

Electronic Monitoring as a Measure to Reduce the Use of Pre-trial Detention

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Received: September 28, 2021

Accepted: October 1, 2021

Online Published: September 5, 2022

doi:10.5539/jpl.v15n4p210

URL: <https://doi.org/10.5539/jpl.v15n4p210>

Abstract

This study tackles the legal regulation of electronic monitoring as an alternative measure to pre-trial detention in the Jordanian Criminal Legislation and the problems of its application. The study concludes that the Jordanian Legislator has stipulated the electronic monitoring system as an alternative to pre-trial detention to be limited to misdemeanors excluding repeating the defendant of the crime. Furthermore, the Jordanian Legislator has omitted to stipulate the conditions and operational mechanisms of the electronic monitoring, which has precluded its application as an alternative measure to pre-trial detention. The study has found the necessary legislative intervention of the Jordanian Legislator and the explicit stipulation of the conditions for applying electronic monitoring as an alternative to pre-trial detention in addition to identifying the operational mechanisms.

Keywords: electronic monitoring, pre-trial detention, Jordanian criminal legislation

1. Introduction

Electronic monitoring is one of the methods developed in modern penal policy, and it represents the use of modern technologies as a measure to reduce depriving freedom, whether in the investigation stage or in the punitive implementation phase, without traditional punitive methods, and this is through replacing it with the punishment of home imprisonment or restricting the freedom of a person in his home through electronic monitoring techniques (Al-Qadi 263). Electronic monitoring, whether it is a measure to reduce detention (pre-trial detention) or an alternative means to penalties depriving freedom, is the most important achievement of scientific progress that has proven its success in the penal systems that have adopted it to ward off the disadvantages of depriving freedom in penal institutions.

Electronic monitoring has multiple forms of use:

- 1) Temporary placement under electronic monitoring as a measure to reduce the use of detention (pre-trial detention).
- 2) Ruling with placement under electronic monitoring as an alternative to custodial punishment.
- 3) Placement under electronic monitoring as a means of implementing judicial oversight.

Electronic monitoring is considered one of the most important measures introduced in the Jordanian criminal policy according to the amendments to the Criminal Procedure Law No. 32/2017, whereby the Jordanian legislator has taken electronic monitoring as a measure to reduce the use of pre-trial detention.

Electronic monitoring system includes not arresting the defendant in any of the correction and rehabilitation centers and leaving him free while subjecting him to a number of obligations and monitoring his movements electronically remotely through a device fixed on his wrist or at the bottom of his foot, which is known as the electronic bracelet, so detention takes away the freedom of the defendant before conviction and affects his dignity and reputation among people, and it is a temporary measure decided in the interest of investigation according to certain controls, but it may be misused by those undertakes investigation, which constitutes a violation of the presumption of innocence expressly stipulated in the Jordanian Constitution of 1952, in Article 101/4, which states: "*An accused person is presumed innocent until proved guilty by a final court judgement.*" For the sanctity of personal freedom, and to limit the abuse of detention by some investigative personnel. The modern criminal policy has decided to search for measures to reduce the use of pre-trial detention that are effective in confronting crime and which

preserve human dignity and reduce overcrowding in arrest centers and the negative consequences that result from being with detained suspects of all degrees of seriousness. Among the most important of these measures is electronic monitoring as a measure to reduce the use of pre-trial detention or during the trial. Therefore, this study came to explain the legal regulation of the electronic monitoring system as a measure to reduce the use of pre-trial detention in the Criminal Procedure Code No. 32/2017.

Due to the novelty of this topic, and the scarcity of specialized research on this topic, this study comes as a modest contribution to provide the Jordanian legal library with a study on electronic monitoring as a system developed in accordance with the amendments to the Criminal Procedure Code, after it became an inevitable scientific and academic imperative as the Jordanian legislator has taken such an important step through stipulating placement under electronic monitoring as a measure to reduce the use of pre-trial detention, and it promises to develop the procedure to include other stages in public litigation.

2. Study Problem

Electronic monitoring is considered one of the most important procedures introduced in the Jordanian criminal policy according to the amendments introduced to the Criminal Procedures Code, under Law No. 32/2017, as the Jordanian legislator adopted electronic monitoring in Article (114 bis) of the Criminal Procedure Code, which stipulated the following: “Except in cases of repetition, the public prosecutor or the court may, in cases where arrest in misdemeanors can be replaced with one or more of the following measures:

A-Electronic monitoring.

B-Travel ban.

C-House arrest or restriction to a geographic area for a period determined by the public prosecutor or the court, and the police are required to verify this.

D-Posting bail or a judicial guarantee in an amount to be determined by both the public prosecutor and the court.

E-The prohibition of frequentation by the defendant to specific places.

The Jordanian legislator introduced in Article (114 bis) new measures alternative to arrest, as it stipulated electronic monitoring as a measure to reduce the use of pre-trial detention, and this article did not include how to implement the electronic monitoring system, so the problem of the study is the extent of the effectiveness of electronic monitoring as a measure to reduce the use of pre-trial detention in the Criminal Procedure Code, and the following questions are derived from the study problem:

- What are the measures to reduce the use of pre-trial detention in the Criminal Procedure Code?
- What is electronic monitoring?
- What are the reasons for the introduction of electronic monitoring?
- What is the legal nature of electronic monitoring system?
- What are the conditions for applying the electronic monitoring system as a precautionary measure which reduces the use of pre-trial detention?
- What are the problems of applying the electronic monitoring system as a precautionary measure which reduces the use of pre-trial detention?

This study is limited to electronic monitoring as a precautionary measure, according to what the Jordanian legislator stipulated in Article (114 bis) of the Jordanian Criminal Procedure Code. Electronic monitoring is outside the scope of the study as a punishment except to the necessary extent required by this study without delving into all of its parts.

3. Study Methodology

This study relied on more than one of the methods of scientific legal approaches, as we adopted the descriptive and analytical approach, describing the electronic monitoring system as it is in the Jordanian legislation and analyzing Article (114 bis) of the Criminal Procedure Code that organizes electronic monitoring as a precautionary measure, being a measure to reduce the use of pre-trial detention, and clarifying its content. Although this study does not rise to the ranks of comparative studies, it will depend on the comparative approach in some parts, which requires reference to the position of comparative legislation and judiciary and the strengths and weaknesses of Jordanian legislation.

4. Study Plan

This study was divided into two parts, in addition to the introduction and the conclusion, as follows:

- What is electronic monitoring?
- The general provisions of the electronic monitoring system as a precautionary measure, being a measure to reduce the use of pre-trial detention in the Jordanian law, and the problems of application.

5. What is Electronic Monitoring?

Defining the nature of electronic monitoring requires introducing it, showing its historical development, and stating its legal nature and justifications for the application thereof

5.1 Defining the Electronic Monitoring System

The concepts and terminology applied to the electronic monitoring system varied, including placement under electronic monitoring by using an electronic bracelet or home detention, and another side preferred the term placement under mobile and fixed electronic monitoring, as well as forced residency by placing under electronic monitoring. Some others were satisfied with the electronic bracelet only. Despite the different formulas, it revolves around the idea of using an electronic medium that allows those who are subject to monitoring to stay in his place of residence with some restrictions imposed on his movements through the electronic monitoring device. Placement under electronic monitoring is one of the innovative methods of implementing punishment or arrest outside the reform and rehabilitation centers in the form of what is called "home detention".¹ Many contemporary criminal legislations have approved the electronic monitoring system, but most penal laws have been interested in clarifying how it is applied and the conditions and procedures thereof, without providing a definition thereof². The Jordanian legislator did not provide a definition for electronic monitoring, leaving it to jurisprudence and the judiciary, in contrast to the comparative law. According to French legislation, electronic monitoring is intended to impose obligations on an accused or convicted person, and such obligations are represented in not leaving his home or place of residence, or any other specific place, outside the times specified by the competent judge, so that his commitment to the duties imposed on him is monitored electronically. Places and times are specified in the body of the judgment or ruling, based on considerations related to the practice of a professional activity, doing university studies, the exercise of an activity that helps him with social integration or participation in family life, or having medical treatment. In return, the convicted person is obligated to comply with all the obligations incumbent upon him, especially summons of the authorities determined by the competent judge.³ The UAE legislator has also defined placement under electronic monitoring as: (Depriving the convict of being absent from his place of residence or any place specified by the order issued by the prosecution or the competent court, other than the specified times, which is implemented by electronic means that allow remote monitoring, where the convict is required to carry an electronic transmitter throughout the period of placement under monitoring).⁴ The Algerian legislator defined it as: (A procedure that allows the convict to spend all or part of the penalty outside the penal institution.) Placement under electronic monitoring means that the convict is required to carry an electronic bracelet throughout the period mentioned in Article (150 bis 1) that allows to know his presence in the place of residence indicated in the placement decision issued by the penal enforcement judge).⁵ The mechanism of implementing electronic monitoring varies in general to three technical methods to implement electronic monitoring, two of which relate to the electronic bracelet.

