

# ELECTRONIC MONITORING IN INTERPERSONAL VIOLENCE CASES: STANDARDS, PRINCIPLES AND STATE PRACTICE

RESEARCH STUDY



This study examines and shares experience of selected countries in implementing electronic monitoring of perpetrators of domestic violence or other forms of interpersonal violence.

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INTERPERSONAL VIOLENCE CASES:  
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AND STATE PRACTICE**

RESEARCH STUDY

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June 2023

Council of Europe

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## Introduction

In Council of Europe member states, Electronic Monitoring (EM) has its roots in policies for using imprisonment as the last resort and reducing prison overcrowding and recidivism. This resulted in programmes to release offenders who had committed low level offences enabling them to remain employed or at liberty and freeing up space in jails.<sup>1</sup> As states implement the Council of Europe's Convention on combatting violence against women and domestic violence<sup>2</sup> (Istanbul Convention) electronic monitoring has subsequently been adopted in interpersonal violence cases prior to the establishment of guilt to reinforce emergency barring orders, restraining orders or protection orders either in a criminal or civil context. In appropriate cases, electronic monitoring can be a useful tool to help protect victims from violence and death, to record evidence of breaches of orders, enhance or enable supervision of offenders. The aim is to reduce recidivism rates and the risk of further violence by using technology to determine whether an offender has breached an order requiring them to stay away from certain areas or keep a certain distance from a victim. A victim centred approach requires victims to always be informed about the limitations of electronic monitoring, how it works and what they should do in an emergency. In some cases, the risk of harm or death to the victim will be so high alternative measures such as detention should be used. As a form restriction on the liberty of the perpetrator electronic monitoring must also be implemented in a lawful and proportionate manner paying due regard to the level of risk to the victim.

## Key Council of Europe standards and principles

- Council of Europe Convention on prevention and combating violence against women and domestic violence (CETS no. 210)
- Council of Europe Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring<sup>3</sup> (adopted by the Committee of Ministers on 19 February 2014) and Explanatory Memorandum (2016)
- Standards and Ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of Electronic Monitoring

## Purpose of study

This research study was developed and conducted under the Council of Europe framework of project "Ending violence against women and promoting gender equality in Armenia" and at the request of the Armenian police. The purpose of the study is to examine and share experience of selected countries in implementing electronic monitoring of perpetrators of domestic violence or other forms of interpersonal violence. Although electronic monitoring is often used by probation or as an alternative to detention following sentence the specific purpose of this study is to look at the use of electronic monitoring in connection with Emergency Barring orders (EBOs), Protection Orders (POs) and Restraining Orders (ROs). (see Annex 1 for more information about EBOs, POs and ROs).

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<sup>1</sup> Ibarra P. Gur O. and Erez E. (2023)

<sup>2</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No.210)

<sup>3</sup> Available at <https://rm.coe.int/09000016800cc24b/>

## Armenia

The Republic of Armenia Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family (Law HO-320-N of December 13, 2017 as amended) defines electronic surveillance as 'surveillance of a person's location, movement, and behaviour by radio wave, biometric, satellite, or other electronic means'.

Police Officers may use electronic surveillance devices while applying emergency intervention orders and appropriate restraining measures including:

- i) Immediate removal from residence and prohibition on return;
- ii) If they live separately, to prohibit the perpetrator visiting the workplace, school, leisure places or residence of the victim of violence until the deadline established in the order;
- iii) Require the perpetrator to stay a specified distance away from the victim;
- iv) To surrender all firearms
- v) Not to communicate with the victim

The procedure for the application and financing of electronic control measures, as well as the management of the database of the electronic control system, and the use of data is defined by the Government.

The law also notes that when using electronic surveillance, the possible negative impact on the personal and family life of individuals should be minimized. The data obtained as a result of electronic surveillance are destroyed after the execution of the decision, within three working days, except for the cases provided for in this part. If an offense is detected or fixed by means of electronic surveillance, the data is stored until the investigation of the offense case or official investigation is completed. The electronic control system must have a sufficient level of protection which is defined by the legislation.

The Armenian authorities will now draft regulations to implement this law.

## Methodology

A desk review of available literature on electronic monitoring of domestic violence was undertaken (see bibliography) and four countries were chosen for a more in-depth review of legislation and practices. Portugal and Spain were early adopters of electronic monitoring technology whereas Georgia and France have recently introduced these systems. Other countries systems are referred to where relevant to a particular issue.

