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POSSIBILITIES OF HUNGARIAN REINTEGRATION SURVEILLANCE – ELECTRONIC MONITORING

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From a legal point of view, in the Hungarian context, *rehabilitation* is understood as the extinction of the detrimental legal consequences connected with a conviction which can be effected by law, by the court or by an act of clemency and the convicted person is relieved from these consequences (see Act C of 2012 on the Criminal Code, Art 98 and 99). "The person cleared by extinction shall be deemed to have a clean criminal record, and – unless otherwise provided for by law – he cannot be required to give an account of any conviction from which he has been exempted" [Criminal Code, Art 98 (2)]. The time of statutory extinction differentiates along with the convict's punishment. In cases of imprisonment, the length of the sentence and the intent of the offender is also considered (Criminal Code, Art 100). In practice, these provisions mean that if the convict was imprisoned for a period between one year and five years for an intentional offense, the statutory exemption happens after a period of five years following the last day of serving the term of imprisonment.

From a criminological-penological perspective, the concept of *rehabilitation* also has its distinctive meaning in the Hungarian context. At the end of the 1960s, the crisis of Western correctionalism and the welfare state became evident for Hungarian criminologists, too. With the experience of the disrespect of the rule of law during the socialist regime, Hungary decided to follow a rather "rights-respecting" approach in law enforcement after the system change of 1989/1990. A consensus emerged that the mandatory treatment programs under the ambition of rehabilitation are endangering the principle of the rule of law. The concept of prisoner rehabilitation in this respect was somewhat discredited. During the two decades that followed the concept of criminal pedagogy or criminal andragogy has developed that emphasized the need for educational programs in prisons (see Ruzsonyi 1999: 24 ff., 2003: 123 ff.; Miklósi 2013: 163 ff.). More recently, Szabó attempted to rehabilitate and re-introduce the concept of rehabilitation (Szabó 2014: 28 ff.). Szabó's post-correctionalist approach argues from a psychological perspective that programs of rehabilitation should aim more than maintain the inmates' mental and psychical well-being, as they have the potential to affect factors that contribute to desistance. From a penological perspective, Fliegauf conceptualized the differences between

the three concepts of rehabilitation, resocialization and reintegration (see Vig and Fliegauf 2016).

The concept of *resocialization* has not developed fully in constitutional law or prison law, and no legal regulations mention it explicitly. Nevertheless, the Constitutional Court has started to develop the concept of "claim for resocialization" which is, however, not seen as a right. This "claim for resocialization" emerged in a 2008 decision of the Constitutional Court when it stated that the benefits of resocialization are acknowledged by society (Decision of the Constitutional Court, 144/2008, XI. 26.). The Court connected this claim to the right to self-determination and the right to privacy, which both derive from the right to human dignity. This was a welcome step that built on previous decisions around the acknowledgment of the principle of resocialization. This principle claimed that the restriction of rights should be limited to what is necessary for the protection of society. These positive developments notwithstanding, the adoption of the Fourth Amendment to the Constitution cut of the possibilities for the further development of this concept, when it declared on a constitutional level that the actual life sentence without the possibility of parole does not constitute a violation to the right to life. According to domestic laws, the Constitutional Court did not have the power to examine the constitutionality of this provision, which in fact made it impossible to raise the "claim for resocialization" to the level of a right.

The Criminal Enforcement Code (Act CCXL of 2013) uses the terms of *reintegration* and *(re)settlement*. The Criminal Enforcement Code shows a conceptual shift from the previous legislation in two respects. Firstly, it mentions resettlement as opposed to the previous term of settlement. Resettlement is one of the purposes of the enforcement of criminal sanctions along with retribution (the enforcement of the negative consequences outlined in the judgement). In our view, retribution remains the primary aim to which resettlement is secondary because the Criminal Enforcement Code prescribes the enforcement of the negative consequences as an imperative aim, whereby it only talks about the aim to foster resettlement, and it does not prescribe resettlement as an aim which is to be achieved under all circumstances [Criminal Enforcement Code, Art. 83 (1)].

