of the judicial organisms and to provide a legislative framework facilitating the efficient operation of the activities of pursuit and trial, the Government Emergency Ordinance no. 60/2006 brought clarifications with regard to the instances in which the judicial organism may order the obligation of permanent wear of an electronic monitoring device. Insufficiently detailed and sustained documentarily, as well as in the absence of a specialized functional structure, the provisions could not be enforced.

Although not as a whole, the new legislative framework¹³⁾ institutes norms adequate for the use of monitoring and investigation, capable to satisfy the requirements of accessibility, foresight and proportionality and, to a great extent, to preserve the principle of observing the right to private life. For instance, when the preventive measure of judicial control is ordered (art. 215, paragraph 2, letter c, the new Criminal Procedure Code) and judicial control on bail (art. 217,

¹¹⁾ See: Jessica's Law. The law is named after Jessica Lunsford, a young lady of Florida, who was raped and killed in February 2005 by John Couey, a sexual offender, with priors. The profound indignation of the public opinion forced the officials of Florida to adopt this law. The text of this law provides for a prison penalty of minimum 25 years and electronic monitoring for the rest of the life, in the case of victims under 12 years of age. In Florida, sexual violence or rape of a child are liable to life imprisonment without the possibility of revision for 12 years (www.projectsafekids.com).

¹²⁾ Published in the Official Monitor of Romania, part I, no. 764 of September 7, 2006.

¹³⁾ See footnote #2.

paragraph 3, the new Criminal Procedure Code), the prosecutor, by ordinance, the judge of rights and liberties, the preliminary session judge or the court, by closure, may order that the offender against which one of these preventive measures was taken must wear permanently an electronic monitoring system. At the same time, according to art. 221, paragraph 3, the new Criminal Procedure Code, the judge of rights and liberties, the preliminary session judge or the court may order, by motivated closure, that during the house arrest, the offender must wear permanently an electronic monitoring system. Also, in the case of parole, monitoring of the observation by the offender of the obligations provided in art. 101, paragraph 2, letters d and e, the new Criminal Procedure Code, may be achieved by an electronic monitoring system, under the conditions provided by the special law (see art. 102, paragraph 3, the new Criminal Procedure Code).

Ordering monitoring measures by an electronic system is conditioned in the first instance by the existence of reasonable suspicions regarding the perpetration of an offense and the obligation to observe the principles of subsidiarity and proportionality and, in the second instance, by the avoidance of enforcing excessively the measure of preventive detention. It is required of the order of imposition to take into account the necessity to ensure and preserve the fundamental rights, the loss of liberties coming to be ordered gradually, according to the gravity and the social danger of the offense, the particularities of the case and the social-professional and profile of the perpetrator.

The place, role and importance of the electronic monitoring services in the area of preventive measures must be thoroughly limited and accepted at the level of all public institutions which are located on the flux of the penal justice act. Absence of the general consensus may lead to the appearance of some obstacles of legislative, logistic and operational nature.

8. Inclusion into an electronic monitoring program must not be a more burdening measure than those currently enforced

The investigations regarding the necessity and timeliness of the electronic monitoring services and programs in the area of preventive measures and parole take into account at least three elements: the operational objectives, technology and procedures. The process continues with the identification, assessment and setting of the eligibility criteria for the subjects, as well as the instances which require objectively the electronic monitoring. The enforcement of electronic monitoring services and programs must be postponed until all required clarifications are obtained and all asperities inherent to any beginning are eliminated.

The target of any assessment study focuses on the quantification of positive influences generated by electronic monitoring in the field of preventive measures, parole or insuring restrictions. As a rule, the results outline the thesis “*electronic monitoring complement of the alternatives to preventive detention*”,

counterbalanced by the sentiments of worry with regard to the “new attempt of imprison the society”¹⁴⁾.

