

Measures to Ensure the Presence of the Defendant in Criminal Proceedings: Kosovo's Legal Infrastructure for the Application of Electronic Monitoring

Nuredin Lutfiu, Dr. Sc, Arben Agushi, Dr. Sc, Dr. Sc. Agon Halabaku

¹UBT College – Higher Education Institution, Kosovo,
ORCID ID: <https://orcid.org/0000-0002-9232-0823>
nuredin.lutfiu@ubt-uni.net

² Business College, Kosovo
ORCID ID: <https://orcid.org/0000-0001-9844-7211>
arben.agushi@kolegjibiznesi.com

³ halabakuagon@hotmail.com

How to cite this article: Nuredin Lutfiu, Arben Agushi, Agon Halabaku (2024). Measures to Ensure the Presence of the Defendant in Criminal Proceedings: Kosovo's Legal Infrastructure for the Application of Electronic Monitoring. *Library Progress International*, 44(3), 18420-18428.

ABSTRACT:

Defendant presence in criminal proceedings is crucial for upholding the principles of fairness and justice. However, ensuring the presence of defendants can be challenging, particularly in cases where there is a risk of flight or harm to others. To address these challenges, electronic monitoring has emerged as a potential solution. This paper explores Kosovo's legal infrastructure for the implementation of electronic monitoring to ensure defendant presence in criminal proceedings. By examining relevant legal provisions and analyzing the benefits, challenges, and practical implications of electronic monitoring, this paper aims to provide valuable insights and recommendations for enhancing Kosovo's criminal justice system. The paper also discusses the international legal framework surrounding electronic monitoring and emphasizes the importance of privacy rights, data protection, and judicial oversight. Additionally, it highlights the role of the Kosovo Police in implementing electronic monitoring, the specific procedures involved, and the safeguards in place to protect the rights of defendants. By shedding light on these aspects, this paper contributes to the ongoing discussions on strengthening the use of electronic monitoring as an effective tool for ensuring defendant presence and promoting a fair and efficient justice system in Kosovo.

Keywords: the presence of the defendant in the criminal procedure, electronic monitoring, legal infrastructure of Kosovo, international legal framework, GPS-based monitoring, the rights of the defendant, monitoring procedures.

Introduction

Defendant presence in criminal proceedings is of paramount importance for the fair and effective administration of justice. It ensures that defendants have the opportunity to confront their accusers, present their defense, and participate fully in the legal process. The principle of "presumption of innocence" places the burden on the prosecution to prove guilt beyond a reasonable doubt, and the presence of the defendant is essential for safeguarding this principle.¹

However, ensuring the presence of defendants in criminal proceedings can be a complex task, particularly in cases where there is a risk of flight, tampering with evidence, or potential harm to victims or the community. To address these challenges, various measures have been developed, including the application of electronic monitoring. This paper aims to explore the legal infrastructure established in Kosovo for the implementation of electronic monitoring as a means to ensure the presence of defendants in criminal proceedings. By analyzing relevant legal

¹ Code No. 04/L-123, Criminal Procedure, article 161, paras. 1-2.

provisions, such as the Criminal Procedure Code, Penal Code, Law on the Family, Law on Electronic Communications, Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision, Law for Protection from Family Violence, and Administrative Instruction (MIB) No. 11/2016, this paper seeks to provide a comprehensive understanding of the legal framework supporting the use of electronic monitoring in Kosovo's criminal justice system.

The purpose of this paper is to examine the benefits, challenges, and potential improvements in the application of electronic monitoring. It will discuss the specific provisions within the aforementioned laws and regulations that pertain to electronic monitoring, the role of the Kosovo Police in its implementation, and the safeguards in place to protect the rights and privacy of defendants. Moreover, the paper will analyze practical implications through case studies and highlight areas where the application of electronic monitoring has been successful or requires further improvement.

By shedding light on the legal infrastructure for electronic monitoring and its impact on defendant presence in criminal proceedings, this paper aims to contribute to the ongoing discussions surrounding the enhancement of Kosovo's criminal justice system. It seeks to provide valuable insights and recommendations for policymakers, legal practitioners, and relevant stakeholders to further strengthen the use of electronic monitoring as an effective tool for ensuring defendant presence and promoting a fair and efficient justice system in Kosovo.

