

**The Placing Under The Electronic Surveillance Using The Electronic  
Bracelet In Light Of The Law n°: 18-01.**

الوضع تحت المراقبة الالكترونية باستعمال السوار الالكتروني، على ضوء القانون رقم: 18-01.

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**Abstract**

The electronic surveillance procedure was introduced using the electronic bracelet, as an alternative to some other liberty-depriving procedures, such as preventive detention, by many of the world's nations, including Algeria. This procedure was regulated by Algerian legislation under the law n°: 18-01, amending the n°: 05-04 on the organization of prisons and the social reintegration of prisoners. Hence, the question arises as to how the Algerian legislator regulated the placing under electronic surveillance using the electronic bracelet? And how effective this procedure is for the reintegration of convicted persons into society?

**Key Words: The Placing Under Electronic Surveillance, Electronic Bracelet The Convict, Sanction.**

يعد الوضع تحت المراقبة الالكترونية باستعمال السوار الالكتروني من الأنظمة القانونية الحديثة، التي تتعلق بتنفيذ العقوبة خارج المؤسسة العقابية، حيث انتشر في دول عديدة من العالم، كبديل عن بعض الإجراءات الأخرى السالبة للحرية، على غرار الحبس الاحتياطي. والجزائر من بين هذه الدول التي تبنت هذا الاجراء. حيث قام المشرع الجزائري بتنظيم احكام هذا الاجراء بموجب القانون رقم: 18-01، المتضمن تعديل القانون رقم: 05-04، المتعلق بتنظيم السجون واعادة الادماج الاجتماعي للمحبوسين. ومن هنا يطرح التساؤل حول كيفية تنظيم المشرع الجزائري للوضع تحت المراقبة الالكترونية باستعمال السوار الالكتروني؟ وما مدى نجاعة هذا الاجراء في إعادة ادماج المحكوم عليه اجتماعيا؟

الكلمات المفتاحية: الوضع تحت المراقبة الإلكترونية، السوار الإلكتروني، المحكوم عليه، العقوبة.

**Introduction:**

One of the world's modern regulations relating to the execution of penalties outside penal institutions is the placing under electronic surveillance. One of the world's modern regulations concerning the execution of sanctions

outside penal institutions is the situation under electronic surveillance, which has become widespread in many countries of the world as an alternative to imprisonment, particularly with regard to short-term sanction. This new system has proven effective in the social reintegration of convicted persons, especially those who do not represent a danger to society. According to which convicted persons can enjoy certain freedom, Such as allowing them to stay within their social environment to live with their families, pursue their education and engage in their activities, on the one hand, and on the other hand, the system has proved effective in reducing costs, as it is considered to be less costly compared to regulations implementing sanctions for the deprivation of liberty. In addition to reducing prison overcrowding due to high crime rate.

Algeria, like the rest of the world, has a high crime rate and prisons have become overcrowded. Since this system has proved effective in some countries of the world, as mentioned above, similar to the United States of America and the States of Europe, Algerian legislators have made an important step in this area by introducing the system of placement under electronic surveillance. So Algeria thus becomes the first Arab country and the second African country to adopt this modern legal procedure.

The electronic surveillance system with the electronic bracelet was officially implemented on 2December 2016, under the judicial supervision, where the investigating judge, of the court of first instance wilaya of Tipaza, issued For the first decision, In a case involving beatings and wounding with a white weapon, In a case before him, to place an accused under electronic surveillance with electronic bracelets under judicial supervision; Where the judicial police supervises the pursuit of the procedure in coordination with the office of pursuit and monitoring established at the court level<sup>1</sup>.

Hence, the question arises as to how the Algerian legislator regulated the placing under electronic surveillance using the electronic bracelet? And how effective this procedure is for the reintegration of convicted persons into society?

In response to the question raised, the analytical approach has been followed. This is done by analysing the various legal articles related to the placing under electronic surveillance using the electronic bracelet, particularly those mentioned in Law n°: 18-01, amending and supplementing the law n° : 05-04, containing prison organisation and social reintegration of prisoners.

The research was divided into two parts. The first part dealt with the concept of the placing under electronic surveillance system. The second part dealt with procedures for the placing under electronic surveillance. Finally, we concluded with a conclusion containing a set of results and recommendations.