The difference of opinion coagulates around two specific fundaments: implementation of the electronic monitoring services and programs *must not alter the act of justice, nor to lead to the extension of the criminal field.*

The enlargement of the area of enforceability is regarded in the context that *no person must be subjected to extra restrictive measures tougher than the ones ordered before this control usage is adhered to.* Contrarily, the electronic monitoring programs and services take the aspect of an act of mercy and making aware of responsibilities, are either assessed as a weakness of the system or an unjustified addition of the criminal justice sentences.

Irrespective of the position of the analysts, in the general sense, electronic monitoring is an additional legal and technical means which gives *security and strictness.*

The contents of the programs enforced in the preliminary stages of the trial act (back door) are limited to operative actions specific to the restriction or house arrest and as compared to the structure of the back door services¹⁵⁾, they do not include compulsory activities of socialization and social-professional treatment. Parole offers a useful circumstance for the standardization of the operational framework and carrying out preliminary assessments. The penalty, mode of execution, achievement of educational and recovery objectives pursued by the punishment are not basic elements in the stage of criminal investigation. As such, monitoring is simplified, individualized and reduced strictly to reporting the conformity of the restriction or house arrest. Consequently, the aim of the monitoring in the case of parole consists of taking the measures required to prevent evasion of the offender or defendant from criminal prosecution, trial or time serving and, as far as possible, to prevent perpetration of new offenses, providing security to the victims and/or rendering of services required by the behavior and/or social-professional profile of the subjects with special needs¹⁶⁾.

What is the safety margin of the electronic monitoring services? Difficult to say. The substance of such programs differs from offense to offense, offender to offender, decision maker to decision maker. Irrespective of the structure and aim of the control decision, electronic monitoring must remain neutral in the relation

¹⁴⁾ P. Hassett, *The Use of Electronic Monitoring for Pretrial Release* 5th BILETA Conference British and Irish Legal Technology Association, 03/04/2005, <http://www.bileta.ac.uk/>.

¹⁵⁾ *Back door* is an expression which brings together the stages of the criminal process after the trial act and refers to the time serving, parole stage and social reintegration, as the case may be.

¹⁶⁾ Usually protection of the public is focused on the limitation of the possibilities of the defendants to manifest a criminal behavior circumscribed to the accusation by restricting the freedom of movement awaiting the solution of the case. The special needs form the subject of complex monitoring programs which include activities oriented towards the maintenance and alleviation of family relations, training in order to obtain or preserve a place of work, solution of the problems of physical or mental health, dependence of psycho-active substances.

with the act of justice, reason for which it is recommended to avoid systems which determine the enlargement or limitation of the areas of enforceability of the preventive measures.

9. Technology is influenced by the scope, contents of the electronic monitoring plan and modes of rendering it operational

Electronic monitoring equipment must remain neutral in relation with the act of justice, reason for which it is recommended to avoid systems which determine the enlargement or limitation of the areas of enforceability of the preventive measures.

Technical monitoring systems enjoy a good reputation. There is the almost general perception with regard to the capacity of identifying the location of the subject irrespective of the area of movement and environmental conditions. Present technology has the possibility to cover these exigencies. But the monitoring services and programs in current use have much more modest characteristics, corresponding to the requirements of restriction or house arrest.

The systems are based on maintaining the subject inside the range of a receiver/ sender which communicates conformity reports to a central computer via telephone lines.

The data sent to the central server certify the presence of the wearer in a certain time bracket in the range of action of the receiver or telephone. In contrary instances, the computer registers a breach of the requirements and alerts the proper authorities in charge of the intervention or probation.

The errors of technical nature represent a significant weight in the structure of the non-conformity reports. These are blamed to a great extent on the improper fidelity and reliability of the equipment. Frequently there are recorded dead points or closed areas where the communication between the attached device and receiver is broken. Some devices were easily detached without being signaled any breaches of the program, while others could be deactivated, usually by extremely simple methods. Many dysfunctions currently signaled in the pioneer stage were remedied. Present day technology ensures a good operation and a remarkable reliability. In spite of all this, the equipment continues to be a source of worry and recommends itself to be a risk factor.