Definition and Types of Electronic Monitoring

"Electronic monitoring is a general term referring to forms of surveillance with which to monitor the location, movement and specific behavior of persons in the framework of the criminal justice process. The current forms of electronic monitoring are based on radio wave, biometric or satellite tracking technology."² According to the Texas Code of Criminal Procedure (2009) "electronic monitoring includes voice tracking systems, position tracking systems, position location systems, biometric tracking systems, and any other electronic or telecommunications system that may be used to assist in the supervision of individuals."³ According to Article 3 paragraph 1 of Law No. 05/L -003 FOR THE ELECTRONIC SURVEILLANCE OF PERSONS TO WHOM IT IS RESTRICTED MOVEMENT BY DECISION OF THE COURT "electronic surveillance means the mechanism that guarantees the effective implementation of the decision of the courts, through the real-time determination of the location of a person, through the use of electronic means placed on his body."⁴

"Electronic monitoring is an integral and growing part of the criminal justice system."⁵ They usually comprise a device attached to a person and are monitored remotely. Electronic surveillance is a form of surveillance that uses technology to track and monitor the movements and activities of individuals. It involves the use of electronic devices, such as GPS trackers, bracelets and radio frequencies (RF), to ensure compliance with court-imposed restrictions and conditions. Electronic monitoring can be used as a measure to ensure the presence of defendants in criminal proceedings in various forms, such as GPS-based monitoring which uses Global Positioning System (GPS) technology to track the location and movements of individuals by enabled authorities to set virtual borders or exclusion zones and receive real-time alerts if a defendant enters a restricted area; Radio frequency (RF) monitoring involving the use of bracelets or ankle monitors that emit signals within a certain range. The signals are monitored by a central system, enabling authorities to ensure that defendants stay within designated areas or adhere to established restrictions.

Benefits of Electronic Monitoring in Criminal Procedure lie in the fact that it helps to ensure the presence of the defendant in the criminal procedure. By electronically monitoring the defendant, authorities can ensure compliance with court orders, such as parole or house arrest. It provides a means to enforce movement restrictions, reducing the risk of absconding and increasing accountability. Compared to traditional methods of securing the defendant's presence, such as detention, electronic monitoring may be a more cost-effective option. "One of the major advantages is the possibility of reduced prison populations."⁶ This is most likely where monitoring is used as an alternative to prison, rather than to enhance existing non-custodial orders. It allows defendants to remain in their communities while still being monitored, reducing the burden on correctional facilities and related costs. Electronic monitoring enables defendants to maintain contact with their families, employment and support networks while participating in criminal proceedings. This can contribute to their rehabilitation and reintegration into society by providing access to educational, vocational and counseling programs. Electronic monitoring enhances public safety by providing real-time information on the whereabouts and compliance of defendants. It

² Recommendation, CM/Rec (2014)4. "Electronic monitoring."

³ Texas Code of Criminal Procedure (2009).

⁴ Law No. 05/L-003 for the electronic surveillance of persons to whom movement is restricted by a court decision, Article 3, para. 1.

⁵ Professor Anthea Hucklesby and Dr Ella Holdsworth, "Electronic monitoring in probation practice," HM Inspectorate of Probation, Academic Insights 2020/08 (December 2020).

⁶ M. Black and R. Smith, "Electronic monitoring in the criminal justice system," Trends & issues in crime and criminal justice no. 254 (Canberra: Australian Institute of Criminology, 2003), accessed May 22, 2023, <https://www.aic.gov.au/publications/tandi/tandi254>.

enables authorities to respond immediately in the event of any breach or potential threat, allowing for effective risk management.

While electronic monitoring has several benefits, it also faces challenges and limitations in ensuring the defendant's presence. Effective implementation of electronic monitoring requires a robust technological infrastructure, including reliable monitoring equipment; secure communication systems and data management protocols. Ensuring the availability and maintenance of these components can be challenging, especially in remote or underdeveloped areas, while electronic monitoring involves the collection and processing of personal data, raising privacy concerns. In this case, protective measures must be taken to ensure the protection of the rights and privacy of individuals subject to electronic monitoring. This includes strict data protection regulations, limited access to collected data and mechanisms for obtaining informed consent, appropriate training and capacity building are essential for the successful implementation of electronic monitoring. Relevant stakeholders, such as law enforcement agencies, judicial authorities, and correctional personnel, should be adequately trained in the use of electronic monitoring devices, monitoring procedures, and response to violations. Ongoing training programs are necessary to keep personnel up to date with evolving technology and best practices.

"Furthermore, research shows that the stigma, social isolation, and stress that results from being monitored exacerbates depression and anxiety for wearers."⁷ The use of electronic monitoring can also carry a stigma and negative social perception. Addressing these issues is essential to ensure the acceptance and effectiveness of electronic monitoring as a measure to ensure the defendant's presence. Public awareness campaigns and community engagement initiatives can help foster understanding and acceptance by the general public.

Acknowledging these challenges and limitations, policy makers and stakeholders can work towards strengthening the implementation of electronic monitoring, ensuring its effective use as a measure to ensure the presence of defendants in criminal proceedings.