The Criminal Enforcement Code mentions *reintegrative activities or reintegrative programmes* (Criminal Enforcement Code, Art 2, 82, 83). In relation to imprisonment, these programmes aim to foster the convicts' integration to the job market, to reduce the convicts' disadvantages that have resulted from their lifestyle and life circumstances prior to incarceration as well as to develop the personality and social competencies of the convicts [Criminal Enforcement Code, Art. 82 (5)]. In this sense, "reintegration" covers all programmes and activities that assist and promote the efficiency of reintegration into society, and minimizes the chances of re-offending. As of the ambitions of the Criminal Enforcement Code, it is im-

portant to seek to establish and improve the convicts' self-esteem and sense of responsibility and help their reintegration into society and labour market.[1]

1. Introduction[2]

The electronic tracking system was born in the mid-1960s, from the idea of Robin Schwitzgebel, psychologist at Harvard University, who thought that his solution could be a humane and cost-effective alternative to the institution of imprisonment.

The "Dr. Schwitzgebel Machine" – as the device was called – was patented in 1969, although its practical application began in the United States in the early 1980s. The system was based on the principle that that criminals who met certain conditions and agreed to wear a device 24 hours a day (commonly known as, the "tag", "bracelet", "wristlet", "anklet") in order to complete their sentence at home. Moreover, they also had to give their consent to install a Home Monitoring Device in their apartment. The HMD originally was used to be connected to the landline telephone and the local energy supply system.

18 November 2014, the Parliament adopted the act 2013: CCXL on the enforcement of sentences, actions, certain coercive measures, misdemeanour seclusion, and imprisonment, as well as act 2014: LXXII on the modification of other acts, which regulated the reintegration surveillance from 1 April 2015.

The essence of the surveillance can be summarized as that the time when convicts are in reintegration surveillance is counted in the custodial sentence and, if limited, the prisoners regain their freedom, since the restriction of the actual freedom of movement and freedom of choice of commorancy lasts during the whole surveillance.

The notion of electronic remote monitoring device – that is used to enforce the reintegration surveillance – is defined in the Code 2013: CCXL as follows: ,"technical device used for following the movement of the sentenced or otherwise detained person". Thus, reintegration surveillance is carried out with a device that continuously ensures that – if the detained person leaves the designated location of the commorancy or movement area – it alerts the authorities immediately. According to Art. 187/A (3) of the above mentioned Code: "Reintegration surveillance shall cease the total deprivation of liberty of the sentenced, but shall restrict his freedom of movement and freedom of choice of commorancy."

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1 Anita NAGY–Dávid VIG: Prisoner resettlement in Hungary. In: *Prisoner resettlement in Europe 2019*. Edited by Frieder DÜNKEL–Ineke PRUIN–Anette STORGAARD–Jonas WEBER. Routledge 2019, chapter. 2.10.

2 "This contribution was developed with the support of the Research and Development Support Agency of Slovak republic within the framework of the project: Privatization of criminal law – substantive, procedural, criminal and organizational-technical aspects; No. APVV-16-0362" – Kassa Projekt.

2. Delimitation of house arrest and reintegration surveillance

In fact, electronic surveillance has been available in Hungary since 2003 for classical house arrest, which aims to simplify the control of enforcement of "house arrest", which may be imposed instead of pre-trial arrest. However, until 2013 neither the financial nor the technical conditions were satisfactory. In terms of terminology and purpose, house arrest should be a completely different institution than reintegration surveillance, a common element in them is that both of them contributes to the reduction of the prison population.

Regarding its purpose, the main objective of reintegration surveillance is that the sentenced should be reintegrated into society as early as possible. However, house arrest aims to replace pre-trial detention (described in Art. 129 of the Code), provided that the aims of pre-trial detention can be guaranteed regarding the nature of the crime, the duration of the criminal proceeding or the behaviour of the accused.

house arrest	**differences**	**reintegration surveillance**
by criminal procedural law coercive measure	**regulation**	by punishment enforcement law a special kind of release for the sentenced
replacement of pre-trial detention that the aims of pre-trial detention can be guaranteed regarding the nature of the crime, the duration of the criminal proceeding, or the behaviour of the accused	**aims**	1. alternative form of completing the sentence 2. redound the reintegration of sentenced
yes	**the phase of the investigation – the prosecutor – judiciary enforcement**	the phase of law enforcement
yes	**reduction of the prison population**	yes

There are two models for the application of Electronic Monitoring – as it is called in Europe: the so-called frontdoor and backdoor model. The essential difference between them is that the frontdoor model does not get to a correctional institution, while in the blackdoor model, the sentenced is released from the correctional institution with a shackle on his legs.