### **Chapter One: The Placing Under Electronic Surveillance**

The placing under electronic surveillance with the use of the electronic bracelet in Algeria has emerged as an alternative to the deprivation of liberty initially as an alternative to provisional detention, and As a measure of judicial control ordered by the judge at his discretionary authority, According to which he is the only decision-maker if the judicial prosecuted person will be subject to the electronic bracelet or provisional detention system, according to the file placed in his hands<sup>2</sup>.

Working with this system will enable the judicial prosecuted person not to enter the temporary prison and stay on release until he is tried. Even if it constitutes criticism among those who consider it incompatible with the presumption of innocence that the accused is innocent until proven guilty, and its effectiveness in promoting respect for human rights, by limiting the use of remand in custody, there by reducing the number of accused in custody.

After that, the introduction of the electronic bracelet became not an alternative to provisional detention, but an alternative to deprivation of liberty for a term of time. This is what the Algerian legislature, like the developed countries, has adopted when it complements the law n°: 05-04 containing prison organisation and social reintegration of prisoners, by the Law n°: 18-01, previously mentioned<sup>3</sup>. So the definition of the situation under electronic surveillance will therefore be discussed first, and then the conditions of benefits, as follows:

### **Section One: Definition of The Placing Under Electronic Surveillance**

In this section, the doctrinal definition of the placing under electronic surveillance will be addressed, first, and then the definition established by Algerian legislation.

#### **Firstly: The Jurisprudence Definition**

It have been given several definitions to the placing under electronic surveillance, including the following: « It is one of the innovative methods of sanction execution of liberty deprivation liberty of short duration, outside the prison walls, in the free milieu, so-called: "prison at home". This method is based on allowing the convict to stay in his home, but his movements are limited and monitored by a device, resembling a watch or bracelet attached to his wrist or at the bottom of his foot. And so this method came to be called: the electronic bracelet, as it is called by quite a few members of the penal community<sup>4</sup>.

It is also known, in terms of time and space, that it is the obligation of the convicted or subject to it, to be in a specific place - often his home - at certain times of the day, and to be allowed to exercise his life normally under certain rules at the rest of the day, allowing him to go to work and buy his living requirements<sup>5</sup>.

Among the definitions of jurisprudence as well, we find the following definition: the use of electronic media to ascertain the subject's presence within a period of time, in the previous agreed place and time between the latter and the judicial authority<sup>6</sup>.

There is controversy among jurists about the effectiveness of this system, its effectiveness and the possibility of making it an alternative to short-term deprivation of liberty. Therefore, the jurisprudence is divided into two directions, one that is in favour and the other against it. Each of them has its own arguments<sup>7</sup>.

### **Secondly: The Algerian Legislator Definition**

The use of modern technology in the fight against crime is one of the most important findings of modern criminal policy in its pursuit of the forgetfulness of punishment, one of its manifestations being placed under electronic surveillance<sup>8</sup>.

The Algerian legislator has tended to introduce the system of the placing under electronic surveillance as a new mechanism for sanction adaptation. The article 150 bis, paragraph 1, of the law n°:18-01, defined it as follows: « the placing under electronic surveillance is a procedure that allows the convict to serve all or part of the sanction outside the penal institution ».

The placing under electronic surveillance is reflected in the fact that, for the three-year period mentioned in the article 150bis1, the convicted person wears an electronic bracelet that allows to know where he is located, in the place of residence indicated in the decision of placing by the judge applying the sanctions<sup>9</sup>.

The electronic bracelet is worn at the wrist or ankle of the convicted person, which includes a chip and a GPS box, administered by the prison administration, that ensures in real time, via the site, that the person does not violate the prohibition set by the judge, exits the designated area, Otherwise, an alert will be made immediately, in which case the alternative penalty will be abolished and replaced by the prison sanction<sup>10</sup>.

The electronic bracelet has technical characteristics that allow it to resist water to depths exceeding 30 meters, high temperatures, vibrations, oscillations, shocks, tearing, cutting and opening. It is also resistant to ultraviolet sunlight, and is equipped with an insulator made of canvas to protect the ankle from sensitivity<sup>11</sup>.