The operational procedures and the quality of the renderer are equally important. The organization and administrative rules differentiate sensibly in comparison with the clarity of the legislative framework, pursued targets, deed perpetrated, trust of the decision-making factor in the use of monitoring programs assisted technically, social status, behavior and professional profile of that subject and do not differ significantly according to the stage of the criminal process.

The monitoring authority is a government entity. It fulfills the specific responsibilities assigned to it with its own personnel or by partial or total outsourcing of the monitoring services, either towards public institutions – probation services or police departments – or private companies.

Lately the provision of monitoring services is achieved by concluding public-private partnerships. International expertise brings to light consistent differences in experience and training between the operational forces mentioned above. The quantitative and qualitative differences influence the efficiency of the services rendered, existing perceivable asperities in the capacity to act and react efficiently in the case of non-conformity reports.

A special investigation requires outsourcing of the monitoring services towards private companies, especially related to the authorization of the personnel for rendering monitoring services and legalization of the access to the residences to install/dismantle the devices, signaling of the program breaches and technical breakdowns or every time a routine verification of the equipment or individual is required. The opponents consider the competences attributed to the private personnel equal or bigger than those granted a public servant, without having the limits and rigors of the abuse of force which is exercised at the level of public authorities.

Other controversies are connected with the reason of being of the private renderer: the profile. They are motivated by the fact that the preoccupations for profit may generate conflicts of interests to the detriment of the rendering or public service. There are opinions which propagate the worry that the private renderer would apply pressure on the enforcement of the act of justice by influencing the eligibility criteria, in the sense of enlarging the area of applicability of the services and on the persons which do not require such a treatment or will seek to obstruct public control and monitoring of the state authorities over the renderings for the reason of defending the private commercial right¹⁷⁾.

The considerations presented above have a solid theoretic support. In practice, the private renderer has the competences limited to the responsibility assumed by contract, its preoccupations being oriented towards the quality of the services and elimination of the vicissitudes of technical or procedural nature. The public authority exercises a permanent adequate control and certifies, by paying the services rendered, the strict observation of the commitments assumed by the private company. The aspects belonging to eligibility criteria are influenced especially by the strategies, policies and programs assumed by the political factor rather than the pressures of the private sector.

10. The eligibility criteria must be linked to the requirement of reducing custody

In case the depopulation of the preventive detention centers and jails is the main motivation of instituting electronics monitoring services, the decision-making factors can impose, by application norms, the narrowing of the selection process to the substitution of custody. The advantage of normative narrowing

¹⁷⁾ See point 19 from P. Hassett, The Use of Electronic Monitoring for Pretrial Release, 5th BILETA Conference British and Irish Legal Technology Association, 2005, p.10, <http://www.bileta.ac.uk/>.

consists in the fact that it restricts, at least formally, the requirements of eligibility in the perimeter of the offenses which require custody. In practice, the particularities of the act of trial may require that this limit be exceeded, and the enforcement of the program be extended also to other categories of offenses. In such situations, the necessity and timeliness of imposing the programs must be thoroughly justified in order to eliminate any controversies. On the other hand, strict anchoring in the jailing area becomes a barrier against the promotion of electronic control as a public service and, equally, against the improvement of the criminal justice act¹⁸⁾.

11. The debate between electronic monitoring versus custody does not cover the whole range of issues and gives monitoring an undeserved first position

Preliminary theoretic and practical research on the impact of the monitoring services by electronic system are very useful and should be directed towards the process of noticing and prevention of the appearance of dysfunctions in the area of legality, observation of the fundamental rights and efficiency of the act of justice as a whole.

In our opinion, custody *versus* alternative measures of preventive detention which can be ordered in order to prevent the evasion of the offender or defendant from criminal prosecution, trial or time serving is the central subject of the analysis. In this context, electronic monitoring *offers more guarantee, security and control* of the decisions which institute the obligation of some less severe restrictions than preventive detention.

The decision regarding the order for preventive detention or other obligations opposed to it, with or without electronic monitoring, is directly influenced by the nature and gravity of the offense, weight of the evidence in the file, existence of other thorough leads and, equally, the character of the defendant, his/her social behavior, priors of criminal nature or the stage of previous obligations ordered in the said case.