Delimitation of frontdoor and backdoor

According to Klára Kerezsi, electronic surveillance is an alternative sanction to deprivation of liberty, but it cannot be considered as a community sanction due to the lack of an active connection with any participant of the criminal jurisdiction and with the community.[3]

Róbert Bogotyán emphasizes that reintegration surveillance is an alternative form of the penitentiary, which does not aim specific and general preventive goals related to punishment, but rather the successful social reintegration of the convicted person, thereby decreasing the relapse rate; thus it aims to achieve the purpose of the enforcement of the criminal proceeding.[4] János Schmehl emphasizes that social reintegration here is a gradual process, a phase – which is controlled by state organs – enters between the deprivation of liberty and responsible, independent life. During this period, the sentenced should secure his independent living, can seek and take employment, rebuild and strengthen his family and social relationships. His activities are followed by electronical remote monitoring devices.[5]

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[3] Klára KEREZSI: Az alternatív szankciók helye és szerepe a büntetőjog szankciórendszerében. In: Ferenc IRK (ed.): *Kriminológiai Tanulmányok 39.* OKRI, Budapest, 2002, p. 117.

[4] Róbert BOGOTYÁN: A zsúfoltság csökkentésének útjai a börtönépítésen túl. *Börtönügyi Szemle*, 2015/1., p. 35.

[5] János SCHMEHL: Az új szabályozás főbb szakmai elemei és üzenetei. *Börtönügyi Szemle*, 2013/4., p. 21.

3. Outlook to the European system[6]

Recommendation Rec(2014) Nr. 4. of the Committee of Ministers of the Council of Europe set out in detail the purpose of electronic monitoring[7] and, in order to support the broad application of this alternative sanction, and the application as an ultima ratio in the criminal proceeding. Therefore:

- during the pre-trial phase of criminal proceedings;
- as a condition of suspension of execution of the prison sentence;
- as an independent way of monitoring the enforcement of the sentence or measure imposed;
- together with other probationary interventions;
- before the release of prisoners in prison;
- conditional release;
- intensive management and supervision of certain types of offenders after their release from prison;
- controlling the internal movement of offenders within or outside prisons;
- in order to protect the victims of specific crimes against certain suspects or offenders.

The Recommendation emphasizes that electronic surveillance technology can only be used in a well-regulated and proportionate manner and that, to this end, regulatory constraints and ethical and professional rules need to be formulated in the participating Member States. The Recommendation declares the concept of electronic monitoring as: "Electronic surveillance" is a general term referring to the monitoring of the position, movement, and particular behavior of persons involved in criminal proceedings. Current forms of electronic surveillance are based on radio waves, biometric or satellite tracking technology. These are usually a personalized device that is monitored remotely."

4. Conditions of applicability of the electronic remote monitoring devices:

In order to the electronic monitoring device be applicable, the property designated to carry out reintegration surveillance must have:

1. electrical supply and uninterruptible power supply,
2. as well as the network coverage required for the data transmission of electronic remote monitoring devices; and
3. signal strength

[6] Az EFOP-3.6.2-16-2017-00007 *Az intelligens, fenntartható és inkluzív társadalom fejlesztésének aspektusai: társadalmi, technológiai, innovációs hálózatok a foglalkoztatásban és a digitalis gazdaságban* című project keretében 01/01/2019–01/04/2019.

[7] Recommendation [Rec(2014) 4] of the Committee of Ministers to member States on electronic monitoring, II. Definitions "Electronic monitoring".

5. Installation of electronic remote monitoring device

The police provide electronic surveillance equipment and remote monitoring infrastructure (hereinafter referred to as "electronic monitoring system") related to tasks performed during the reintegration detention, but the electronic remote monitoring tool is installed to the sentenced by the staff member of the correctional institution. According to Ferenc Szabó,[8] the following devices are necessary for the application of electronic monitoring:

- an anklet, which is placed above the ankle for practical reasons;
- a mediatory device (HMD).