First: Using the electronic bracelet:

The electronic bracelet is the most common technique and it is most used, due to its low cost and effectiveness, compared with other methods and means, and this method depends on placing a small electronic transmitter around the wrist or foot joint of the person subject to electronic monitoring, in a manner that is not removable. This device is also resistant to shocks and every external influence such as shocks, water, radiations and vibrations, and it shall be made of healthy materials. This device sends short waves coded, within the limits of a certain area, so that it cannot be simulated or received by other devices. Such signals bear a secret code for each person subject to monitoring, and they are received by another device for processing and resending, which is installed by those in charge of monitoring the implementation, and which is connected to the central computer in the Supervision,

¹ Otani, Safaa. *Placement under Electronic Surveillance "The Electronic Bracelet in the French Punitive Policy"*, Damascus University Journal of Economic and Legal Sciences, Volume 25, Issue 1, 2009, p. 131.

² Obaid, Op. cit., pp. 1-17.

³ Articles 2-26-132 of the French Penal Code

⁴ Article (355 Federal Decree-Law No. (17) of 2018 amending some provisions of the Criminal Procedure Law issued by the Federal Law No. 35 of 1992.

⁵ Article (150 bis) of Law No. 10-18 of January 30, 2018, supplementing Law No. 04-05 of February 5, 2005, Law of Organizing Prisons and the Social Reintegration of Prisoners.

Monitoring and Follow-up Center, called the central pole in French legislation, via a telephone line, or via the GSM of mobile phone operators, which is designated for the monitoring process without the other phone operations. Therefore, if the rules and obligations are violated, especially the times and place of monitoring, or the bracelet is removed or any external influence or technical damage, the receiver sends electromagnetic signals during specific periods of time (every thirty seconds) in the vicinity of a specified distance, not more than fifty meters, which are received by the central computer at the monitoring center, where the control officer can, through these signals, verify the existence of the person subject to electronic monitoring in the geographical area specified for him to take appropriate measures. In the event of tampering with the device by way of breakage or damage, this device sends warning signals to the monitoring officers. There are types of electronic bracelets that send electrical charges that are used to immobilize a person and prevent him from tampering with or damaging the electronic bracelet. The electronic bracelet works through large batteries that ensure the continuity of its work, equipped with an alarm for cases of charging depletion. Some countries use electronic bracelets that work with the GPS system that determines places using satellites. This type of electronic bracelet is used in the mobile electronic monitoring system. This system is flexible, as this system enables the person who is subject to electronic monitoring to move without this monitoring being limited to the place where the monitoring devices are specified.⁶ Among the countries that adopted this method is France.⁷ As for the Jordanian legislator, the method has not yet been defined, pending the issuance of the regulatory provisions.

Second: Electronic monitoring through a telephone call

This is implemented by placing an electronic device that is placed in the house or place of residence of the person subject to electronic monitoring, or the place where such monitoring will be carried out if electronic monitoring is fixed. The device is fixed around the waist of the person subject to mobile electronic monitoring. This device is connected to a fixed telephone line and the electrical circuit to link it to the central computer of monitoring. The device transmits the signals of the electronic bracelet to a central computer, where warning messages are sent about any attempts to destroy or sabotage the electronic bracelet, and in the event that the person subject to monitoring leaves the geographical area specified by the judge.

Third: Electronic monitoring by voice print: It is also called the voice match system. This system means that the person subject to monitoring calls the center in charge of monitoring, from his home or the place of monitoring, during a specific period of time. The central computer makes an automatic comparison of voice pitches and matches the caller's voice with the voice print pre-recorded on it. At the same time, it determines the phone number and place of contact and records the timing of the call automatically. In the event that all or part of the data do not match, it issues a notification and proves a violation of the rules of application of the system. This system was applied in the United States of America, Bulgaria, Wales and England.⁸

We point out that each of the aforementioned techniques must take into account several characteristics, the most important of which are:

- **Impenetrability:** The bracelet is well secured and cannot be broken, opened, taken off or disabled easily.
- **Detectability:** Only the authorities in charge of implementation can detect and locate the bracelet holder easily, even at a distance, and usually depends on the network of the mobile phone.
- **Efficiency and reliability:** It performs its role technically and it should be without problems, although this cannot, likewise all technological systems, be completely excluded.
- **Respect for privacy:** Despite the restrictions and obligations imposed by it, this technology should not provide accurate details that constitute interference in the private life of the individual.⁹

5.2 The Legal Nature of the Electronic Monitoring System

The idea of placement under monitoring is considered one of the relatively old ideas in criminal justice, as its roots extend to the ancient Roman Empire. The latter has known a system called free detention, which is based on deciding the perpetrator's residence in his home under security guard, with the appointment of a guarantor to represent him before the judiciary. It was not applied largely in the pre-judgment stage and it was to a lesser extent

⁶ Al-Qadhi, Rami Metwally (2015). *Electronic Surveillance System in French and Comparative Law*, a research published in the Journal of Sharia and Law, College of Law, United Arab Emirates, Issue 63, Year 29, pp. 287-2289.

⁷ Al-Zaiti, Ayman Ramadan (2005). *Home Detention*. Dar Al-Fikr Al-arabi, Cairo, p. 3 and beyond.

⁸ Abdullah, Kabbasi (2016/2017). *Electronic Surveillance Using the Electronic Bracelet*, Master's thesis, University of Badji Mokhtar, Annaba, Algeria, Page 20.

⁹ Abdullah, Kabasi, *ibid*, p. 22, and in detail: Al-Zaiti, *ibid*, pp. 79-81.

in the post-judgment stage, as a result of the judiciary's belief that it was not sufficient as a measure to maintain security, as it was a consensual measure not coupled with complementary guarantees that guarantee its success. Likewise, Islamic law defined the penalty of home detention, which was applied to an adulterous woman. Allah says: ¹⁰*Those who commit unlawful sexual intercourse of your women - bring against them four [witnesses] from among you. And if they testify, confine the guilty women to houses until death takes them or Allah ordains for them [another] way.*¹¹

In modern times, the term "placing under electronic monitoring" first entered into penal legislations in the United States where it was called "Electronic Monitoring", the initial credit of the SCHWITZGIBE brothers to conduct the first experiments determining the place of a person in 1964. The SCHWITZGIBE are scientists from American Harvard University, dedicated their lives to do research about what is called human behavior technology, to monitor human and nervous signals in a specific place. Their research resulted in setting up a wireless monitoring system, and the experiment of the system took place in Boston State on a group of youth who is convicted and benefiting from the Conditional Release system, in an area of four hundred meters, the location of the signals was successfully and accurately monitored, and similar experiments followed in each of St. Louis's cities and New Mexico which was the most and last important station, where in 1977. Based on the idea quoted from the cartoon series Spider-Man showing that the villain was able to locate the spider-man thanks to a device in his wrist, which inspired a fan of this cartoon series who was AlKady Jack Love then he started to persuade his subordinates with the idea and indeed succeeded in persuading a software distributor of Honey well company to produce the transmitter and receiver, which has already been done. In 1983, AlKady Jack Love successfully tested the first electronic bracelet for three weeks, before a decision of placing five suspects under electronic monitoring, following the success of the experiment that was adopted by many Americans¹², The electronic monitoring system was applied in the United States of America as a measure to reduce the use of pre-trial detention, and to implement the deprivation of liberty penalties to reduce suicides, and adults who are often perpetrators of traffic offenses for their need a special kind of following-up in the society in which they live¹³.

In Britain: Placing under electronic monitoring appeared in Britain in 1988 after a working visit to the United States of America by then Secretary of State John Patten, and senior criminal justice officials to the United States of America. However, the ineffectiveness of the used devices and the failure of those responsible for implementing them led to the failure of the first attempt. In 1991, The British House of Commons issued the Criminal Justice Act, which adopted electronic monitoring as a measure to reduce the use of pre-trial detention.

In 1994, the Criminal Justice and Public Order Act was issued to confirm the effectiveness of the electronic monitoring system, and was partially experimented in the cities of Manchester, Reading, and Norfolk. At the beginning of 1999, the system was disseminated at the national level, to be applied in a consensual manner to anyone convicted of a minor penalty, non-payment of fines, or an additional penalty for Punishment of Community Service "Work for Public Benefit". In 2001, the Criminal Justice and Police Act, which extended its scope of application to include minors from 12 to 16, who are convicted of serious crimes - for which the law establishes a penalty of at least 14 years such as sexual offenses, violent offenses or habitual offenders. Electronic monitoring as an original penalty for adults is no longer than three months.¹⁴

The French legislator introduced placement under electronic monitoring into the penal system through code 97-1159 issued on 12/19/1997, and it was completed by Law No. 2000-516 dated 6/15/2000, where the French legislator allocated to it articles from 723-7 to 723 -14 of the French penal Procedure Code, the provisions of the placement under electronic monitoring have been amended by code No. 2002-1138 of 9/9/2002, where the placement under electronic monitoring was introduced within the framework of judicial control and as a measure to reduce the use of pre-trial detention, and code No. 200-204 of 3/9/2004, which allowed the application of electronic monitoring as a quasi-original punishment, and as a security measure also by the judges of the matter and misdemeanor and felony issues as well as In the context of the immediate appearance and penal order on the proposal of the Public Prosecutor, the code on Recidivism in Criminal Offenses No. 1549-2005 on 12/12/2005, and the code on Organization of Prisons and Punitive Treatment No. 1436/2009 dated 11/24/2009, Which expanded by the electronic monitoring system as a new method for implementing freedom-depriving punishment and as a measure to reduce it, as well as within the framework of judicial control as a measure to reduce the use of pre-trial

¹⁰ Ram, El-kady, *ibid*, PP 268

¹¹ Verse 15 of Surah An-Nisa.