France	Law No. 2019-1480 of December 28, 2019 aimed at taking action against violence within the family (1) (France, Law No. 2019-1480) <a href="https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039684243">https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039684243</a>
Georgia	Law of Georgia on Prevention of violence against women and/or domestic violence protection and assistance to victims of violence (no. 20, 09.06.2006 as amended) (Georgia, Law No. 20 of 2006) <a href="https://matsne.gov.ge/en/document/view/26422?publication=18">https://matsne.gov.ge/en/document/view/26422?publication=18</a>  Amendments and Additions to the Law of Georgia 'On Prevention of Domestic Violence, Protection and Assistance to Victims of Domestic Violence' 13.01.2010 <a href="https://matsne.gov.ge/ka/document/view/91360?publication=0">https://matsne.gov.ge/ka/document/view/91360?publication=0</a>  Order No. 126 of August 26, 2020 On approval of the rule of implementation of electronic supervision (Georgia, Order No. 126 of 2020)



	<a href="https://www.matsne.gov.ge/ka/document/view/4974072?publication=0">https://www.matsne.gov.ge/ka/document/view/4974072?publication=0</a>
Portugal	<p>Law No. 112 of 2009 Establishes the legal regime applicable to the prevention of domestic violence, protection and assistance to its victims (Portugal, Law No. 112/2009)  <a href="https://diariodarepublica.pt/dr/detalhe/diario-republica/180-2009-129489">https://diariodarepublica.pt/dr/detalhe/diario-republica/180-2009-129489</a></p> <p>Law No. 33 of 2010 Regulates the use of technical means of remote control (electronic surveillance) and revokes Law No. 122/99 of 20 August which regulates the electronic surveillance provided for in article 201 of the Code of Criminal Procedure (Portugal, Law No. 33/2010)  <a href="https://diariodarepublica.pt/dr/detalhe/diario-republica/171-2010-131084">https://diariodarepublica.pt/dr/detalhe/diario-republica/171-2010-131084</a></p> <p>Ordinance No. 26 of 2001 Establishes the general technical characteristics to which the equipment to be used in electronic surveillance must comply (Portugal, Ordinance No. 26/2001)  <a href="https://diariodarepublica.pt/dr/detalhe/portaria/26-2001-337579">https://diariodarepublica.pt/dr/detalhe/portaria/26-2001-337579</a></p>
Spain	<p>Organic Law 1/2004 of December 28 on Comprehensive Protection Measures Against Gender Violence (Spain, Law No. 1/2004)  <a href="https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760">https://www.boe.es/buscar/act.php?id=BOE-A-2004-21760</a></p> <p>Protocol of Action of the Monitoring System by Telematic Means of Compliance with the Measures and Penalties of Expulsion in the Field of Gender Violence 2013 (Spain, 2013 Protocol)  <a href="https://violenciagenero.igualdad.gob.es/profesionalesInvestigacion/seguridad/protocolos/pdf/ProtocoloDispositivos2013.pdf">https://violenciagenero.igualdad.gob.es/profesionalesInvestigacion/seguridad/protocolos/pdf/ProtocoloDispositivos2013.pdf</a></p> <p>Protocol of Action in the Penitentiary Field of the Monitoring System by Telematic Means of Compliance with the Measures and Penalties of Distance in the Field of Gender Violence (Spain, 2015 Protocol)  <a href="https://violenciagenero.igualdad.gob.es/profesionalesInvestigacion/seguridad/protocolos/pdf/Protocolo_Ambito_Penitenciario_Dispositivos_Telematicos2015.pdf">https://violenciagenero.igualdad.gob.es/profesionalesInvestigacion/seguridad/protocolos/pdf/Protocolo_Ambito_Penitenciario_Dispositivos_Telematicos2015.pdf</a></p>

## The duty of the state to protect

**The state holds ultimate responsibility to protect the victim and ensure sufficient safeguards to uphold the human rights of the perpetrator.**

*9. Where private sector organisations are involved in the implementation of decisions imposing electronic monitoring, the responsibility for the effective treatment of the persons concerned in conformity with the relevant international ethical and professional standards shall remain with public authorities. CM/Rec (2014) 4*

Electronic monitoring is often provided by a private firm under contract to the government. Any use of private technology to deliver a public function must be **legal, necessary and proportionate** to the goal sought to be achieved. States should also ensure that there are sufficient safeguards in place in terms of transparency, procurement processes, accountability, oversight and redress.<sup>4</sup> It is important that the roles and responsibilities of the relevant state departments and other stakeholders are clear.