The option for one of the alternative measures to custody is marked by the existence and particularities of the elements with uncertain evolution. Subjective factors – thoroughness of the leads, behavior, social-professional status, priors – give a great responsibility to the court, which, in many instances, considers itself obliged to make appeal to intuition and experience when it opposes to the measure of preventive detention more permissive restrictions and obligations, also assuming certain risks. In this situation, the services and programs of electronic monitoring come to the support of the options contrary to custody, by exercising a true and permanent control of the individuals.

¹⁸⁾ This is the reason which could prevent application of electronic monitoring in the case of provisional parole under judicial control or on bail, for instance.

According to the data of a study carried out in the United States of America, more than 50 percent of the persons accused of theft, fraud or deceit were arrested preventively because the courts considered that there are “thorough leads” which prevent provisional parole on bail. 33 percent of the persons against whom the preventive detention was ordered were sentenced to imprisonment. The same study reveals the fact that 25 percent of the persons paroled provisionally on bail breached the measure and were arrested preventively. In return, in the case in which was ordered complementarily also the measure of including the subjects into electronic monitoring, the rate of conformity was 90-95 percent¹⁹⁾. The data are sufficiently conclusive and underline the contribution of the monitoring services in support of the alternative preventive measures.

There are opinions which support the thesis according to which electronic monitoring has no impact on the relaxation of overcrowding the preventive detention centers or penitentiary institutions. In the context in which the analysis is based exclusively on the wager custody versus electronic monitoring, the reasoning can be accepted as a counter-argument of reference. Of course, the point of view is easily fought against when the objectives of the grounding and timeliness studies are directed towards the increase of the weight of alternative measures in comparison to preventive detention and reduction of costs related to the act of criminal justice, in general, and of the expenses related to the management of the detention centers and jails in particular.

The condition is that the services and programs of electronic monitoring must be considered a support of the preventive measures, others than detention, and house arrest. This way, the services and programs of electronic monitoring have a determined contribution in achieving the targets expressed by the partial or total inhibition of the circumstances which support preventive detention, concomitantly with the consolidation of the trust of the decision makers in the application of the other security giving measures, as well as to diminish the demand for new detention capacities.

The opponents of the electronic monitoring programs bring frequently into debate the counter-argument that monitoring does not prevent individual's evasion from the requirements ordered by the court. The thesis has a pronounced institutional and media-related impact, and the considerations are, partly, real and to be taken into consideration for the protection of any electronic program of judicial control.

When formulating any point of view there must not be omitted the fact that the electronic monitoring services and programs pursue *subjects' civic disciplining and putting in order as well as their protection against the negative consequences of imprisonment by making the individuals responsible and with*

¹⁹⁾ See C. Stone, *Bail Information for the Crown Prosecution Service*, London; Vera Institute of Justice, 1988.

their consent, so that the obligations assumed are received as a “second chance”. Also, it is necessary to be taken into consideration also the fact that monitoring is not a measure in itself, but it appears on the background of supporting a measure which does not deprive one of freedom ordered by the court, a probation or social reintegration program and is addressed to offenders quartered in the grey area of the social risk.

12. The electronic monitoring services are grounded around four essential judicial notions: consent, restriction, detention and house arrest, and their mode of normative regulation influences decisively the creation of an efficient monitoring system.

The necessity, role and importance of the consent were underlined. In practice the threshold of acquired acceptability is exceeded by the consent of the subject, because, in many instances, he/she is the one who requires, via his/her lawyer, a preventive measure adverse to preventive detention, with electronic monitoring.

Restriction, detention and house arrest can last from several hours a day to total restriction to leave the residence. In principle, each imposition allows the user to go to work, to go shopping, to go to church, school, to undergo medical treatment or participate to counseling sessions, to pay and receive visits.

The flexibility and spectacular aspect of the programs are sufficiently seducing for the courts, individual and community so that electronic monitoring be able to become a custom in judicial practice, more so as it does not address to offenders with particularly grave and violent deeds.