¹² Obaid, Osama Hassanein, *Electronic Criminal Surveillance, A Comparative Study*, First Edition, Dar Al Nahda Al Arabia, Cairo, PP9.

¹³ Obaid, Osama Hassanein, *ibid*, PP 33.

¹⁴ Obaid, Osama Hassanein, *ibid*, PP 33- 38.

detention, allowing the benefit of the largest possible number of convicted and accused persons. The French penal code regulating the placement under electronic monitoring provided a model and an integrated legislative framework¹⁵.

In Arab legislation, despite the importance of the electronic monitoring system in its various uses in the field of criminal justice, the response of Arab legislation to apply the electronic monitoring was limited, except Algeria, the Kingdom of Saudi Arabia, the Hashemite Kingdom of Jordan and the United Arab Emirates.

The Kingdom of Saudi Arabia applies the electronic monitoring system to some of the non-serious convicted persons, as it applies it in necessary and exceptional cases and it is not an alternative to depriving freedom at the stage of investigation or punitive implementation, as its application was limited to humanitarian and social cases that require the departure of the convicted persons for a certain period for medical treatment Or visiting a sick person or attending a funeral ceremony, for a limited period and under the supervision of the General Investigation and the Public Security¹⁶.

As for the Algerian legislator, it has adopted the electronic monitoring as an alternative to pre-trial detention in the area of Judicial control during the investigation according to the amendments to the penal Procedures code of 2015¹⁷ it limited the possibility of applying these procedures in cases stipulated in the Criminal Procedures code, represented in the obligation that the accused person shall not leave the territorial boundaries set by the investigating judge, refrain from seeing the persons appointed by the investigating judge or meet with each other, and stay in the place of residence designated by the investigating judge and leave Except with its permission, and not leaving the place of residence except under specific conditions and times, and in 2018 the Algerian legislator expanded the field of electronic monitoring to become an alternative to depriving freedom in short-term imprisonment¹⁸ The UAE legislator has also applied the electronic monitoring as an alternative to preventive Arrest and an alternative to freedom-depriving penalty, according to the Federal code Amending the Criminal Procedures code.¹⁹ The UAE legislator has also applied the electronic monitoring as an alternative to preventive Arrest and an alternative to freedom-depriving penalty, according to the Federal Code Amending the Criminal Procedures code.

5.3 *The Legal Nature of the Electronic Monitoring System*

The legal nature of electronic monitoring means the classification under one of the two forms of Penal action in terms of being considered a penalty or as a precautionary measure.

A jurisprudential debate has arisen over the legal nature of the electronic Monitoring system, on two approaches, where the first approach considers that the electronic Monitoring system is a precautionary measure aimed at preventing the occurrence of a crime and combating criminal seriousness, and achieving the objectives of the contemporary penal policy. Therefore, the technology that underlies electronic Monitoring shall be applied to prevent crime.²⁰ While the second jurisprudential approach considers electronic monitoring as a penalty because it causes pain in the form of restricting the freedom of those who are subject to it, in addition to causing him family disturbance.

In order to reconcile the two previous approaches, an aspect of jurisprudence considers that determining the legal nature of electronic Monitoring is given by referring to the procedural stage in which it is applied. If electronic Monitoring is applied during the judicial investigation stage or after the freedom-depriving penalty has been executed, then it is considered a precautionary measure, but if it was applied in the punitive execution stage, it is undoubtedly of a punitive nature.

We support this approach, and we see that it is the closest to the fact of the placement under the electronic Monitoring system, at least in France, as the French legislator adopted the placement under electronic Monitoring system in all stages of the criminal Lawsuit procedure, starting from the stage of the judicial investigation and ending with a stage Punitive implementation, as it is a precautionary measure during the judicial investigation

¹⁵ Awtani, Safaa, Ibid, pp. 113.

¹⁶ Al-Qadhi, Rami Metwally, Op. cit, p. 21

¹⁷ Pursuant to Order No. 02-15 amending the Criminal Procedures code issued on 7/23/2015

¹⁸ And according to the amended code No. 18-01 of 30/1/2018 and supplementing code No. 04-05 Prisons code and Reintegration the society with Prisoners

¹⁹ Federal Decree-Law No. (17) of 218 amending some provisions of the Penal Procedure Law issued by Federal Law No. 35 of 1992.

²⁰ Read about this approach: Osama Hassanein Obaid, Ibid, PP.10 etc.

stage and an alternative to the freedom-depriving penalty at the trial stage, as well as after it²¹

5.4 Justifications for Applying the Electronic Monitoring System as a Precaution Measure

In order to demonstrate the effectiveness of the electronic Monitoring system as a measure to reduce the use of pre-trial detention in reforming and rehabilitating the perpetrators, the advantages of the placement under electronic Monitoring system shall be demonstrated.

5.4.1 Advantages of the Electronic Monitoring System

1) Limiting the prejudice to the presumption of innocence

Electronic monitoring, as a measure to reduce the use of pre-trial detention, has a role in limiting prejudice to the presumption of innocence. Arrest is an exceptional measure according to what the Jordanian legislator stipulated in Article 114 of the Criminal Procedure Code, as it is a judicial procedure from the preliminary investigation procedures based on depriving the defendant's freedom for a short period Before the conviction was proven and the material and moral damages that would result from and inflict on those who were arrested, so some considered it a violation of the principle (the accused is innocent until proven guilty), which the Jordanian legislator affirmed in Article 10 of the Constitution, and despite the association of arrest with the nature of freedom-depriving penalties from Where the accused person's freedom was deprived for a period of time, however, arrest is not a punishment. Therefore, the legislator informed this procedure with guarantees represented in objective and formal conditions that must be met when taking this measure²².

In most cases, detention cannot be dispensed in order to achieve justice, as many crimes have an impact on the individual and on society, and as the deprivation of freedom entailed in arrest and the consequent material and moral damage to the placement, the need has become urgent to apply the electronic monitoring system on the arrest in countries that do not use it, according to controls determined by the legislator and others that are left to the judge's discretionary authority, and it can be said that the application of electronic monitoring on arrest is more important than its application as an alternative to penalty, as the legal status of the arrested differs from the legal status of the convicted, so the latter determines his fate by a final judgment which means that he deserves the consequences that the punishment achieves. If this person is subject to the electronic Monitoring system, then this is a matter of rehabilitation, and to prevent mixing and overcrowding of prisons and for the stability of the family. As for the arrested, he is still a defendant who benefits from the presumption of innocence. Therefore, the consequences that befall the arrested who was subjected to the electronic Monitoring system, then the lawsuit against him was filed or a judgment of acquittal was issued, much greater than that of the convicted person in the cases of filing the Lawsuit and the acquittal²³

2) The Balance between the Interest of the Individual and the Interest of Society

The application of the electronic Monitoring system in the field of arrest achieves a great deal of balance between personal rights and freedoms and the interest of the state, as it achieves a great deal of protection of the right of the individual to be accepted by society, which is not achieved in the arrest in its traditional form, and that who is subject to arrest is often unable to hide his affairs from those around him, so whoever is subject to electronic Monitoring resides in his home and practices his work, and everything in the matter is subject to electronic Monitoring, which is impossible for many members of the community to know about his submission to it and that is not achieved in penalties depriving freedom.

On the other hand, one should not understand who is subject to the electronic monitoring system is being monitored in all his movements and actions inside the dwelling. Legislation that adopts the electronic monitoring system includes restrictions that ensure the maintenance of the privacy of Inviolability of domicile, including the prohibition of the use of cameras during monitoring and the prohibition of the entry of the monitoring officer in the dwelling just because the subject is subjected to monitoring Committing a violation.²⁴

3) Reducing Financial Expenditures

The electronic monitoring system contributes significantly to reducing the cost of the traditional correction process, which takes place inside correction and rehabilitation centers, and usually exhausts countries economically and administratively. This is one of the most important reasons to follow the electronic monitoring, despite the large

²¹ Kabasi, Ibid, p. 46

²² Al Fawaghra, Ibid, p. 25

²³ Al-Walid, Sahir Ibrahim, electronic Surveillance of the accused as means to reduce the disadvantages of pretrial detention, an analytical study, Journal of the Islamic, University for Islamic Studies, Volume 30, Issue I, pp. 674-675.

²⁴ Al-Walid, Ibid, p. 678

expenses of launching the electronic Monitoring system due to the equipment and technical matters that shall be required, so the cost of the electronic Monitoring system is less than the cost of the placement in a Punitive institution, so electronic Monitoring is an effective way to reduce of the traditional punishment expenditures that burden all countries, including the most economically stable ones, in France, today's expenditures of the placement under the electronic monitoring are four times less than the placement in a penal institution for a day.²⁵

In the Hashemite Kingdom of Jordan, according to the Jordanian Minister of Interior, the cost of correction and rehabilitation centers is about 92 million dinars annually²⁶ This spending constitutes 1% of the gross domestic product in addition to the costs of dependence their families from the National Aid Fund in addition to benefiting from in-kind assistance provided to inmates of correction and rehabilitation centers, despite the lack of criminal information department statistics for the number of convicted or arrested persons in misdemeanors cases, who may be placed under the electronic monitoring, but its statistics indicate that 19,215 misdemeanors crimes were committed during 2019.²⁷ Until the actual implementation of the electronic monitoring and its success as a measure to reduce the use of pre-trial detention, and including it within the legislative system as an alternative to more modern and less expensive freedom-depriving penalties, the correction and rehabilitation centers will remain overcrowded and the state will incur approximately 92 million dinars each year, and inmates will be infected with the crime in addition to the negative effects, which are reflected on the families of inmates and society in general, which will keep our penal policy lagging behind the advanced Western policies.