Further details of the technical requirements of the EM can be found in Ferenc Szabó's article on the possibilities of electronic monitoring (EM) for law enforcement, according to which the following possibilities can be used for the device:

- remote alcohol monitoring: the HMD device installed in the monitored home in equipped with a supplementary application that can measure and detect the alcohol influence through a random phone call and conversation;
- remote voice verification monitoring: in the frame of the application – even without using an anklet – remote, periodical, random and automatic control of the duty of staying at home can be possible. (Essentially, based on a voice sample digitally recorded on the surveillance computer, the system is able to identify, through a voice call, an automated voice analysis to determine if the person interviewed is actually the person being monitored.)
- Local (RF) home curfew monitoring units.
- In-prison monitoring.
- Group monitoring unit, etc.[9] (group monitoring tool)

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[8] http://www.shp.hu/hpc/userfiles/riaszto/em_cikk.pdf (09/09/2015)

[9] http://www.shp.hu/hpc/userfiles/riaszto/em_cikk.pdf (09/08/2015)

6. Possible types of reintegration surveillance

7. Conditions of reintegration surveillance from 1st January 2017

The procedure concerning reintegration surveillance is regulated by Art. 61/A of the above mentioned Code, according to which: "the correctional institution proposes to the court in order to command reintegration surveillance". Thus, reintegration surveillance is not authorised by the correctional institution, but the judge of the second instance criminal court. In such cases, the judge decides on the basis of the submitted documents, but he may also hold a hearing on the basis of the request submitted by the sentenced or his defender.

Reintegration surveillance may be initiated once during the term of completing the punishment by the sentenced person or his defender. The request is forwarded by the correctional institution to the criminal court within fifteen days. "Once" is important because the sentenced receives a significant change in his conditions in his life-style and therefore it is only accessible to those sentenced who are less dangerous to society and who can reasonably be expected to be able to successfully reintegrate into civil society. Although sentenced under reintegration surveillance may leave the correctional institute before the punishment is actually completed, but only to the house or apartment designated by the law enforcement judge, and can only leave the designated property in strictly defined cases. Ensuring the ordi-

nary needs of daily life, carrying out work, education and medical treatment are defined as such cases by the law.

Art. 187/A (1) of the above mentioned Code regulates the conditions when reintegration surveillance can be ordered. If the purpose of the deprivation of liberty can also be achieved in this way, the sentenced person can be placed under reintegration surveillance – before the estimated date of release from punishment –, if he agrees with it and:

- he has been sentenced to a custodial sentence for a crime committed with negligence, or
- he has been sentenced to a custodial sentence for an intentional crime, then
  a) not convicted of an offense concerning violence against a person as defined in Art. 459(1) 26 of the Criminal Code,
  b) he has been convicted for the first time for a non-custodial sentence or a non-recidivous criminal, and
  c) shall complete a maximum term of detention of five years.

The duration of the reintegration surveillance is

a) up to one year if the sentenced person is sentenced to imprisonment for a negligent crime,
b) for a maximum period of ten months, other than that specified in (a).

Reintegration surveillance is also available to minors according to the Code, by laying down further specificities in the application of the above-mentioned reintegration surveillance, so that the conditions for the application of juvenile reintegration surveillance, in addition to the general rules:

(a) to attend family therapy or family counseling at least once during the period of deprivation of liberty,
(b) the consent of the legal representative to the installation of the electronic monitoring equipment and the lodging of a declaration of accommodation with a statement to escort the detainee.

The Code also implements a multi-directional extension of the institution of reintegration surveillance in order to reduce the saturation of institutions.

On the one hand, it would allow a wider range of offenders to benefit from this institution, as the amendment would extend not only to those who are sentenced for the first time but also to those who are convicted of negligent offenses and to re-offenders. On the other hand, it determines the length of time spent in reintegration surveillance, depending on the degree of guilt and over a longer period (10 months in the case of intentionality and one year in the case of negligence).

8. Cases when reintegration surveillance shall be excluded or terminated

When using reintegration surveillance, there are three broad categories of cases in which it cannot be used.

1. The sentenced person shall not be placed in custody.

2. Reintegration surveillance shall be terminated.
3. An objective circumstance, that is, the residential property is unfit for reintegration surveillance.