The programs based on restriction and house arrest have various degrees or levels of restriction. These can evolve from a restriction to leave the residence limited to a certain time interval up to the interdiction to leave the residence the entire duration of the day.

As an example, in the United States of America, at federal level, there are used three levels of interdictions. The first level imposes to the participants to the program their presence at the residence at certain hours or between certain intervals of time. The second level, corresponding to a form of permissive house arrest, requires from the participants to remain permanently at home, except for the time allotted for other activities of the program, such as: work, school, treatment, religious service, solution of aspects related by the criminal trial as well as other situations mentioned in the program as obligations or facilities. Limitation of the freedom of movement operates, as a rule, during the night and has a span of maximum 12 hours. The most restrictive level, house arrest as such, requires subject's presence at the residence 24 hours a day, except for the time approved by the court and allotted for chronic or emergency medical treatment, presentation in courts and other strictly required activities.

Electronic monitoring services and programs, grounded on restriction and house arrest, demonstrated, with precise evidence, that they imprint a descending

trend to the rate of recurrence, both at the level of adults and minors²⁰⁾. Electronic monitoring, in spite of the fact that it is not the most popular means of juridical control, exceeds in fidelity and efficiency the activity carried out exclusively through the human factor. Additionally, they offer at least two advantages, secure as compared to imprisonment.

In the first place, it reduces the public fiscal burden, since it allows adult offenders to work and the minors to continue school education. In the second place, it relaxes the humane and financial costs of custody of the offenders. Contrary to opposed opinions, restriction, detention and house arrest, *the services and programs of electronic monitoring are viable instruments which contribute to the increase of the efficiency of the act of criminal justice by exercising a certain control over the dynamic of the rate of recurrence and cutting down the related expenses.*

Although the use of electronic monitoring devices for offenders and defendants became known within the frame of the programs of restriction, detention and house arrests under the name of *labeling*, the term must be avoided from use because, in our opinion, it does not correspond to the reason of being of this activity.

13. Implementation of the electronic monitoring services and programs is determined by the appearance of a political, social or economic moment, favorable to or sharpening of the issues related to the management of the criminal phenomenon

The peak is reached at the moment of triggering the process of updating and alleviating a normative framework and policies in matters of criminal justice, in accord with international theories and practice, on the background of increase of imprisoned population, the necessity to cut down humane and financial expenses and the requirements of improvement of the efficiency of the correctional act, in general. There must not be omitted the positive contributions furnished by the permanent development of the monitoring system and technical devices and the sustained marketing of the private companies interested to sell technology, provide training services to users and maintenance of the equipment or rendering of complete services²¹⁾.

There are three main reasons which support the implementation of electronic monitoring:

✓ *Detention*: electronic monitoring services and programs have the capacity to report the presence of a person at a certain assigned place. The programs specific to the restriction, detention and house arrest provide that the offenders are

²⁰⁾ J. Bonta, S. Wallace Capretta, J. Rooney, *Can Electronic Monitoring Make a Difference? An Evaluation of Three Canadian Programs*, "Crime & Delinquency" 46(1), 2000, p. 61-75.

²¹⁾ See M.G. Maxfield, T.L. Baumer, *Home detention with electronic monitoring; Comparing pre-trial and post conviction program*, Crime & Delinquency, vol. 36 no. 4, p 521-536, 1999.

forbidden to leave the residence during the restriction period. This category of monitoring was among the first used and remains the most used one²²⁾;

✓ *Restrictions*: electronic monitoring may be used to forbid access of the offender in certain areas or to approach certain persons, such as the victims, potential victims or even accomplices;

✓ *Monitoring*: it is the reason of being of the services; due to this function the authorities can monitor permanently, within the limits of the set program, the movements of the offenders without intervening, in fact, over their decisions.

14. House arrest is a legal notion which is not found in the Romanian criminal trial norms

The positive results obtained in other international jurisdictions justify us to make a number of succinct references.