It should be noted that the cost of the electronic tagging as an alternative to freedom-depriving penalties does not exceed 10% of the current spending on the correction and rehabilitation centers, and adopting it will thus reduce the rate of recidivism and recurrence of crimes, and the crime infection will decrease to 10%.

4) Reducing Congestion in Correction and Rehabilitation Centers

International conferences on crime prevention and criminal justice emphasized the need to resort to the electronic monitoring as a measure to reduce the use of pre-trial detention and penalties depriving freedom, in order to reduce the overcrowding of correction and rehabilitation centers that have become troublesome to criminal justice systems in all countries of the world, according to the annual report of the World Prison Brief, which is An independent institution based in Britain, the number of prisoners in the world exceeded 10 million prisoners. 28According to the forensic statistical report issued by the Criminal Information Department in the Hashemite Kingdom of Jordan, the number of misdemeanors crimes committed in the year 2019 reached 19,215 crimes, and as misdemeanors are the crimes covered by the application of the electronic monitoring as a measure to reduce the use of pre-trial detention, as well as the number of the administrative arrested person reached 37,686 in 2019 ²⁹ . Whereas the electronic monitoring can be considered as a means to implement the judicial control stipulated in Clauses C and E of Article (114 bis), which is the residence in the home or the geographical area for the period specified by the public prosecutor or the court, and the prohibition of the defendant from going to specific places, we found that these numbers confirm the possibility of electronic monitoring If applied to alleviate the congestion of correction and rehabilitation centers and reduce financial expenditures.

5) Prevention of Recidivism

Supporters are mobilizing to justify the placement under electronic monitoring system, that one of its most important advantages is its effectiveness and feasibility in preventing recidivism, as studies prove that those released after being subjected to electronic monitoring are less likely to commit crimes again

as electronic monitoring as a measure to reduce the use of pre-trial detention or penalties depriving freedom is a more humane measure than that provided by correction and rehabilitation centers. Likewise, the placement under electronic monitoring can be considered a means to reduce the mixing of criminals within the correction and rehabilitation centers, as mixing provides Negative environment and lead to the opposite result of the correction process.

The study of comparative experiences in countries that have adopted electronic monitoring confirms that encouraging results have been obtained in this field. The American experience - the first country to finally adopt

²⁵ Otani, *ibid.*, P153

²⁶ The Jordanian Minister of Interior responded to a question by a member of the Chamber of Deputies in accordance with Article 96 of the Constitution and Article 119 of the Chamber of Deputies's internal system, on February 5, 2020.

²⁷ Statistical studies published on the Public Security Directorate website, showing the number of crimes committed in 2019.

<https://www.psd.gov.jo/images/cid/docs/statistics2015-2019.pdf>

²⁸ <http://www.prisonstudies.org/highest-to-lowest/prison-population-total>

²⁹ <https://www.psd.gov.jo/images/crcdocs/av.png>

the placement under electronic monitoring system- confirms that no incidents were recorded during implementation in 71% of application cases. In 98% of those cases, no new crime was committed after the end of electronic monitoring system. The Swedish experience also confirmed that out of 180 cases that were placed under electronic monitoring, only 6 cases failed, and no problems were recorded during implementation.

In France, during the first three years of the start of the placement under electronic monitoring system, only 15 new cases, or 15 cases of recidivism, were registered during the implementation period, out of a total of 1136 placing under electronic monitoring³⁰.

On the basis of these data, the placement under electronic monitoring system was assessed as an accurate method for implementing penalties depriving freedom, and a real measure to reduce the use of detention³¹.

5.4.2 The Defects of the Electronic Monitoring System

This system has a set of defects, the most important of which are:

1) The majority of jurisprudence considers that this system does not achieve the principle of social reaction to a crime, as the meaning of punishment and obligation is not achieved in this system.

2) It is difficult for public opinion to accept the placement under electronic monitoring as a measure to reduce the use of pre-trial detention or penalties depriving freedom, as it appears to the public opinion as a procrastination in the social reaction of the crime, as the punishment of a crime is one of the concepts that cannot be easily abandoned because it is a part of the people's culture.

3) The risks of electronic monitoring on individual freedom. Many opponents of the placement under electronic monitoring fear that individual freedom will gradually disappear because of these technologies used by the authorities that may misuse or abuse it: as individual freedom is one of the most sensitive fields in the life of societies, which raises the problem of the compatibility between the place of implementation of electronic monitoring in the home and the Breach of domicile principle and respect for private life and the branching out of it in terms of freedom of body behavior and the right to dignity and personal freedom³².

4) Many judges and punishment scholars consider it false freedom, and this system shall not be widely applied, as it is difficult to find psychologically stable people who are able to manage this false freedom³³.

6. The General Provisions of the Electronic Monitoring System as a Precautionary Measure to Reduce the Use of Pre-Trial Detention in Jordanian Law and the Problems of Implementation

According to articles 114 and (114 bis) of the Criminal Procedures Law, we find that the Jordanian legislator has divided the measures in terms of their nature into:

1) Custodial measure (arrest)

2) Freedom-restricting measure (Prohibition of travel and residence in the home and the specific geographical area, the prohibition of frequenting specific places, and electronic monitoring)

6.1 Arrest as a Custodial Measure

The arrest is considered the most dangerous investigation procedures, as it is one of the procedures affecting the freedom of the defendant, and it constitutes a breach of the presumption of innocence, as An accused person is presumed innocent until proved guilty; Therefore, the Jordanian legislator acknowledges its exceptional nature and its restriction to a set of formal and objective conditions that establish a balance between the public interest and ensuring the interest of the investigation that allows for the trial of the perpetrator and the achievement of justice, and between the personal freedom of the accused person in the pre-trial stage, which ensures that the investigative authority is not arbitrary to resorting to him. it forms at the same time, a guarantee for the accused person to confront him.

6.1.1 Concept of Arrest

The nomenclature used in the penal legislation to describe the procedure that includes reserving the freedom of the defendant for a specific period before issuing a final ruling proven guilty, according to the philosophy of each legislation in selecting its legal nomenclature, as The Jordanian, Iraqi, Syrian, Lebanese, and Saudi legislators used

³⁰ Talby, Layla, the placement under electronic surveillance, research published in the Journal of Human Sciences, No. 47 June 2017, Volume A, p. 256.

³¹ Safaa, Ibid, pp. 151.

³² Safaa, Ibid, pp. 157.

³³ Talby, ibid., P. 257.

the term "arrest", while the Egyptian legislator, the legislator in the Gulf Cooperation Council countries, the Yemeni legislator, and the Algerian legislator used the term "pre-trial detention." 'Some legislations combined the previous nomenclatures, and the term "arrest and pre-trial detention" was used as the Palestinian legislator, and the French legislator used the term "temporary detention", explicitly in the provision of Article 131 of the French Criminal Procedures Code³⁴, Despite the different nomenclatures, there is no dispute over the substance of the arrest, as it is the deprivation of the accused person's freedom for a temporary period, as required by the interest of the investigation.

The Jordanian legislator regulated Arrest in the Criminal Procedures code of 1961 and its amendments, in a special chapter within the investigation section, in Articles 111-120, in which it specified the period of Arrest and its competent authorities.

The Jordanian legislator does not define Arrest in the Criminal Procedures code, and confine with stipulating that it is an exceptional procedure, in article of Article 114 of the Criminal Procedures code, and the jurisprudence defined it as: ""A precautionary measure whereby the defendant, by order of a competent judicial authority, is placed in arrest for a legally specified period as required by the interest of the investigation, and within the controls set by the law,"³⁵ ' as it defined it as: " A precautionary measure against the accused person shall be included within the preliminary investigation powers"³⁶.

6.1.2 Arrest Justifications

The Jordanian legislator stated in Article 114 of the Jordanian Criminal Procedures code that Arrest is an exceptional measure, and by extrapolating the provision of this article we can say that Arrest is a precautionary measure and not mandatory, as it is the discretionary authority of the Public Prosecution or the court imposed by the requirements of the investigation, so it shall not be used extensively as it contradicts the Presumption of innocence.

The Jordanian legislator stipulated, in Article 114 of the Jordanian Criminal Procedures code that, the justifications for arrest is as an exceptional measure in the amended Law No. 32 of 2017, the purpose of which is to preserve evidences or material features of the crime or to prevent the practice of coercion on witnesses or the victim or to prevent the defendant From making any contact with his accomplices in the crime, or those involved in or instigating it, or protecting the defendant, putting an end to the effect of the crime, or wanting to prevent its renewal, preventing the defendant from fleeing, or sparing public order any defect resulting from the crime

Likewise, the Jordanian legislator stated in Article 111 of the Jordanian Criminal Procedures code that:

"In the felony and misdemeanor lawsuits, the public prosecutor may be satisfied with issuing a summons to appear, provided that replacing it after questioning the defendant with a warrant for arrest if the investigation requires that...."