Legal Framework for Electronic Monitoring in Kosovo

The legal framework of the Republic of Kosovo and international instruments for the protection of fundamental freedoms and human rights provide a strong legal framework that protects the right to liberty and security of the person, the rights to due process and access to justice, including the right of any person to challenge the lawfulness of his or her arrest before an independent tribunal.

These rights are the essential pillar of the rule of law and justice, and constitute the vital component of a democratic society and as such also in the justice system of our country.

The legal framework for the protection of fundamental rights and human freedom, in Kosovo, includes a set of documents starting with the Constitution of Kosovo,⁸ which contains a large number of provisions that protect fundamental rights and human freedoms, such as life, personal integrity and a range of other rights related to restriction and deprivation of liberty.

The Criminal Procedure (Code No. 08/L-032) in Kosovo provides the legal basis for the use of electronic monitoring as a measure to ensure the presence of defendants in criminal proceedings. It outlines the conditions under which electronic monitoring can be imposed, such as pre-trial release, the defendant's promise that he will not leave his place of residence; prohibition to approach the specified place or person; house arrest,⁹ or post-conviction monitoring. The code defines the rights and responsibilities of defendants and establishes the procedures for implementing and supervising electronic monitoring.

The Penal Code of the Republic of Kosovo (Code No. 06/L-074) incorporates provisions that are relevant to electronic monitoring. It addresses offenses related to tampering with electronic monitoring devices, violation of conditions imposed by electronic monitoring, or obstructing the monitoring process. The penal code sets out the penalties for such offenses, ensuring that violations of electronic monitoring requirements are treated seriously under the law.¹⁰

The Law on the Family of Kosovo (Law No. 2004/32) includes provisions that specifically relate to electronic monitoring in cases involving child custody disputes or domestic violence. It allows for the imposition of electronic monitoring as a condition for granting or restricting visitation rights or for ensuring the safety of victims of domestic violence. This law provides a framework for using electronic monitoring in family-related cases and emphasizes the protection of vulnerable individuals.¹¹

The Law on Electronic Communications (Law No. 04/L-109) in Kosovo establishes the legal framework for electronic surveillance and communication monitoring. It regulates the interception, monitoring, and collection of electronic communications data by authorized entities, including law enforcement agencies. This law ensures

⁷ Ayomikun Idowu, Allison Frankel, and Yazmine Nichols, "Three People Share How Ankle Monitoring Devices Fail, Harm, and Stigmatize," ACLU, accessed May 22, 2023, <https://www.aclu.org/news/criminal-law-reform/ankle-monitoring-devices-fail-harm-and-stigmatize>.

⁸ Constitution of the Republic of Kosovo. June 2008.

⁹ Criminal Code of the Republic of Kosovo (Code no. 06/L-074), Article 171, paras. 3, 4, and 7.

¹⁰ The Penal Code of the Republic of Kosovo (Code No. 06/L-074).

¹¹ The Law on the Family of Kosovo (Law No. 2004/32).

that electronic monitoring is carried out in accordance with legal procedures, privacy protections, and respect for fundamental rights.¹²

The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003) specifically governs the application of electronic monitoring in Kosovo. It sets out the criteria for imposing electronic surveillance, the technical requirements for monitoring devices, the obligations of the monitored individuals, and the procedures for reporting and responding to violations. This law establishes the legal framework for the practical implementation of electronic monitoring and ensures compliance with international standards.¹³

The Law for Protection from Family Violence (Law No. 03/L-182) addresses the issue of domestic violence in Kosovo. It recognizes the importance of protecting victims and includes provisions related to electronic monitoring as a means to ensure the safety and security of victims. This law enables the imposition of electronic monitoring as a protective measure and establishes the legal basis for its application in cases of family violence.¹⁴

The Administrative Instruction (MIB) No. 11/2016 on the Implementation of Electronic Surveillance and Reporting by the Kosovo Police, of Persons Whose Movement is restricted by Court Decision issued by the Ministry of Internal Affairs provides guidelines and procedures for the implementation of electronic surveillance by the Kosovo Police. It outlines the responsibilities of the police in monitoring individuals, reporting violations, and collaborating with other relevant institutions. This instruction ensures the uniform application of electronic monitoring practices and the coordination of efforts among different stakeholders.¹⁵

The legal framework for electronic monitoring in Kosovo, encompassing the Constitution, the Criminal Procedure Code, Penal Code, Law on the Family, Law on Electronic Communications, Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision, Law for Protection from Family Violence, and Administrative Instruction (MIB) No. 11/2016, establishes the basis for the application of electronic monitoring as a measure to ensure the presence of defendants in criminal proceedings. These laws define the conditions, procedures, and rights associated with electronic monitoring, ensuring compliance with legal standards, protecting the rights of defendants, and promoting the effectiveness of electronic monitoring as a tool for enhancing the criminal justice system in Kosovo.