House arrest represents an assembly of measures destined to act directly on relaxing the overcrowding of jails, diminishing the requirement for new imprisonment capacities and, implicitly, optimizing the management expenses²³⁾.

House arrest is a legal facility which can grant to a category of convicts with penalties of up to four years, probation up to 60 days earlier, by inclusion in an electronic monitoring program, as a consequence of a preliminary trial for risk assessment. Completion of the program is, in principle, conditioned by the existence of an adequate residence – dwelling or guest-house – and a land phone line²⁴⁾.

The house arrest programs with electronic monitoring bring consistent benefits to prison managements. For example, at the level of Great Britain, by programs of house arrests are monitored approximately 16,000 detainees per year. In the first 16 months since the implementation of the program in January 1999, more than 21,000 detainees were integrated in house arrest programs, out of 72,000 eligible inmates from a total of over 82,000. During this period, cancellation of the measure was ordered for 5 percent of the subjects. Usually, the index of returns to prison of the house arrest programs is relatively reduces and constant, of 5-6 percent, and the profile of the subject has a relevant role in favoring these results.

Exclusion from the program and return to prison were mainly due to deviations regarding house arrest – 68 percent of the cases –, the appearance of

²²⁾ See Mukherjee, S. 1999, "Intermediate sanctions: Electronic monitoring and house arrest", in G. Newman (ed.), *Global Report on Crime and Justice*, Oxford University Press, New York, <http://www.aic.gov.au/publications/> si Crowe, A.H. 2002, "Electronic supervision: From decision-making to implementation", *Corrections Today*, vol. 64, no. 5, pp. 130-133.

²³⁾ Home Detention Curfew (HDC), the system was introduced in England and Wales on January 28, 1999.

²⁴⁾ K. Dodgson, Ph. Goodwin, Ph. Howard, S. Llewellyn-Thomas, Ed. Mortimer, N. Russell, M. Weiner, *Electronic monitoring of released prisoners: an evaluation of the Home Detention Curfew scheme*, Home Office Research, Development and Statistics Directorate March, 2001, p. 2. <http://library.npia.police.uk/docs/hors/hors.222.pdf>.

alterations of the initial legal situation – 25 percent – and, in part, the change of the residential situation. Edifying for the rigor of the selection criteria is the fact that only 1 percent of the persons placed in house arrest were returned to prison for the reason of high risk to public security.

The gravity of the deed perpetrated, the category of the jail, the behavior in the period of detention and the profile of the detainee are the main trial criteria. The degree of exigency increases in the case of selecting the subjects who present a high risk of recurrence or return to prison by breach of restrictions, especially detainees coming from jails with a high security degree. The majority of the subjects selected in house arrest programs come from the category of detainees with moderate social risk, a fact which suggests the severity and rigor of the assessment process, absolutely required in order to prevent new criminal events.

House arrest is perceived in many instances as a reward granted inmates with an adequate behavior.

Statistics show the notable difference with regard to the profile of the selected inmates. Thus, the female inmates enjoy additional attention for the inclusion in house arrest programs, recording a figure of 40 percent of the total eligible inmates, so far as they represent 10-15 percent of the detained population. The segment of adult inmates has a larger weight as compared to young inmates, colored inmates outrun the white inmates, i.e. 31 percent as compared to 29 percent, and Asian inmates outrun the other categories of foreign inmates, i.e. 51 percent as compared to 39 percent. All these values are in close contact with the structure and exigency of the eligibility criteria, compared to the assessment of the social risks and potential for recurrence²⁵⁾.

The nature and gravity of the offense hold a special importance for the eligibility criteria. The convicts with offenses with high social danger or perpetrated with violence and the recidivists in deeds of theft and aggravated theft hold a relatively low weight as compared to the offenses related to occasional consumption of psychoactive substances, fraud, forgery and use of forgery, deeds characterized by relatively low rates of recurrence and indexes of probation with high values. The rate of return to prison of the offenders convicted for theft and aggravated theft is of approximately 10 percent and 1-2 percent in the case of those convicted for fraud, forgery and use of forgery.