From the extrapolation of the text of Article 111, we find that the Jordanian legislator has stipulated that the arrest warrant shall be issued as "if the investigation requires that." and to limit the authority of the public prosecutor to issue the arrest warrant, and not limit its legitimacy to the interest of the investigation only, The Jordanian legislator has specified the cases that require an arrest, which limits the issuance of the arrest warrant set in Article 111 of the Criminal Procedures code provided that the arrest warrant shall be based on justifiable reasons, and whatever the justifications, whether to ensure the integrity of the investigation or in the interest of public security or to ensure the execution of the punishment, The arrest warrant shall not be deviated from its exceptional nature, which must be taken within the narrow scope of prejudice to the presumption of innocence.

6.1.3 Arrest Legitimacy and Conditions

Arrest as being an exceptional measure whereby an individual is imprisoned and deprived of its freedom before a court ruling is issued convicting it. Therefore, the legislator required many conditions that were required by the legislator when issue it in order to ensure that individual freedom was not compromised. so the judicial control shall ensure the availability of these guarantees and conditions set by the legislator, so this requirement will be divided into four branches, allocate the first branch to the Arrest legitimacy, and allocate the second branch to the Substantive conditions for arrest, while the third allocated it to the formal conditions for arrest, and allocate the

³⁴ Al-Fawara'a, Muhammad Nawwaf, Legal restrictions on the decision to arrest in the pre-trial stage, a research published in Al-Manara Magazine, Volume 20, Issue 3, 2014 p 2.

³⁵ Hosni, Mahmoud Naguib, Explanation of the Criminal Procedures code, Dar Al-Nahda Al-Arabiya, Cairo, Second Edition, 1988, p. 700, july, previous reference, p. 372.

³⁶ Al-Saeed, Mustafa Al-Saeed, General Provisions in the Penal Code, 1953, Cairo, second edition, p 615.

fourth branch to appeal the arrest warrant.

6.1.3.1 Arrest legitimacy

The basic principle is that a person is born free, and it is not permissible to deprive its freedom and imprison it unless it is convicted by a final court ruling. The Jordanian legislator stated in Article (7) that “personal freedom is safeguarded.” The penal legislation adopted this principle and considered the presumption of innocence one of the principles on which the penal procedural legislation is based, as the principle of procedural legislation approves that the accused is innocent until proven guilty. This is because the accusation does not negate the presumption of innocence because it is based on suspicion, and certainty does not disappear with suspicion, and this was stipulated in Article 11 of the Universal Declaration of Human Rights. The Jordanian legislator stipulated this right in Article (8) of the Jordanian constitution, as it stated that: “No one may be arrested or imprisoned except in accordance with the provisions of the law”. As well as stipulated by the Jordanian legislator in Article 147 of the Criminal Procedures code³⁷.

Arrest is an exceptional measure taken against the individual before proved guilty, and it is a measure justified in the interest of the investigation, and the Arrest legitimacy stems from the provision of Article 114 of the Jordanian Criminal Procedures code, as it is an exceptional measure, Article 114 includes legal guarantees that the investigative authority shall adhere to. These guarantees are substantive and other formal conditions.

6.1.3.2 Substantive Conditions for Arrest

The Substantive conditions for arrest shall be considered as a legal guarantee that protects the personal freedom of the temporarily arrested person, as it continues to enjoy the presumption of innocence during all stages of the preliminary investigation until a final court is issued against it, and by issuing it the presumption of innocence abates, and these conditions are as follows:

First: Crimes that the defendant is arrested

The Jordanian legislator specified in Article 114 of the Jordanian Criminal Procedure Code the crimes in which the defendant may be arrested as following:

- 1) Felonies in general whatever its nature.
- 2) Misdemeanors punishable by imprisonment for a period exceeding two years, as for misdemeanors punishable by a fine alone, it is not permissible to arrest for, and so is the matter for violations
- 3) Misdemeanors punishable by imprisonment shall not exceed a period of two years, in the following two cases:
 - A. If the act with which it is charged is a misdemeanor of theft, premeditated harm, or unpremeditated harm resulting from car accidents, if the act violates the provisions of the Traffic Law, such as driving without a license or driving under the influence of alcoholic beverages, drugs or psychotropic substances.
 - B. If it does not have a stable and known residence in the Hashemite Kingdom of Jordan.

Second: interrogation of the accused

The interrogation is discussing the accused on the existing evidence of the crime against him/her in detail to find out the truth, either by denying the crime and refuting this evidence or admitting it. The interrogation is investigative action by the competent authority which is the Public prosecution or the Public Court for crimes requiring preliminary investigation. pursuing of the interrogation by the competent authority is one of the most important guarantees that should be taken into account when conducting the interrogation. The Judicial Police shall not be authorized to pursue the investigation according to the article 48 of the Criminal Procedure Code³⁸ Among the guarantees of the interrogation is also inviting the accused to attend and have freedom to express opinion, and according to Article 63 of the Criminal Procedures Law, the Prosecutor must upon the appearance of the defendant, read out the charges against him/her. the Prosecutor must caution the defendant that he/she has the right to remain silent except in the presence of a lawyer. This shall be noted in the record and if the defendant refuses to appoint a lawyer or does not attend a lawyer within 24 hours, the investigation is conducted in isolation. The Jordanian legislator also authorized the prosecutor to ask the defendant about the charge he/she was charged with before his/ her lawyer was invited to attend, In the event of urgency due to fear of losing evidence, and the

³⁷ Article 147 of the Jordanian Criminal Procedure Code stipulates that: “1-An accused person is presumed innocent until proved guilty by a final court judgment....”.

³⁸ Article 48 of the Criminal Procedures code stated that “the public prosecutor may, In the course of performing the duties in the cases described in Articles 29 and 42, the Prosecutor may entrust a judicial police, each according to his/her specialization, with a part of the work within his/her duties if he/ she deems it necessary, except for the interrogation of the defendant.”.

legislator stipulated that the public prosecutor's decision be justified, and the Jordanian legislator has arranged a procedural sanction for the prosecutor's failure to abide by the previous provisions contained in paragraphs 1, 2 and 3 of Article 63, which is the invalidity of the statement made by the defendant.

Under the new amendments to the Criminal Procedures code for 2017, the Jordanian legislator required the presence of a lawyer with the defendant, in felonies of which minimum penalty is ten years or more, and if the defendant was unable to appoint a lawyer, the Jordanian legislator required the prosecutor to appoint a lawyer for him/her according to the prevailing legislations. The legislator decided that the interrogation is invalid if the interrogation was completed without the assistance of a lawyer as set out in article (63 bis).

Third: The existence of sufficient evidence for suspicion or accusation

In paragraph (2) of this article (114), the Jordanian legislator stipulated that, until the defendant is arrested the evidence that linking him/her to the crime must be provided. The word "evidence", as provided for in article 114 of the Code amending the Code of Criminal Procedure No. 16 of 2001, which was repealed under the amended Act No. 19 of 2009, is not enough. Accordingly, the prosecutor or the court must state the factual and material reasons that relied on to issue the arrest order, and the Jordanian legislator amended the conditions of arresting more than once in order to limit the arrest of the defendant by the investigating authority during the pre-trial detention.³⁹

Fourth: Term of arresting

One of the most important guarantees of arrest as an exceptional and temporary measure of investigation procedures after interrogating the defendant is that it be for a limited term, and the term of arresting varies according to the authority that issues it, and the nature of the crime and the penalties prescribed for it.

The Jordanian legislator determined the term of arresting in paragraph 2 of the Criminal Procedure Code, which are as follows:

- A. A term of seven days in misdemeanors punishable by imprisonment for a term of more than two years, and the term may be extended for one month.
- B. A term not exceeding fifteen days if the act is punishable by a criminal penalty and evidence is already links the defendant to the crime.
- C. For seven days in misdemeanors punishable by imprisonment for a term not exceeding two years, the misdemeanors stipulated in paragraph 3, article 114 of the Code of Criminal Procedure, namely, misdemeanor of theft, or premeditated harm, or unpremeditated harm resulting from car accidents, if the act violates the provisions of the Traffic Law, such as driving without a license or driving under the influence of alcoholic beverages, drugs or psychotropic substances. If the defendant does not have a fixed and known residence in the Hashemite Kingdom of Jordan, the defendant shall be released in the event that a guarantor approved by the prosecutor, and ensures his/her attendance whenever requested to do so. The arresting term may be extended for one month, with the terms of arrest and extension provided in article 114/2
- D. The prosecutor may extend the arresting term whenever the interest of the investigation requires, provided that it does not exceed three months in felonies punishable by a temporary penalty and six months in other felonies, and according to the fourth paragraph of Article 114, the prosecutor must present the case file to the court competent to hear the case, and to the court after review the extending of the arresting term for a period not exceeding in each time three months in felonies, provided that the total of arresting and extension in felonies punishable by law do not increase with a temporary penalty or eighteen months in other felonies, or a decision to release the defendant with or without bail.

In any event, the term of the arrest and extension shall not be increased in the investigation and trial phases, shall not exceed one-fourth of the maximum specified penalty for the crime.