The international legal framework for electronic monitoring

The international legal framework for electronic monitoring, such as; International Covenant on Civil and Political Rights (ICCPR), European Convention on Human Rights (ECHR), United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Council of Europe Recommendation Rec (2014)4 on Electronic Monitoring, ensure the lawful and proportionate use of electronic monitoring in criminal proceedings. Key elements include the ICCPR protecting the rights of liberty, the ECHR emphasizing clear provisions and fair trials, the Tokyo Rules promoting non-custodial measures, the Bangkok Rules taking into account gender sensitivity, the Council of Europe Recommendation outlining safeguards and international standards that provide best practices and technical guidance. Adherence to these standards ensures fair and effective enforcement, supporting human rights in criminal justice systems.

The international legal framework for electronic monitoring provides guidance and standards for the use of electronic monitoring as a measure to ensure the presence of defendants in criminal proceedings. Several international instruments and conventions address various aspects of electronic monitoring and aim to safeguard the rights of individuals undergoing such monitoring.

Various international organizations, such as the International Penal and Penitentiary Foundation (IPPF) and the International Corrections and Prisons Association (ICPA), have developed standards and guidelines on electronic monitoring. These documents offer best practices and technical guidance on the use of electronic monitoring, including device specifications, monitoring procedures, data protection, and training requirements for personnel. The international legal framework provides a foundation for the application of electronic monitoring in criminal proceedings. It emphasizes the importance of respecting human rights, proportionality, privacy protection, and individualized assessment. By adhering to these standards, countries can ensure that electronic monitoring is implemented in a fair, effective, and rights-based manner, promoting the integrity and legitimacy of their criminal justice systems.

Implementation of Electronic Monitoring in Kosovo

The implementation of electronic monitoring in Kosovo is primarily the responsibility of the Kosovo Police.¹⁶

¹² Law on Electronic Communications (Law No. 04/L-109).

¹³ Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003).

¹⁴ Law for Protection from Family Violence (Law No. 03/L-182).

¹⁵ Administrative Instruction (MIB) No. 11/2016 on the Implementation of Electronic Surveillance and Reporting by the Kosovo Police of Persons Whose Movement is Restricted.

¹⁶ The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law

The police play a crucial role in supervising and monitoring individuals subject to electronic monitoring measures. They are responsible for ensuring the compliance of defendants with court-imposed restrictions and conditions. The Kosovo Police collaborate with other relevant stakeholders to effectively implement electronic monitoring and uphold the legal framework.

Procedures for Implementing Electronic Monitoring

The procedures for implementing electronic monitoring in Kosovo involve several key steps:

- a) Court Decision: Electronic monitoring is usually imposed by the court's decision, either as a condition during the determination of the measure to ensure the presence of the defendant in the criminal procedure or as part of the sentence. The court, before announcing the final decision, or any decision on the measures to ensure the presence of the defendant, asks the person if he consents to the use of Electronic Surveillance.¹⁷
- b) Device Installation: Once the court decision is made, The Kosovo Police carries out Electronic Surveillance and is responsible for the installation, removal and regular operation of the device.¹⁸ the Kosovo Police is responsible for installing the electronic monitoring device on the defendant. This may involve the placement of a GPS tracker or an RF bracelet, depending on the type of monitoring specified by the court.
- c) Defendant Orientation: The defendant undergoes an orientation session conducted by the Kosovo Police, where they are informed about the expectations, restrictions, and responsibilities associated with electronic monitoring. They are provided with guidelines on the proper use of the monitoring device.¹⁹
- d) Monitoring and Compliance: The Kosovo Police monitor the movements and activities of the defendant through the electronic monitoring device. They ensure that the defendant adheres to the specified restrictions, such as curfews or exclusion zones. Any violations or incidents are documented and reported.²⁰

Safeguards and Protection of Privacy Rights

Kosovo's legal infrastructure includes safeguards to protect the privacy rights of individuals undergoing electronic monitoring. These safeguards aim to balance the need for effective monitoring with respect for fundamental rights:

- a) Data Protection: Measures are in place to safeguard the personal data collected through electronic monitoring. Strict data protection regulations ensure that collected data is securely stored, accessed only by authorized personnel, and used solely for monitoring purposes.

- b) Limited Access: Access to electronic monitoring data is restricted to authorized personnel directly involved in the monitoring process. This helps prevent unauthorized disclosure or misuse of the collected information.