Useful in the economy of house arrest services are the opinions of the subjects restricted to the residence, those of the family members and persons responsible from probation and monitoring services. The results of the surveys made for these categories of persons show the fact that the house arrest programs are a real

²⁵⁾ See R. Hood, S. Shute, *The parole system at work: a study of risk based decision-making*, Home Office Research Study No 202. London: Home Office, 2000, p.24-26 <http://rds.homeoffice.gov.uk/rds/pdfs/hors202.pdf>.

success in the achievement of the objective of smoothing the transition process from custody to reintegration in society.

98 percent of the subjects appreciate favorably the measure of inclusion in house arrest programs, while the rest of 2 percent mentioned that they would have preferred to do the rest of their time in prison. 37 percent of the questioned people showed that the prospect of being paroled earlier with electronic monitoring influence to the better their behavior in jail, they being preoccupied to meet the eligibility requirements.

The probation services generally support the house arrest programs, appreciating that such programs represent a real help for their activities (76 percent). In their great majority, the subjects consider that the information system must be transparent and improved continuously. In this respect, 83 percent of the interviewed persons said that they had been informed by written documents, while 29 percent also by video materials and approximately 49 percent considered that they had not been sufficiently informed before entering the assessment process.

In the opinion of 82 percent of the program subjects, the main advantage is represented by the recovery of the social contact and family life. 72 percent of the family members appreciate the contribution of house arrest to the maintenance of domestic relations and 69 percent underline the cut down of the expenses incurred by the family during the detention period: parcels, visits, correspondence etc.

The possibility to carry out certain remunerated activities represents the second mentioned advantage. Approximately 28 percent of the convicts returned to the old place of work, while 36 percent were recorded as seeking work. The detention with house arrest is considered both an advantage and a disadvantage in the execution of a paid activity. Among the advantages there are mentioned the possibility to seek a place of work and the establishment of an orderly living regime and in the chapter of disadvantages there are the complaints for the severe restrictions which limit the possibility of finding a place of night work for instance (41 percent).

61 percent of the subjects declared at least one breach of the program²⁶⁾. More than 67 percent of them were due to the operation of the equipment or insufficient training.

The probation and monitoring services and a large part of the family members appreciated positively the activity of the operators considering them polite, amicable and professional, especially at the installation of the electronic system and solving of the deviations of hierarchic nature.

The deviations can be grouped in four categories, which in many instances superimpose or interpenetrate. Mainly, these are the causes for:

- ✓ the operation and reliability of the equipment;

²⁶⁾ "Breach of restrictions" refers both to ignorable breaches and those which attract sanctioning of the subject in question, noticeable by the said individual or the monitoring system.

- ✓ aspects of emotional or psychological nature;
- ✓ possession or management of residences and/or behavior in domestic couple relation;
- ✓ isolation, boredom or improper living style etc.

15. House arrest is justified and promoted by a favorable rate cost-benefits

Analysis of the economic efficiency pursues the identification and assessment of the expenses generated by the stages of the monitoring process: assessment of the eligibility and risks, rendering operable the monitoring services and, as the case may be, and where the situation requires it, quantification of the expenses determined by the deviations recorded and returns to prison ordered. The sum of these costs is opposed to the expenses generated by the custody of persons convicted in a certain period of time.

The advantage of electronic monitoring consists of the highlighting of a sub-unitary expenses/efficiency ratio. The costs recorded besides the electronic monitoring services take place in a large interval of values, representing 40-80 percent of the total expenses for detention. In order to promote and support the electronic monitoring programs there are spread values which tend towards 70-85 percent of the specific custody costs.

In reality, the assessment mechanism is much more difficult and complex. A pertinent and credible conclusion can be made exclusively on the basis of data furnished by the pilot project.

Two aspects are relevant: the *economy of resources* results by the decrease of the penitentiary population and the *reduction of the demand for investments* at the level of preventive detention centers and jails. There must not be omitted the fact that, to a certain extent, personnel expenses related to probation and monitoring services increase.