Fifth: Issuance of the order from the competent authority

Given that the arrest affects the personal freedom of the defendant, the arrest must therefore be assigned to an authority of competence, independence and impartiality, which is a guarantee that the defendant will be able to achieve his defense. Article 103 of the Code of Criminal Procedure stipulates that "no one shall be arrested or imprisoned except by order of the competent authorities," and the Jordanian legislator assigned the arrest report to

³⁹ This article was amended in 2001, whereby the Jordanian legislator required that the defendant shall be arrested upon the availability of evidence that actually links him/her to the crime, and before 2001 the Jordanian legislator did not require evidence or indications or signs that the defendant committed the crime. It is only required that the act may result in imprisonment or a more severe penalty.

the Public Prosecution, specifically the Public Prosecutor, as long as the criminal case is in his possession, and to the regular and special courts in accordance with the Criminal Procedure Code or in other special laws.

6.1.4 Formal Arresting Conditions

They are as follows:

First: The Decision to arrest should be in writing

The Jordanian legislator stipulated in the Code of Criminal Procedure that the arrest decision must be in writing to prove its contents. Articles 115 and 116 of the Code of Criminal Procedure required that the arrest warrant be signed by the public prosecutor who issued it, that it be sealed with his/her seal, and that it includes certain data, which is the name of the defendant. His fame and distinctive characteristics as much as possible, the crime that required their issuance, type, legal article punishing him/her, and the arresting term.

Second: The Causation of Decision to Arrest

There is no provision in the Criminal Procedure Code requires the reasons for arrest decision, but it can be concluded that the defendant must be arrested by the decision of arrest under article 117 of the Criminal Procedures Code. The Criminal Procedures Code stated that "the defendant shall be notified of summon, subpoena, and arrest warrant, leaving a copy of them", This allows judicial oversight over the authority of the Public Prosecution or the court when issuing arrest decisions without verifying the justifications for their issuance. The Jordanian legislator stated the justifications for arresting as an exceptional measure in Paragraph (1) of Article (114) of Criminal Courts Code, which states: Arrest is an exceptional measure, and it is only allowed under limited circumstances, including when it "is the only means of preserving evidence or material signs of a crime" or "to prevent coercion of witnesses or victims, or to prevent the suspect from contacting his partners or associates in a crime or the purpose of the arrest is protecting the defendant himself/herself or putting an end to the effect of the crime or the desire to prevent its renewal, preventing the defendant from fleeing, or avoiding public order any defect resulting from the crime.

Third: Appealing the arrest decision

Due to the seriousness and exceptional nature of the arrest, the Jordanian legislator acknowledged the right of the arrested to appeal the arrest decision, as part of the recent amendments to the Criminal Procedure Code in 2017. Before this amendment, the arrested had no right to appeal the decision to arrest him/her, and his/ her right was limited to merely appealing the decision to refuse to release him/her on bail, which required legislative intervention, and according to the new amendments to the Criminal Court Procedures Code, Article 124 stipulated that "It is permissible to appeal the decision issued by the public prosecutor or the magistrate to arrest the defendant, extend his/her arresting term, release him/her, or leave him/her free to the Court of First Instance, and the decision issued by the Court of First Instance to the Court of Appeal within three days begins with the right of the Attorney General from the arrival of the papers to his/her office for viewing and with the right The defendant from the date of signing the notification to him/her".

6.2 The Electronic Monitoring as a Precautionary Measure as a Measure to Reduce the Use of Pre-Trial Detention Which Restricted the Freedom in Jordanian Law

Although the arrest is an exceptional measure, the Jordanian legislator has attached it to the rules and guarantee, ruling it in order to achieve balancing personal freedoms and the interest of society. However, the practical application deals with arrest as a deterrent and not a temporary measure required by the interest of the investigation. Therefore, the modern criminal policy chose to search for alternatives to arresting in order to achieve balanced justice. So, The Criminal Procedure Code was amended by the addition of article (114 bis), which included updated alternatives to arrest, which stated as follows: "Except in cases of repetition, the public prosecutor or the court may, in cases where arrest in misdemeanors can be replaced with one or more of the following measures:

- A- Electronic Monitoring.
- B- the travel ban.
- C- House or geographical area arrest for period of time which the Prosecutor or the court and the police are required to verify this.
- D- The deposit of a financial amount or the provision of judicial guarantee, each of which shall be determined by the Prosecutor or the Court.
- E- The prohibition of the frequentation by the defendant to specific places.

Alternatives to arrest include a set of core characteristics that can be summarized as follows:

- The legitimacy of the alternatives to arrest The alternatives to arrest are subject to the principle of criminal legality,

"There is neither crime nor penalty except as provided by law", which means that the alternatives to arrest can be imposed only by law, and the legitimacy of alternatives to arrest in Jordanian law stems from article (114 bis) of the Criminal Procedures Code.

- Alternatives to arrest are personal The alternatives to arrest are implemented only to the defendant, as they are of an individual or personal nature applicable to the defendant, without prejudice to his/her family and surroundings.
- Judicial alternatives to arrest Such measures may be imposed only before the Public Prosecutor the competent criminal court shall be in accordance with the provisions and conditions set by the legislator.

6.2.1 Conditions of the Placement under Electronic Monitoring

From the extrapolation of Article (114 bis) of the Criminal Procedures Code, it revealed that to us that the Jordanian legislator has stipulated conditions for implementing alternatives to arrest, including electronic monitoring as a measure to reduce the use of pre-trial detention, which are:

- 1) According to paragraph 1 of Article (114 bis), the application of alternatives to arrest is limited to misdemeanors only, without felonies or offenses.
- 2) There is no way to apply alternatives to arrest in cases of recurrence (recidivism).
- 3) Public prosecutor or the court may combine more than one of the alternatives to arrest provided for in Paragraph 1 of Article (114 bis), with the possibility of ending, adding or modifying one or more of the alternatives to arrest provided for in Paragraph 1 of Article (114 bis).
- 4) Where no text is mentioned in this regard, the provisions and methods of appeal shall apply to alternatives to arrest.
- 5) If the defendant shall breach any of the alternatives to arrest, public prosecutor or the court shall refer to the arrest procedure (Article 114 bis).
- 6) Electronic monitoring shall consider as a means of implementing judicial control as a measure of judicial control measures provider for in Clauses C and E of Article (114 bis), it is the residence in the home or the geographical area for the period that the public prosecutor or the court, and the prohibition of the defendant from entering specific places.

However, no regulatory provisions shall have issue indicating the procedures for implementing electronic monitoring and accordingly we shall discuss the conditions of electronic monitoring as a new measure in the Jordanian criminal policy within the text of Article (114 bis) of the Criminal Procedure code as a precautionary measure as an alternative to the new arrest alternatives stipulated by the Jordanian legislator. that is in contrast to the comparative systems, especially the French system, where the electronic placement under monitoring system in the French penal system takes three forms, as it is a method for implementing freedom-depriving penalties, or as a penalty in itself, or a measure to secure judicial control, Where the French legislator shall present integrated legislative provisions that clarify the legal and material conditions for the system placement under electronic monitoring, unlike the Jordanian legislator, who shall consider it an alternative measure to arrest. On this basis, it is necessary to refer to French law, as it applies the penal and procedural system closest to the Jordanian system.

Application of the electronic control system shall require the availability of legal and material conditions, as follows:

6.2.1.1 Legal Conditions

Legal conditions that shall meet to implement the electronic monitoring system are the following:

First: Conditions related to crime

In Article 114 of the Jordanian Criminal Procedures code, the Jordanian legislator permitted the public prosecutor to arrest the defendant if the offense committed was a felony or misdemeanor punishable by imprisonment for a period exceeding two years, and in misdemeanors punishable by imprisonment for a period not exceeding two years if the act assigned to him was a misdemeanor theft or premeditated harm or unpremeditated harm resulting from car accidents if the act is in violation of the provisions of the Traffic Law, such as driving without a license or driving carving out the influence of liquor commission, drugs or psychotropic substances.

According to Article (114 bis) of the Jordanian Criminal Procedures code, electronic monitoring shall only for misdemeanors, that is, in crimes whose punishment ranges from one week to three years, and the penalty is a freedom-depriving condition. The electronic monitoring system shall may not be applied to the financial penalty, fine and confiscation, Likewise, the electronic monitoring system shall may not be applied to felonies and violations.

Whereas, the Jordanian legislator shall not indicate the type of misdemeanors crimes in which electronic monitoring shall be applied as a measure to reduce the use of pre-trial detention. Therefore, the absolute is executed according to the legal rule, so that it applies to all misdemeanors crimes, and in this we see that financial crimes shall be excluded from the application of electronic monitoring, for fear of the perpetrator of the crime of fleeing, hiding it, we also believe that the application of electronic monitoring shall be expanded to include the felonies associated with legal excuses or mitigating reasons.

Second: Conditions related to the person to be subjected to electronic monitoring.

In accordance with Article (114 bis) of the Jordanian Criminal Procedure Code, defendant is subject to the electronic monitoring system for committing misdemeanors without the convicted person, provided that it shall not repeated, as the Jordanian legislator excluded repeat perpetrator of the crime.

Likewise, the benefit from the placement under electronic supervision shall limited to the natural without the legal person. In addition, the Jordanian legislator shall not distinguish in the conditions related to the person to be subjected to electronic supervision between a male and a female, whether an adult or a juvenile. The Jordanian legislator shall not require obtaining the consent of the defendant to be placed under electronic control by the public prosecutor or the court.