- c) Informed Consent: Defendants are provided with information about the nature and purpose of electronic monitoring. They must provide informed consent before electronic monitoring is imposed, ensuring their understanding and acceptance of the process.²¹

- d) Judicial Oversight: Judicial oversight ensures that electronic monitoring is carried out in accordance with the law. Courts review the necessity and proportionality of electronic monitoring measures, providing an additional layer of protection for defendants' privacy rights.²²

Monitoring and Reporting Mechanisms

The Kosovo Police has established monitoring and reporting mechanisms to ensure the effective implementation of electronic monitoring:

- a) Real-time Monitoring: The Kosovo Police actively monitor the movements and activities of defendants in real-time. They receive alerts and notifications if a defendant violates imposed restrictions or enters prohibited areas.
- b) Reporting: The Kosovo Police document any incidents, violations, or technical issues related to electronic monitoring. They provide regular reports to the court and other relevant authorities, ensuring transparency and accountability in the monitoring process.²³
- c) Response to Violations: In case of any violations or breaches, the Kosovo Police take appropriate action, which may involve notifying the court, issuing warnings, or initiating legal proceedings for non-compliance. Prompt

No. 05/L-003), Article 9, para. 1.

¹⁷ Law No. 05/L-003 FOR ELECTRONIC SURVEILLANCE OF PERSONS WHOSE MOVEMENT IS RESTRICTED BY COURT DECISION, Article 5.

¹⁸ Law No. 05/L-003 FOR ELECTRONIC SURVEILLANCE OF PERSONS WHOSE MOVEMENT IS RESTRICTED BY COURT DECISION, Article 10.

¹⁹ Law No. 05/L-003 FOR ELECTRONIC SURVEILLANCE OF PERSONS WHOSE MOVEMENT IS RESTRICTED BY COURT DECISION, Article 6 par.2.

²⁰ Law No. 05/L-003 FOR ELECTRONIC SURVEILLANCE OF PERSONS WHOSE MOVEMENT IS RESTRICTED BY COURT DECISION, Article 16.

²¹ Law No. 05/L-003 on the Electronic Surveillance of Persons Whose Movement Is Restricted by Court Decision, art. 6, par. 2.

²² Law No. 05/L-003 on the Electronic Surveillance of Persons Whose Movement Is Restricted by Court Decision, art. 15

²³ Ibid art. 18.

response to violations ensures the effectiveness of electronic monitoring as a deterrent and enhances public safety. Collaboration with Relevant Stakeholders

The implementation of electronic monitoring in Kosovo involves collaboration among various stakeholders:

a) Judicial Authorities: The Kosovo Police closely collaborate with judicial authorities, including judges and prosecutors, to ensure that electronic monitoring measures align with court decisions and comply with legal requirements.

b) Correctional Services: In cases where electronic monitoring is imposed as an alternative to imprisonment or as part of a sentence, collaboration with correctional services is crucial. They provide support and supervision to defendants, helping them adhere to the imposed restrictions and facilitating their reintegration into society.

c) Legal Professionals: Collaboration with defense attorneys and legal professionals is important to ensure that the rights of defendants are protected throughout the electronic monitoring process. They play a crucial role in advocating for fair treatment and due process.

d) Data Protection Authorities: Collaboration with data protection authorities ensures compliance with privacy regulations and safeguards the rights of individuals undergoing electronic monitoring. They provide guidance on data management, security, and retention.

e) Civil Society Organizations: Engaging civil society organizations promotes transparency, accountability, and public awareness regarding the implementation of electronic monitoring. These organizations can contribute to monitoring the effectiveness of the process and advocating for the rights of defendants.

Collaboration among these stakeholders facilitates a comprehensive and multidisciplinary approach to the implementation of electronic monitoring in Kosovo. It ensures that the process is conducted in a fair, transparent, and accountable manner, while safeguarding the rights and privacy of individuals involved in criminal proceedings.

Benefits of Electronic Monitoring in Kosovo's Criminal Justice System

Electronic monitoring has brought several benefits to Kosovo's criminal justice system. The implementation of electronic monitoring as a measure to ensure defendant presence in criminal proceedings has proven to be advantageous in various ways:

Enhanced Public Safety: Electronic monitoring plays a significant role in promoting public safety by closely monitoring individuals involved in criminal activities. The real-time tracking and monitoring capabilities allow authorities to intervene immediately if there are any violations or deviations from the imposed conditions. By keeping a close watch on offenders, electronic monitoring reduces the risk of reoffending and helps prevent further criminal behavior, thus making the community safer.²⁴

Reduced Prison Overcrowding: Electronic monitoring provides an alternative to incarceration, which helps alleviate prison overcrowding. By allowing certain offenders to serve their sentences under house arrest or parole with electronic monitoring, it reduces the strain on correctional facilities. This approach frees up resources that can be redirected towards other important areas within the criminal justice system, such as rehabilitation programs or victim support services.