## **Section Two: Conditions To Benefit From The Placing Under Electronic Surveillance**

In this section, we shall examine the general conditions to benefit from the placing under the electronic surveillance, first, and then the conditions that are specific to the convicted person, as follows:

**Firstly: General Conditions To Benefit**

Article 150 bis 1 from the law n° : 18 -01, mentioned earlier, stipulates certain conditions to benefit from the placing under the electronic surveillance, as follows: « The judge applying the penalties may apply automatically or or at the request of the convicted person or through his lawyer, decide to carry out the punishment under the electronic surveillance system, in the case of a conviction for deprivation of liberty not exceeding three years, or in the case of the remaining penalty not exceeding this period<sup>12</sup>.

The judge applying the sanctions issues the decision of placing under electronic surveillance, after taking the opinion of the public prosecution, as well as the opinion of the committee of the application of sanctions in the case of the prisoners. »

Thus, in order to benefit from the placing under electronic surveillance, the sanction for deprivation of liberty or the remainder of it shall not exceed three years. The judge must, first and after determining the execution of the sanction under the electronic surveillance system, and before issuing the decision of the placing, should take the opinion of both the public prosecution and the committee of the application of sanctions, if the beneficiary is a prisoner.

It must be pointed out that, in the case that the convicted person is a minor, the judge applying the sanctions may not issue the decision of placing, unless the latter's consent or his legal representative is given<sup>13</sup>.

After carrying out the placing under electronic surveillance, all measures must be taken to ensure respect for the convicted person's dignity, safety and privacy<sup>14</sup>.

**Secondly: Conditions To Benefit Specific To The Convicted Persons**

The article 150 bis 3 from the law n° : 18 -01, mentioned earlier, stipulates, further to the above conditions, on another set of conditions which must be available in the convicted person, in order to benefit from the placing under electronic surveillance, we state, respectively:

- The judgement must be final,
- The person concerned must prove a fixed habitation or residence,
- The person concerned must pay the amount of his/her penalties,
- The carrying of the electronic bracelet does not harm the health of the concerned<sup>15</sup>.

When placing under electronic surveillance, consideration must be given to the family situation of the meaning, or to pursuing medical treatment or professional or formative activity, or if it shows serious guarantees of integrity.

### **Chapter Two: Procedures Of Placing Under Electronic Surveillance**

The procedure of placing under electronic surveillance are stipulated under article 150 bis 4 and beyond, from the law n° : 18 /01 mentioned earlier, beginning with the request to benefit from the procedure as well as the measures accompanying it, until its cancellation, if necessary. We will therefore address in the first section to the request to benefit, as well as the measures accompanying the placement under electronic surveillance. Then in the second section we deal with the consequences resulting from the placing under electronic surveillance, as follows:

#### **Section One: The Request To Benefit From The Procedure And The Measures Accompanying it**

In this section, we shall, firstly, examine the request to benefit from the placing under electronic surveillance, and secondly the measures accompanying it, as follows:

##### **Firstly: The Request To Benefit From The Procedure**

As mentioned above, the judge applying the sanctions may, on his own initiative, decide to carry out the sanction under the electronic surveillance system, if the above conditions are met. The convict may also, personally or through his lawyer, request it<sup>16</sup>.

In this case, the convicted person or the lawyer must apply for the benefit from the electronic surveillance system to the judge applying the sanctions of the place of the convicted person residence, or the place where the penal institution, the prisoner in question, is located. This is stipulated in the article 150 bis 4 from the law n°: 18 -01, mentioned earlier.

When a request is being made, the execution of the sanction is postponed until the request is adjudicated by the judge. The latter shall adjudicate the request within a period not exceeding 10 days, from the day of notification, by decision not subject to appeal. By closing the appeal, the convicted person, whose request has been rejected, is only left to wait for a period of 6 months, from the day his request is rejected, In order to submit a new request<sup>17</sup>.

##### **Secondly: The Measures Accompanying The Procedure**

After issuance of the decision on placing under electronic surveillance, the convict shall not leave his home or the place appointed by the judge applying the sanctions outside the time specified in the decision. In determining places and times, the judge must take into account the convict's exercise of professional activity, pursuit of a study, formation, education, occupation of a job, or pursuit of a treatment. This is in application of Article 150 bis5, from the law n°: 18 -01 mentioned earlier.