Third: Conditions related to the authority issuing placement decision under electronic monitoring.

According to the Jordanian code, the placement of the electronic monitoring system shall be considered an alternative precautionary measure to arrest in the primary investigation stage and the trial stage. Therefore, the decision to place under the electronic monitoring system shall be issued by the public prosecutor during the primary investigation stage or the court. and that is in misdemeanors in which arrest shall permissible without requiring the consent of the defendant or his lawyer, in contrast to the French law, which shall adopted many forms of electronic monitoring in the various stages of a public prosecution, the French legislator shall has used it as a means to implement freedom-depriving penalties in the punitive execution phase, as a security measure during the judicial investigation phase, Therefore, the judicial authority that issues the decision to place under electronic monitoring differs according to the different procedural phase in which the placement is under electronic supervision, it is issued by the investigating judge or the freedoms judge in the case of judicial control as an alternative to pre-trial detention or arrest, and by the ruling judge as an alternative punishment to the freedom-depriving penalties, and by the penalty execution judge at the end of the penalty⁴⁰.

Fourth: Material conditions for the application of the electronic placement system

The Jordanian legislator shall not provide the material and technical conditions for placing the defendant under electronic monitoring, unlike the French legislator and the Algerian legislator. ⁴¹ The French legislator shall provide in Article 732-8 of the French Procedures Code amended by Law No. 204/2004 issued on 3/9/2004, which shall affirm the necessity of using These means are in a way that ensures respect for the person's dignity, privacy and private life, and among these conditions:

- 1) That the person subject to electronic monitoring has a fixed place of residence, and obtaining the approval of the owner of the property or its leased property if the person subject to electronic monitoring shall reside in a place other than his home.
- 2) Place of residence shall be equipped with a fixed telephone line.
- 3) A medical certificate indicating that the health condition of the person subject to electronic monitoring shall compatible with the placement of the electronic bracelet or the device for monitoring.

In accordance with the French law, the Aid for Social Integration and Selection Department conducts a preliminary investigation and to verify the family and living situation of the person subject to electronic monitoring to ensure that the person proposed to place under electronic monitoring lives in an properly and appropriately environment for the application of the electronic monitoring system⁴²

Fifth: Technical conditions

Application of the electronic monitoring system shall depend on a group of technical means, namely:

- 1) A transmitter shall place in the hand of the defendant who is subject to electronic monitoring or below his ankle.

⁴⁰ Kabasi, Ibid, pp. 35-41.

⁴¹ Article (150 bis) of the Algerian Prison Regulation and Social Reintegration Law.

⁴² Al-Qadi, Ibid, pp. 305-306.

2) A transmitter and receiver device that shall be connected to the telephone line at the place where electronic monitoring shall be implemented, as this device picks up the bracelet or collar signal and transmits it to a central computer.

3) A central computer device shall place in places of electronic monitoring control that shall receive the signal and sends a warning in the event of the absence or change of the signal shall receive from the electronic bracelet or the device for monitoring⁴³.

From the foregoing, in conclusion, to that the Jordanian legislator shall have sufficed with the provision on the type of offense assigned to the person to be placed under electronic monitoring, in misdemeanors in which detention shall be permissible and shall not be repeated. Therefore, we shall wish the legislator to explicitly provision the conditions for placing under the electronic monitoring system as an alternative to alternatives to arrest and add the following conditions:

1) The defendant shall have a permanent place of residence.

2) Electronic monitoring method shall not harm the health of the defendant, and the need to see the person subject to electronic monitoring to a doctor and obtain a medical certificate to determine whether his health condition shall allow him to be placed under electronic monitoring.

3) Necessity of taking into account the family situation of the defendant, the necessity of the defendant's practice of professional and educational activities, or the necessity of his subjecting medical treatment when placed under electronic monitoring.

4) Need to obtain the consent of the defendant and his family to shall place under electronic monitoring.

6.2.1.2 Procedures for the Placement of the Electronic Monitoring System

The Jordanian legislator did not stipulate how to put under the situation under the Electronic monitoring system and ongoing follow-up mechanisms. According to Article (114 bis) of the Jordanian Criminal Procedures Code, the procedures for issuing a decision placing the defendant under the electronic monitoring system begin as an alternative to the arrest by the public prosecutor or the competent court during the trial, which is a permissible matter, and from the extrapolating the text of the mentioned Article (114 bis), it becomes clear to us that The text is devoid of the right of the defendant or his guardian or his attorney to request the placement under the electronic monitoring system as an alternative to arrest and approval, as the text is limited to the right of the defendant to request the termination or addition of a measure or amendment of one of the measures stipulated in Paragraph 1 of Article (114 bis), and since the Jordanian legislator stipulated that the same applies to the electronic monitoring that applies to the arrest in which no special provisions have been received, we believe that the defendant can request the public prosecutor or the competent court during the trial to place it under electronic monitoring as an alternative to arrest as Traditional alternative arrest, is like a request to be released on bail, which is an important guarantee to protect personal freedom, provided that the request is supported by a medical certificate and the justifications for the request if necessary.

The text of Article (114 bis) did not include any duties for the defendant who is subject to the electronic monitoring system, and the French legislator stipulated a set of obligations and duties that the defendant who is subject to electronic monitoring must fulfill, which are original obligations with a compulsory nature related to the prohibition of leaving accommodation or residence specified by the judge, and complementary obligations of a voluntary nature that are subject to the discretion of the judicial authority issuing the decision, which the judge may impose on the person subject to electronic monitoring.

First: The original obligations regarding electronic monitoring

They are as follows:

1) The obligation of not leaving the accommodation or the places at the specified times throughout the period determined by the public prosecutor or the court during the investigation or trial phase.

2) Obligation to follow up on the social specialist.

3) Obligation to wearing the electronic bracelet or monitoring device throughout the day at the specified times, taking into account basic considerations, which are practicing professional activities or participating in social life,

⁴³ Salem, Ibid, PP.10.

such as exercising parental authority over a child under the age of ten who lives with the defendant in his/her home⁴⁴.

4) Taking into consideration the technical system for electronic monitoring, including maintaining the electronic monitoring devices and not exposing them to breakage or removal under penalties⁴⁵.

Second: Complementary obligations

These are obligations that guarantee effective follow-up to the person subject to electronic monitoring, and are represented in responding to the summons of the judicial authority and the authorities in charge of follow-up, receiving visits by monitoring staff, and notifying the judicial authority of every change of place of residence.

In accordance with article (114 bis), paragraph 1, the public prosecutor or the court during the trial shall automatically or at the request of the Public Prosecution or the defendant (the accused as stated in the text of the article) request the end of electronic monitoring or amendment or add one of the measures stipulated in paragraph 1 of Article (114 bis), which are the ban on travel and residence in the home, the geographical area, or the court, the deposit of a sum of money, the presentation of a judicial guarantee, or the prohibition of the defendant from visiting specific places

The Jordanian legislator shall state the penalty for the defendant's violation of the provisions of electronic monitoring as a measure of alternative measures to arrest. This is in article (114 bis) of the Criminal Procedures Code, paragraph 2, clause D, as it gave the public prosecutor or the court the right to cancel the decision issued to place under electronic monitoring and re-arrest the defendant. Accordingly, and since the Jordanian legislator stipulated in Article (114 bis), that it applies to alternatives to arrest with regard to the provisions and methods of appeal that are not mentioned. In order to consecrate the principle of the legality of crimes and penalties, we hope the legislator to explicitly stipulate the penalty for violating electronic monitoring by removing or disabling the electronic monitoring tool to the penalties prescribed in Article 228 of the Penal Code and to fine the defendant in the event of breakage.

The Jordanian legislator did not indicate in Article (114 bis) the mechanism for implementing the situation under electronic monitoring. Therefore, we believe that the implementation is assigned to the Ministry of Justice, in coordination with the judicial authorities and the judicial police, due to the multiplicity of the authorities responsible for its implementation including a technical and legal aspects

The situation under electronic monitoring shall continue throughout the duration prescribed by the public prosecutor or the court during the investigation or trial phase. The Jordanian legislator shall not specify in Article (114 bis), the period of subjecting the defendant to electronic monitoring as a measure to reduce the use of pre-trial detention, which makes him/her subject to the interpretation of the applicator of the text.

7. The Problems for Applying the Electronic Monitoring System as a Precautionary Measure Which Reduces the Use of Pre-Trial Detention

Electronic monitoring shall raise as a measure to reduce the use of detention (pre-trial detention) provided in Article (114 bis) of the Penal Code many problems in its implementation:

1) Although the amended provisions of the Criminal Procedure Code are in force and electronic monitoring is approved as a measure to reduce arresting "pre-trial detention", especially in the minor misdemeanors of the Jordanian Penal Code, which is a leading development that reflects Jordanian policy and approach in developing the penal system using the best modern technology according to Jordanian legislation and which promotes the methodology of reward and punishment in a modern and civilized way, but as of the time of preparation of this research there is no regulatory provision for the application of electronic monitoring system.

2) The term of the arresting under electronic monitoring is not determined.