Successful Reintegration into Society: Electronic monitoring enables individuals to serve their sentences within their communities, facilitating successful reintegration into society. By allowing offenders to maintain their employment, support their families, and participate in social activities, electronic monitoring promotes a smoother transition from confinement to freedom. This helps individuals develop pro-social behaviors, take on personal responsibilities, and rebuild their lives, thereby reducing the likelihood of reoffending.²⁵

Cost-Effectiveness: Implementing electronic monitoring is generally more cost-effective compared to traditional incarceration methods. The expenses associated with maintaining and supervising individuals through electronic monitoring are considerably lower than the costs of operating correctional facilities. This cost-effectiveness allows for the efficient allocation of resources within the criminal justice system, ensuring that limited funds are utilized for maximum impact in other critical areas.²⁶

Increased Compliance with Court Orders: Electronic monitoring ensures compliance with court orders and conditions imposed on defendants. By closely monitoring their movements and activities, it acts as a strong deterrent, encouraging individuals to abide by the rules set forth by the court. This not only promotes accountability but also helps maintain the integrity of the criminal justice system.

Customization and Flexibility: Electronic monitoring offers flexibility in tailoring monitoring conditions based

²⁴ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, in *lot Toward Criminal Justice Solutions*, September 2011, NCJ 234460, "Electronic Monitoring Reduces Recidivism."

²⁵ Robert Kanallakan, "Best practices for electronic monitoring post-incarceration: Evidence suggests electronic monitoring plus home detention could be an effective deterrent to crime and have enormous social benefits," (date: April 19, 2019).

²⁶ Kamila Borsekova, Peter Krištofik, Vaňová Anna, and Samuel Korony, "Electronic Monitoring as an Alternative Form of Punishment: An Exploratory Study Based on European Evidence," (Banská Bystrica: Univerzita Mateja Bela v Banskej Bystrici, April 2018).

on individual circumstances. The technology allows for the customization of monitoring boundaries, curfews, and restrictions specific to each offender's case. This personalized approach ensures that monitoring is targeted and relevant to the individual, taking into account factors such as risk level, location, and rehabilitation needs.

Technological Advancements: With technological advancements, electronic monitoring systems have become more reliable, accurate, and efficient. The use of GPS tracking, biometric recognition, and tamper-proof devices has improved the effectiveness of electronic monitoring. These advancements provide a higher level of confidence in monitoring individuals and responding swiftly in case of any violations.

In conclusion, the implementation of electronic monitoring in Kosovo's criminal justice system brings several benefits, including enhanced public safety, reduced prison overcrowding, successful reintegration into society, cost-effectiveness, increased compliance with court orders, customization, flexibility, and advancements in technology. By leveraging these advantages, Kosovo can further strengthen its criminal justice system and contribute to safer communities and successful offender rehabilitation.

Electronic Monitoring and the violation of the rights of defendants in the case of detention

Electronic Monitoring in Kosovo's Criminal Justice System serves as a valuable tool in reducing the violation of defendants' rights, particularly in cases of detention. By implementing electronic monitoring as an alternative to traditional confinement methods, the system ensures a more balanced and rights-focused approach. Here are several ways in which electronic monitoring helps safeguard defendants' rights:

Presumption of Innocence: Electronic monitoring aligns with the principle of presumption of innocence, a fundamental right in criminal proceedings. Rather than automatically subjecting defendants to pretrial detention, electronic monitoring allows for the imposition of less restrictive measures while still ensuring their presence during court proceedings. This approach respects defendants' rights by avoiding unnecessary deprivation of liberty before the determination of guilt.

Minimization of Detention Periods: Electronic monitoring can significantly reduce the length of pretrial detention for defendants. Instead of extended periods spent in jail awaiting trial, individuals can be released under electronic monitoring, which maintains their presence while allowing them to remain in their homes or within the community. This helps prevent the violation of defendants' rights associated with prolonged and unnecessary detention.²⁷

Proportional and Individualized Measures: Electronic monitoring allows for the implementation of proportionate and individualized measures tailored to defendants' specific circumstances. Rather than resorting to blanket detention measures, electronic monitoring takes into account factors such as risk assessment, flight risk, and the likelihood of reoffending. By customizing monitoring conditions, the system respects defendants' rights by imposing measures that are proportionate to the alleged offense and individual circumstances.

Access to Legal Representation: Defendants under electronic monitoring can maintain regular contact with their legal representation, ensuring effective communication and consultation throughout the legal process. By enabling defendants to participate actively in their defense, electronic monitoring reduces the risk of infringing upon their right to a fair trial and proper legal assistance.