The efficiency of the electronic monitoring programs remains an open subject. The areas of research of the efficiency are limited by a relatively reduced number of indicators and have a narrow investigation area. Usually, the research objectives are oriented towards the issues of costs, recidivism and prison and social impact.

The studies carried out on the contents and results of some monitoring programs sought to highlight the efficiency of the permanent control measure on various target-categories of offenders.

Not always the results were according to expectations. In many instances, the data showed that there are no significant differences between the recidivism ratio recorded by the electronically monitored groups and those who served time in jail.

Most of the opinions lead to the conclusion that electronic monitoring is neutral with regard to the dynamics of the recidivism index.

Frequently there is introduced the thesis according to which *the monitoring systems have a limited impact on the improvement of the social behavior of the individual, in the absence of some adequate interventions of behavioral and social therapy and focused on the reintegration of the offenders in the community.* The finding is justified by the fact that *electronic monitoring does not approach issues of behavioral therapy*, its scope being to record and signal the conformity of observing the obligations assumed by the monitoring program. In this context, *the role of electronic monitoring services is to support the actions of social treatment or social-professional training*, the results being more than conclusive.

16. The pilot experiment is the pragmatic mode of integration of the electronic monitoring services and programs

In the majority of international jurisdictions, the organization, operation and development of electronic monitoring services were achieved as a result of the initiation and execution of pilot programs. It is a modality recommended to Romania.

The diversity of the opinions circulated in institutional plane requests a certain coagulation of the opinions. That is why carrying out of some experiments in the direction of coagulating, harmonizing and clarifying the issues and finding legislative and administrative solutions handy for those who, in a not very far future, will have to solve cases of this kind, is a good sign.

The debates on electronic monitoring bring to discussion subjects of the nature of legal, management and administration, control of criminality, provision of public security, making profitable the costs, and, not last, assessment and quantification of the emotional impact on the community and person.

It is fundamental to be analyzed to what extent the present legislation allows the configuration of an electronic monitoring program regarding limitation of movement of eligible subjects and under what conditions the monitoring services are constituted in a useful mode of reducing the investigated population in Romania. Under such circumstances, it is necessary and timely to diagnose the capacity of public institutions to answer to the requirements to provide complete and efficient electronic monitoring services.

At conceptual level, the Romanian criminal legislation provides the possibility to oblige a person engaged in a criminal trial “to wear permanently an electronic monitoring device”²⁷⁾. Limitation from the operative perception – suggested by the previously mentioned regulation – and the removal of possible application deficiencies can be achieved by the operation of certain clarifications at the level of the legislative package. Supplementation of the legal means by introducing the notions of *house restriction and arrest with restriction at the residence* is a fully justified approach. The deficiencies of operative nature find

²⁷⁾ Se art. 145, 160² and 453¹, the Criminal Procedure Code in force.

their solution in the enlargement of the area of competence and intervention up to the level of private operators, by outsourcing procedures of the services or public-private partnership.

Conclusions

The efficiency of electronic monitoring, its role and importance within the frame of criminality control, degree of penetration in the media with high vulnerability and social risk are in accordance with the necessity of the mentality changes with regard to delinquency. Establishment of the moment and modes of implementation of electronic monitoring services must be determined according to the fundamental objective of the act of justice: *to do all that is best and useful for the reintegration of the offender in society, with minimum costs*. The extent to which these desiderata are fulfilled is given by the evolution of the weight of actions opposed to preventive detention and/or punishment in jail in the total of sentences pronounced in courts.

Certainly, the results of a pilot experiment could clarify many uncertainties.

At international level, the stake of electronic monitoring programs is the extension of the programs towards grave offenses and individuals with pronounced deviating behavior. Continuous building and improvement of such programs, with a large dose of social risk, express a provocation and a search for the limits of use of electronic monitoring services.

In Romania, the process is quartered in the area of intent. Execution of a pilot project at the level of the Ministry of Justice, with the support of the affected public sectors and a private partner with relevant experience may be the long sought for trigger.

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