1. The sentenced person shall not be placed in custody
   Art. 187/C of the Code regulates the cases in which the sentenced cannot be placed in custody, that is:
   a) further imprisonment shall be carried out against the sentenced person,
   b) his pre-trial detention on remand in custody has been suspended for the duration of his imprisonment,
   c) the reintegration surveillance allowed during his detention has been terminated for reasons attributable to the convicted person,
   d) has not already completed at least three months of imprisonment not exceeding one year, or completed at least six months of imprisonment exceeding one year,
   e) the designated apartment is not suitable for the installation of an electronic remote monitoring device.
2. Reintegration surveillance shall be terminated
   According to Art. 187/E (1) of the Code, the leader of the correctional institute shall immediately submit a request to the criminal judge for the termination of the reintegration surveillance, if during it:
   a) the institute is notified of a custodial sentence or a new criminal procedure,
   b) the convicted infringes the rules of using the electronic remote monitoring device, damages the electronic surveillance device or renders it unusable,
   c) the designated apartment has become unfit for the placement of the electronic monitoring equipment or the declaration has been withdrawn by the person making the declaration and the sentenced person is unable to designate another apartment that could be designated as a place for reintegration surveillance.
3. An objective circumstance, that is, the residential property is unfit for reintegration surveillance
   The applicability of a property or remote monitoring device shall be excluded if:
   a) there is no electricity available on the property and, as a result, the remote monitoring device cannot be charged,
   b) network coverage and signal strength required to transmit data from the remote monitoring device are not available in all areas of the property,
   c) the property is unfit for housing for any reason,
   d) he lack public utilities (drinking water or heating) endangers the livelihood of the prisoner to be reintegrated,
   e) the contact person designated by the detainee or any person living in the property threatens the effective reintegration of the detainee to be placed in reintegration surveillance from a criminological point of view.

To sum up, we can see that reintegration detention is a "multiplayer" procedure were not only the criminal judge but also the defender, probation officer and the correctional institute also has a major role to play.

9. Roles of the participants of the reintegration surveillance

convicted or his defender	is allowed to submit a request once during law enforcement deadline: 15 days
probation officer	prepares a study about the applicability of the property deadline: 30 days
correctional institute	orders the study and submits a request if the conditions are appropriate
criminal judge	makes a decision on the basis of the documents, or holds a hearing
	designates the property, if it is applicable
	assigns the purpose and the duration of leaving the property
	Indicates the end date of the reintegration detention. – Issues an arrest warrant if the convicted violates the rules on reintegration surveillance and moves to an unknown location.

10. Delimitation of conditional release and reintegration surveillance

Reintegration surveillance is distinguished from conditional release in that while the conditional release is a substantive criminal law institution in which the court, on the basis of its behaviour in the execution of its sentence, does not execute a specific part of the sentence. However, regarding reintegration surveillance, the convicted person is in fact serving his sentence but is not being completed in prison. The other part of the question is answered by the amending act (2014: LXXII) of the Code, as its Art. 113 regulates the conditional release. According to this: "if the conditional release is to be decided during the reintegration surveillance and the correctional institute proposes the conditional release in its request, the judge may refuse to hear the convicted. If the judge has ordered the conditional release of the sentenced, but the correctional institute notifies by the due date of the conditional release, that the convicted violated the rules of the reintegration surveillance or that of the application of the electronic remote monitoring device; the electronic remote monitoring device has been damaged or rendered unusable, on this basis, the decision of the judge may be put aside.

11. Summary

Electronic surveillance entails significant cost savings for the budget, although the technical requirements of the EM require a one-time major investment. After that, the supervision costs much less than the placement in the correctional institution. For comparison, the daily cost of using EM in England is £12.10, in Estonia, it is EUR 2.64, in Finland, it is EUR 3-4, in France, it is EUR 15.50, in Germany it is EUR 30, in Norway, it is EUR 100, in Poland, it is EUR 4.3, in Portugal, it is 16.35 EUR, 3.45 EUR in Sweden, and 65 EUR in Switzerland.

While in Europe, the average daily cost of a prisoner with guarding and provision is approx. From 60 to 80 EUR, the cost of running electronic surveillance is estimated at 21 EUR per day. We can highlight in favour of the EM, that the enforcement of the sentence in this way will relieve the correctional institutions. The convicted can keep his job, keep earning money, raise his child at home, and fulfill his social obligations. The convicted can also use the money to pay compensation or reparation to the victim of his crime.

Due to the custodial nature of electronic supervision, it restricts the personal liberty of the convicted, but is less restrictive than the custodial sentence to be carried out and does not involve the use of physical coercion.

However, the psychological impact of the continuous “invisible” control and the prospect of imprisonment in case of not obeying the rules are undeniable.

In addition, other fundamental constitutional rights of the convicted person, such as the right to human dignity, privacy, private housing and the protection of marriage and the family, arose. According to some opinions, Electronic Monitoring realizes an “Orwellian” total privacy control.