Preserving Social and Family Ties: Electronic monitoring allows defendants to remain within their communities, preserving social and family ties during the legal proceedings. This helps prevent the isolation and social disconnection that can result from extended periods of detention.²⁸ By safeguarding these essential relationships, electronic monitoring upholds defendants' rights to maintain personal connections and support networks.

Reduced Stigmatization: Traditional detention can carry social stigmatization and adverse consequences for defendants, even if they are eventually found not guilty. Electronic monitoring offers an opportunity to mitigate the negative societal impacts associated with detention by allowing defendants to maintain their regular routines, employment, and community engagement. By reducing the stigmatization of defendants, electronic monitoring protects their rights and promotes their reintegration into society.²⁹

Overall, electronic monitoring in Kosovo's criminal justice system plays a crucial role in reducing the violation of defendants' rights in cases of detention. By providing alternatives to traditional confinement, the system upholds the presumption of innocence, minimizes unnecessary detention periods, ensures proportionality and individualization, facilitates access to legal representation, preserves social and family ties, and reduces stigmatization. These measures collectively contribute to a more rights-centered approach within the criminal justice system, promoting fairness, dignity, and respect for defendants' rights.

Conclusion:

²⁷ Black, M., and R. Smith. 2003. "Electronic Monitoring in the Criminal Justice System." Trends & Issues in Crime and Criminal Justice no. 254. Canberra: Australian Institute of Criminology, accessed [insert access date], <https://www.aic.gov.au/publications/tandi/tandi254>.

²⁸ Samuel R. Wiseman, "Pretrial Detention and the Right to Be Monitored," Essay, vol. 123, no. 5 (March 2014): 1118-1625.

²⁹ Hannah Graham and Gill McIvor, "Scottish and International Review of the Uses of Electronic Monitoring," University of Stirling, August 2015, cited in Rokkan, 2012b, 7.

In conclusion, electronic monitoring has emerged as a valuable measure to ensure the presence of defendants in criminal proceedings in Kosovo. The legal infrastructure, consisting of various laws, regulations, and administrative instructions, provides a solid foundation for the application of electronic monitoring. The implementation of electronic monitoring by the Kosovo Police, in collaboration with relevant stakeholders, has demonstrated several benefits in terms of compliance, cost-effectiveness, rehabilitation, and public safety. However, challenges and limitations such as technological infrastructure, privacy concerns, training, and social perception must be addressed to maximize the effectiveness of electronic monitoring.

Through an examination of the legal framework and implementation of electronic monitoring in Kosovo, several key findings have emerged. Firstly, the Criminal Procedure Code, Penal Code, Law on the Family, Law on Electronic Communications, and other relevant laws form the basis for the application of electronic monitoring. The Kosovo Police plays a pivotal role in supervising and monitoring defendants, while ensuring compliance with court-imposed restrictions. Procedures for implementing electronic monitoring include court decisions, device installation, defendant orientation, and ongoing monitoring and compliance procedures. Safeguards are in place to protect privacy rights, such as data protection measures, limited access to information, and judicial oversight. Monitoring and reporting mechanisms enable real-time tracking, incident documentation, and prompt response to violations. Collaboration with stakeholders, including judicial authorities, correctional services, legal professionals, data protection authorities, and civil society organizations, enhances the effectiveness and transparency of the process.

Recommendations for Enhancing Effectiveness:

To enhance the effectiveness of electronic monitoring in Kosovo's criminal justice system, several recommendations can be considered. Firstly, continuous investment in technological infrastructure is necessary to ensure reliable and secure monitoring devices and communication systems. This will improve the accuracy and efficiency of electronic monitoring. Training programs for relevant personnel, including police officers, judges, prosecutors, and correctional staff, should be prioritized to ensure a comprehensive understanding of electronic monitoring procedures, best practices, and respect for defendants' rights. Furthermore, awareness campaigns should be conducted to address societal stigmas and promote acceptance of electronic monitoring as a valuable tool for ensuring defendant presence. Strengthening collaboration among stakeholders, including regular information sharing and joint initiatives, will foster a holistic approach to electronic monitoring implementation.

The Future of Electronic Monitoring in Kosovo's Criminal Justice System:

The future of electronic monitoring in Kosovo's criminal justice system is promising. As technology advances and best practices evolve, electronic monitoring can play an increasingly vital role in ensuring defendant presence. It has the potential to contribute to a more efficient and cost-effective criminal justice system while respecting the rights and privacy of individuals involved in criminal proceedings. Continuous evaluation and research should be undertaken to assess the impact of electronic monitoring on recidivism rates, rehabilitation outcomes, and public safety. Additionally, international cooperation and the exchange of experiences and knowledge regarding electronic monitoring can further enhance its implementation in Kosovo.