The Jordanian legislator shall not specify in Article 114 bis, the period of subjecting the defendant to electronic monitoring as a measure to reduce the use of pre-trial detention, which makes him/her subject to the interpretation of the applicator of the text. The same applies to the travel ban and the prohibition of the defendant from visiting specific places, in contrast to the residence in the house or the geographical area where the legislator left the order to determine it to the public prosecutor and the court, which would prejudice the rights and freedoms of individuals, and where the Jordanian legislator stipulated in Article (114 bis), Where no text is mentioned in this regard, the provisions and methods of appeal shall apply to measures to reduce the use of pre-trial detention. We believe that

⁴⁴ Al-Qadi, Ibid, pp. 314-315

⁴⁵ Kabasi, Ibid, p. 106

electronic monitoring as a measure of restriction of liberty must take the term of arrest. As the alternative measure that restricts freedom may not be harsher for the defendant than the original measure (arresting) as a measure that prevents freedom, therefore the legislator must determine the period of placement under electronic supervision, and it must be at the minimum level in which arresting may not be overridden. A measure to reduce the use of pre-trial detention, which is an exceptional measure that must not be misused in a way that constitutes a violation of the purpose for which it was found.

3) The extent to which the period of placement may be calculated under electronic monitoring as a measure to reduce the use of pre-trial detention from the period of punishment.

The Jordanian legislator did not explicitly stipulate the period of placement under electronic monitoring shall calculate from the period of penalty to be imposed in the event of a conviction other than arresting, where the period of arresting is calculated from the period of the punishment. Therefore, we believe that since the Jordanian legislator stipulated in Paragraph (c) of Article (114 bis) that the provisions of arresting that apply to arresting are stipulated in the Criminal Procedures Code. Although electronic monitoring is not considered arrest in the strict sense, the period of time under electronic monitoring must be calculated as a measure to reduce the use of pre-trial detention, as it is deducted from the penalty period in the event of conviction, and this is explicitly stated.

4) Appealing the decision of placement under electronic monitoring as a measure to reduce the use of pre-trial detention.

As part of the recent amendments to the Criminal Procedure Code in 2017. Before this amendment, the arrested had no right to appeal the decision to arrest him/her, and his/ her right was limited to merely appealing the decision to refuse to release him/her on bail, which required legislative intervention, and according to the new amendments to the Criminal Court Procedures Code, Article 124 stipulated that "It is permissible to appeal the decision issued by the public prosecutor or the magistrate to arrest the defendant, extend his/her arresting term, release him/her, or leave him/her free to the Court of First Instance, and the decision issued by the Court of First Instance to the Court of Appeal within three days begins with the right of the Attorney General from the arrival of the papers to his/her office for viewing and with the right The defendant from the date of signing the notification to him/her". According to the new amendments to the Criminal Procedures Code, the arrested shall may appeal the decision to arrest him based on Article (124), provided that "the decision shall issue by the public prosecutor or the magistrate's judge to arrest the defendant, extend his arrest, release him, or leave him free to the court of first instance, and the decision Issued by the Court of First Instance to the Court of Appeal within three days, begins with the right of the Attorney General from the arrival of the papers to his/her office for viewing and with the right The defendant from the date of signing the notification to him/her". As for the appeal of the procedures for placing under electronic monitoring, the Jordanian legislator shall not provide for a special provision, which means that the provisions shall contain in Article (124) of the Criminal Procedure Code shall will be enforceable, based on Paragraph C of Article (114 bis) of the Criminal Procedures Code, which shall provide the following: "Without the special provisions of this paragraph, the provisions and methods of appeal provided for in this Act shall apply to such measures as are applicable to arrest." Due to the varying nature of the arrest of alternatives to arrest, we believe that an integrated system of appeal against alternatives to arrest should be developed.

5) Compensation for electronic monitoring as an alternative to arrest

Unlike other procedure legislation, the Jordanian legislator shall not provide for material compensation for arrest (pre-trial detention), as Jordanian Code shall not allow anyone who was arrested or detained in a legal or illegal manner to arises a lawsuit to redress the damage he shall suffer, despite the provision of this in many International legislations. The International Covenant on Civil and Political Rights shall have commit this⁴⁶ and the Universal Declaration of Human Rights, ⁴⁷Whereas, the Jordanian legislator shall not take material compensation except for what shall provide in the provision of Article (178) of the Criminal Procedure Code⁴⁸ and as for the moral compensation, the Jordanian legislator shall provide it in Article (298) of the Criminal Procedure Code, which shall require suspending the judgment of innocence of the convicted person as a result of the retrial inside the court or public places in the town in which the first judgment shall issue, and in the place where the crime shall commit, in the domicile of the retrial applicants and in the last domicile of the convict if he was dead. It is also necessary

⁴⁶ Article 9, paragraph 5 of the Covenant stipulates that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

⁴⁷ Article 9 stipulates that "no person shall be arrested, detained, or arbitrarily exiled."

⁴⁸ Which states that (if it appears that the act does not constitute a crime or that the suspects are innocent, the court decides that he is not responsible or declares his/her innocence and at the same time, it shall rule on the personal claimant to request compensation from the defendant if it appears to it that the lawsuit was filed against him/her in a malicious manner)

for the acquittal ruling to be published inevitably in the Official Gazette, and also to be published if required by the person who requests a retrial in two local newspapers of his/her choice, and the state bears the publishing expenses. Therefore, we hope the Jordanian legislator to acknowledge the state's responsibility for compensation for the arrest.

8. Conclusion

The study conducted with a group of results and recommendations as follow:

8.1 Results

- 1) Electronic monitoring as a measure to reduce the use of pre-trial detention shall considered one of the most important results of technological progress by obliging the defendant in his home or anywhere else within hours specified by the public prosecutor or the court, and this shall follow up using modern techniques such as electronic bracelet.
- 2) Electronic monitoring as a precautionary measure, a measure to reduce the use of pre-trial detention and shall not mean canceling the arrest and replacing it with electronic monitoring, as it shall apply in misdemeanors without felonies, and it shall not apply to recurrence crimes.
- 3) Electronic monitoring system shall not without an updated a measure to reduce the use of pre-trial detention from the pros and cons, as it balances the interest of the individual and society, so it shall achieve a great deal in protecting the right of the individual to be accepted by society, and it shall not achieve in freedom-depriving penalties, so it shall solve the problem of overcrowding in prisons and the reduction of state expenditures, shall reduce the risk of mixing between criminals, and shall help to spare the arrested the risk of arrest.
- 4) The legislator shall approve electronic monitoring as a measure to reduce the use of pre-trial detention, in the pre-trial phase or during the trial, in accordance with the amendments to the Criminal Procedures Code No. 32/2017.
- 5) Electronic monitoring as a precautionary measure, a measure to reduce the use of pre-trial detention shall have legal conditions that shall be met, and original and complementary obligations.
- 6) The Jordanian legislator shall not include in Article (114 bis) of the Law Amending the Criminal Procedure Code No. 32 of 2017 the implementation mechanisms for implementing electronic monitoring, leaving that until the necessary implementation regulations shall issue, and - until the preparation of this study - no regulatory provisions shall issue describing the procedures for implementing electronic monitoring. Whereas, the Jordanian legislator shall link the application of electronic monitoring to the issuance of implementation regulations, which means, accordingly, stopping the work of electronic monitoring and freezing it as an alternative precautionary measure to arrest until this is the issuance of the implementation regulations necessary for their application, which prevents the judiciary from applying electronic monitoring.
- 7) Electronic monitoring shall raise as a measure to reduce the use of detention (pre-trial detention) provided in Article (114 bis) of the Penal Code many problems in its implementation.

8.2 Recommendations

- 1) We shall wish that the Jordanian legislator reformulates the provision of Article (114 bis) of the Criminal Procedures Code and approve an integrated legislative system for electronic monitoring as a measure to reduce the use of pre-trial detention, which shall include the conditions and procedures for placing under electronic monitoring, how to terminate and implement them, and the penalty for violating its provisions.
- 2) Expediting the issuance of the implementation regulations and instructions necessary to application electronic monitoring as a measure to reduce the use of pre-trial detention, as the legislative regulation of electronic monitoring shall be a measure to reduce the use of pre-trial detention, expanding its application and taking it as an alternative to the new alternatives to penalty.
- 3) After issuing the implementation regulations and instructions, we hope that the Ministry of Justice shall will create a directorate for electronic monitoring, in coordination with the judicial authorities and the judicial police, due to the multiplicity of the authorities in charge of its implementation, as it consists of a technical side and a legal aspect, and the issuance of a guide for the application of the new arrest alternatives, including electronic monitoring.
- 4) We shall wish the Jordanian legislator to amend the Criminal Procedures Code and determine the period of placement under electronic monitoring a measure to reduce the use of pre-trial detention to the minimum in which arrest shall may not exceed.

- 5) We shall wish the Jordanian legislator to amend Criminal Procedure Code and shall explicitly provide that the period of placement under electronic monitoring shall calculate from the period of penalty.
- 6) We shall wish the legislator approve the material compensation for the arrest, as well as approve compensation for the placement under electronic monitoring as a measure to reduce the use of pre-trial detention if it shall not justify to achieve harm by deprivation of freedom.
- 7) Preparing the Jordanian society to accept the electronic monitoring as a measure to reduce the use of pre-trial detention by stating its advantages and benefits, and shall conduct training courses to develop awareness of the importance of electronic monitoring and the need to applicate it, and that it shall not represent a violation of its private life, but rather a new technological method that shall use to reduce the disadvantages of arrest.

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