In addition to the foregoing, the judge can also take a number of measures accompanying this procedure, which must be followed by the convicted person, including:

- Engaging in professional activity, pursuing an education, or vocational formation,
- Not to go to some places,
- Failure to meet with some convicts, including original perpetrators, or accomplices,
- No meeting of persons, especially victims, or minors,
- Adherence to health, social or psychological welfare requirements aimed at social reintegration
- Adherence to the conditions of health care, or social or psychological, or educational, aimed at social reintegration<sup>18</sup>.

One of the obligations of the convicted person, which is included in the placing under electronic surveillance status, is to respond to the summons of the judge applying the sanctions, or any authority appointed by the latter.

### **Section two: The Consequences Resulting From The Placing Under Electronic Surveillance**

This section will examine the results of acceptance of the placing under electronic surveillance procedure, firstly, and then the monitoring and the supervision its implementation, secondly, and when, it is cancelled thirdly, as follows:

#### **Firstly: The Results Of Acceptance Of The procedure**

After accepting the status procedure under electronic surveillance, the electronic bracelet is placed in the convicted penal institution. And then the electronic system is put in place to implement it, by qualified officials of the Ministry of Justice. In accordance with article 150 bis7, from the law n°: 18 /01 mentioned earlier.

The question that arises here, Are the above agents sufficiently constituent in this field? And is there an effective electronic system capable of reflecting this mechanism in Algeria?

#### **Secondly: The Monitoring And The Supervision of the implementation**

Monitoring and Supervision of the implementation of the placing under electronic surveillance, under the supervision of the judge applying the sanctions, by the external departments of the prison administration, which are responsible for the social reintegration of prisoners, from afar and through site visits, and telephone surveillance. And the later must commit it self to:

- Sending periodic reports to the judge applying the sanctions, about the implementation of the placing under electronic surveillance,

- Notifying the judge of any breach of time relating to the placing under electronic surveillance<sup>19</sup>.

Within the framework of his task of supervising the placement under electronic surveillance, the judge can apply the penalties, automatically, or at the request of the concerned

As part of its task of supervising the placing under electronic surveillance, the judge may automatically, or at the request of the subject under electronic surveillance, change or modify the obligations specified in the decision on the placing under electronic surveillance. This is explicitly referred to in article 150 bis 9 of the law n°: 18 -01 mentioned earlier.

### **Thirdly: Cancellation Of The Placing Under Electronic Surveillance**

There are several cases justifying the cancellation of the placing under electronic surveillance by the penal judge, as follows:

-**The First Case:** The convict's own request<sup>20</sup>,

-**The Second Case:** The convict's failure to respect his obligations, without legitimate justification.

-**The Third Case:** The new conviction<sup>21</sup>,

-**The Fourth Case:** At the request of the Attorney-General, he shall be directed to the Committee on the Adaptation of sanctions, if he considers that the placing under electronic surveillance is prejudicial to security and public order<sup>22</sup>.

In no case can the judge of the application of the penalties be resorted to for annulment, except after hearing, under article 150 bis 11 of the Act, the latter granted him the right to appeal to the Committee on the Adaptation of Punishment. The latter must be adjudicated within 15 days of notification.

In no case can the cancellation be resorted, by the judge, unless after hearing the concerned, this last one, the law granted him the right of appeal against the decision of placing under electronic surveillance, to the committee on the adaptation of sanction. The latter must be adjudicated within 15 days of the date of notification<sup>23</sup>.

In the event of the cancellation of the decision of placing under electronic surveillance, the person concerned shall carry out the remainder of the sanction imposed on him within the penal institution, after deduction of the duration of the placement under electronic surveillance. In addition, a convict who evades electronic surveillance, in particular by removing or disabling electronic surveillance machinery, is liable to the penalties established for the crime of escape, provided for in the Penal Code.

### **Conclusion:**

At the end of the research, we concluded that the placing under electronic surveillance, which was adopted by the Algerian legislature under the law n°: 18 /01, as an alternative to deprivation of liberty, the judge applying the sanctions is considered as the cornerstone in it. It has advantages that

effectively promote the development and modernization of the justice sector, on the one hand, It has one of the advantages that effectively promotes the development of the justice sector, on the one hand, and the guarantee of human rights, by reconciling the prevention of crime again, and the social reintegration of the convicted, by allowing him to enjoy some of his freedom, on the other. This is through its objectives; which are:

- Strengthening and expanding judicial control,
- The reservation of the dignity of the accused and convicted person,
- Ensuring respect for both the accused and the convicted,
- Permit the subject under electronic surveillance from the exercise of his normal life, until he appears in court if he is accused, and terminates the sentence if he is convicted,
- Reduction of pressure on penal institutions,
- Reducing the financial cost of imprisonment.