In conclusion, the application of electronic monitoring in Kosovo's criminal justice system has the potential to strengthen defendant presence while upholding their rights. By addressing the identified challenges, implementing the recommended measures, and embracing advancements in technology, Kosovo can ensure that electronic monitoring is effectively utilized, contributing to a fair, efficient, and rights-based criminal justice system.

This study employs a qualitative research approach to explore the legal infrastructure for the application of electronic monitoring in Kosovo's criminal justice system, a comprehensive analysis of relevant legal provisions including the Criminal Procedure Code, Penal Code, Law on the Family, Law on Electronic Communications, Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision, Law for Protection from Family Violence, and Administrative Instruction (MIB) No. 11/2016, the study gathers information from international legal instruments and conventions relevant to electronic monitoring and defendant presence, such as the International Covenant on Civil and Political Rights (ICCPR), European Convention on Human Rights (ECHR), United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), Council of Europe Recommendation Rec (2014)4 on Electronic Monitoring, and international standards and guidelines developed by organizations like the International Penal and Penitentiary Foundation (IPPF) and International Corrections and Prisons Association (ICPA).

Bibliography

1. Borsekova, Kamila, Peter Krištofik, Vaňová Anna, and Samuel Korony. "Electronic Monitoring as an Alternative Form of Punishment: An Exploratory Study Based on European Evidence." Banská Bystrica: Mateja Bela University v Banská Bystrica, April 2018.
2. Black, M., and R. Smith. 2003. "Electronic Monitoring in the Criminal Justice System." Trends & Issues in Crime and Criminal Justice no. 254. Canberra: Australian Institute of Criminology. Accessed [insert access date]. <https://www.aic.gov.au/publications/tandi/tandi254>.

3. Black, M., and Smith, R. "Electronic monitoring in the criminal justice system." Trends & issues in crime and criminal justice no. 254. Canberra: Australian Institute of Criminology, 2003. Accessed May 22, 2023. <https://www.aic.gov.au/publications/tandi/tandi254>.
4. Code No. 04/L-123. Criminal Procedure.
5. Criminal Code of the Republic of Kosovo (Code no. 06/L-074). Article 171, par. 3, 4, and 7.
6. Graham, Hannah and Gill McIvor. "Scottish and International Review of the Uses of Electronic Monitoring." University of Stirling, August 2015. Cited in Rokkan, 2015, page 63.
7. Hucklesby, Anthea, and Ella Holdsworth. "Electronic monitoring in probation practice." HM Inspectorate of Probation, Academic Insights 2020/08. December 2020.
8. Idowu, Ayomikun, Frankel, Allison, and Nichols, Yazmine. "Three People Share How Ankle Monitoring Devices Fail, Harm, and Stigmatize." ACLU. Accessed May 22, 2023. <https://www.aclu.org/news/criminal-law-reform/ankle-monitoring-devices-fail-harm-and-stigmatize>.
9. Kanallakan, Robert. "Best practices for electronic monitoring post-incarceration: Evidence suggests electronic monitoring plus home detention could be an effective deterrent to crime and have enormous social benefits." Published on April 19, 2019.
10. Law for Protection from Family Violence (Law No. 03/L-182).
11. Law No. 05/L-003 for the electronic surveillance of persons whose movement is restricted by a court decision.
12. Law on Electronic Communications (Law No. 04/L-109).
13. Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003).
14. Recommendation, CM/Rec (2014)4. "Electronic monitoring." Adopted by the Committee of Ministers on February 19, 2014, at the 1192nd meeting of the Ministers' Deputies.
15. Samuel R. Wiseman, "Pretrial Detention and the Right to Be Monitored," Essay, vol. 123, no. 5 (March 2014): 1118-1625.
16. Texas Code of Criminal Procedure. 2009.
17. The Criminal Code of the Republic of Kosovo (Code No. 06/L-074).
18. The Law on Electronic Communications (Law No. 04/L-109).
19. The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003). Article 5.
20. The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003). Article 6, par. 2.
21. The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003). Article 9, para. 1.
22. The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003). Article 16.
23. The Law on the Electronic Surveillance of Persons Whose Movement is Restricted by Court Decision (Law No. 05/L-003). Article 5.
24. The Law on the Family of Kosovo (Law No. 2004/32).
25. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. In tears Toward Criminal Justice Solutions. September 2011. NCJ 234460. "Electronic Monitoring Reduces Recidivism."
26. Administrative Instruction (MIB) No. 11/2016 on the Implementation of Electronic Surveillance and Reporting by the Kosovo Police of Persons Whose Movement is Restricted.