However, the implication of applying the placing under electronic surveillance system using the electronic bracelet requires high techniques and advanced scientific possibilities, at all stages, due to the complex equipment that must be provided and qualified persons with experience in this field. In our view, Algeria has not been able to control it, especially with its high cost. We therefore propose the following recommendations:

- Strengthening the procedure, through the formation of qualified agents capable of keeping up with the development of crime, on the one hand as well as in the field of modernization, on the other,
- Acceleration of legislation, to a specific regulation contains the manners of the application of the law n°: 18 /01,
- Reliance on Algerian hands in the electronic bracelet industry, beginning and ending, to alleviate its exorbitant cost.

### **Margins:**

<sup>1</sup>- Khalifi Samir, Electronic Monitoring Using The Electronic Bracelet, « a punishment Outside the Walls Of The Penal Institution », Mediterranean Journal of Law and Economics, Volume: 7, Number:2, 2002, p81.

<sup>2</sup>-The ordinance n° : 15-02, dated in 23 June 2015, amending and supplementing the law n° :66-155, containing the criminal procedure code.

<sup>3</sup>-The law n° : 18-01, dated in 30 January 2018, amending and supplementing the law n° : 05-04, containing prison organisation and social reintegration of prisoners

<sup>4</sup>-Sadrati Nabila, the placing under judicial surveillance as a new system of adaptation of sanction, Journal of Studies and Legal Researchs, Ninth Edition, p 160.

<sup>5</sup>- Ayman Ramadan Al-Zaini, Home Confinement, Towards a Modern Concept of Punitive Treatment and alternative Penalties for Deprivation of Liberty in Prisons, Pyramid Printing House, Egypt, 2005, p5.

<sup>6</sup>- Osama Hussein Obaid, Electronic Criminal Surveillance - Comparative Study, Dar Al-Nahda For Arab, Cairo, 2009, p5.

<sup>7</sup>-For more details about this see, Ahmed Saoud, Electronic Surveillance as an Alternative to Short-Term Custodial Penalty, Journal of Legal and Political Sciences, Number:2, p681.

<sup>8</sup>- Busri Abdul Latif, Systems Developed for the Face of the Short-Term Imprisonment Crisis, Al Wafa Law Library, Alexandria, Cairo, 2016, pp220-221.

<sup>9</sup>- The paragraph 2 of the article 150 bis, from the law n° : 18 /01 mentioned earlier.

<sup>10</sup>-GPS : Global Positional System.

<sup>11</sup>- Citing the Algerian News Agency.

<sup>12</sup>- The French legislator adopted two years' duration, under the law n° : 97-1159, dated in 19 December 1997, amended and completed.

<sup>13</sup>- The paragraph 1 of the article 150 bis 2, from the law n° : 18 /01 mentioned earlier.

<sup>14</sup>- The paragraph 2 of the article 150 bis 2, from the law n° : 18 /01 mentioned earlier.

<sup>15</sup>- The Algerian legislature reaffirmed this requirement under article 150 bis 7 of the law n° : 18 /01 mentioned earlier. The judge applying the sanctions must, before placing the convict under electronic surveillance, or at any time during the execution of this procedure, to verify automatically or at the request of the person concerned, that the electronic bracelet does not prejudice the health of the person concerned.

<sup>16</sup>- The article 150 bis1, from the law n° : 18 /01 mentioned earlier.

<sup>17</sup>- The article 150 bis5, from the law n° : 18 /01 mentioned earlier.

<sup>18</sup>- The article 150 bis6, from the law n° : 18 /01 mentioned earlier.

<sup>19</sup>- The article 150 bis8, from the law n° : 18 /01 mentioned earlier.

<sup>20</sup>- The Algerian legislator did not specify when he could do so.

<sup>21</sup>- These three cases are stipulated in article 150bis10, from the law n° : 18 /01 mentioned earlier.

<sup>22</sup>- These case is stipulated in in article 150bis12, from the law n° : 18 /01 mentioned earlier.

<sup>23</sup>- The article 150 bis11, from the law n° : 18 /01 mentioned earlier.