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<sup>4</sup> Privacy International, (undated)

Ultimately, the state holds the operational and substantive duty to protect individuals from breaches of their fundamental human rights protected by the European Convention on Human Rights. This includes ensuring the right to life (Article 2), freedom from inhuman or degrading treatment (Article 3) and ensuring the right to private and family life (Article 8). The Istanbul Convention<sup>5</sup> requires states to refrain from acts of violence against women and to ensure that State authorities and officials act in conformity with this obligation. It also requires states to take necessary legislative and other measures to exercise due diligence in the prevention, investigation, punishment, and provision of reparations for acts of violence covered by the scope of the Convention that are perpetrated by non-state actors.

A failure to provide effective protection may therefore result in the State being held liable for the breach of human rights including in circumstances where part or all of that duty is contracted out to a private entity such as a monitoring company.

In **Portugal** the Directorate General for Social Reinsertion is the state body responsible for electronic surveillance. The DRGC may use the services of other entities to acquire, install, ensure and maintain the functioning of the technical means used in electronic surveillance.<sup>6</sup> The interrelationship and communication channels between those entities is then set out in the legislation.

## What is electronic monitoring?

**Electronic monitoring** is a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process. The current forms of electronic monitoring are based on radio wave, biometric or satellite tracking technology. They usually comprise a device attached to a person and are monitored remotely.<sup>7</sup>

**Bilateral monitoring** works by attaching a bracelet or 'tag' to the perpetrator, usually the ankle and providing a device which notifies the perpetrator through an alarm signal of any breach of conditions and any approach to the victim in designated Geographical zones. The victim is also provided with a device that provides an audible, visual and/or vibration alert whether the perpetrator's device is within the prohibited range. This can be in the form of a bracelet or a unit similar to a mobile phone that the victim must carry with her. A receiver is usually placed within the home of both the victim and perpetrator.<sup>8</sup> The device usually allows text and voice communication bidirectionally with the user. Alarms and messages as well as the location of victim and perpetrator are transmitted to a control centre. The devices primarily use GPS (Global Positioning System) but where the signal is lost, they may switch to a GSM (global system for mobile communications).

**Radio frequency tags** work by attaching a tag to the perpetrator's ankle and a base station in the individual's house. Although these work for enforcing curfew conditions they do not monitor geographic location and therefore are unsuitable for enforcing restriction orders.

**GPS tracking** works by attaching a tag containing a GPS navigation chip and SIM card to the perpetrators ankle which communicates directly with a control centre via a mobile network. It is

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<sup>5</sup> Istanbul Convention, Article 5

<sup>6</sup> Portugal, Law 33/2010, Article 9

<sup>7</sup> CM/Rec(2014)4

<sup>8</sup> Scottish Government (2019)

usually backed up by mobile signals when GPS is weak. The frequency with which the wearer's is transmitted depends on the product and how it has been configured.<sup>9</sup>

In **France** in an effort to fight against the rise in domestic violence, the French government developed the new legislation that required abusers to wear an electronic bracelet. The bill was officially adopted on December 19, 2019.<sup>10</sup>

Under the new legislation, a criminal or family court can request an abuser to wear an electronic bracelet as part of the terms of their restraining order. If the order is issued in a family court, then the perpetrator has the right to refuse, in which case a judge can then decide to open a criminal investigation.

The electronic bracelets, which resemble a large smartwatch, follow an abuser's movements with the help of a GPS device. The victim is also equipped with a tracker, which they must wear at all times. These trackers will alarm the authorities if the abuser gets too close to the victims and will trigger an alert to a private security firm which will warn the abuser to back off. If the abuser ignores the warning, the police will intervene, and the abuser will be charged.

Each bracelet comes with a battery, which has a 48-hour life before it needs to be recharged. Failing to do that is considered an infraction.<sup>11</sup>

Further resources:

- ✓ Victim Support Europe: [https://victimsupporteurope.eu/activeapp/wp-content/files\\_mf/1433926458W2\\_DomesticViolenceGPSProximityNotificationSystem\\_SVEP.pdf](https://victimsupporteurope.eu/activeapp/wp-content/files_mf/1433926458W2_DomesticViolenceGPSProximityNotificationSystem_SVEP.pdf)
- ✓ Privacy International: Electronic monitoring using GPS tags: a tech primer, Privacy International 9 February 2022, <https://privacyinternational.org/explainer/4796/electronic-monitoring-using-gps-tags-tech-primer>  
[Domestic violence: 'Electronic bracelets are a first step, but we have to go further' \(france24.com\)](https://france24.com/en/france/20191219-electronic-bracelets-are-a-first-step-but-we-have-to-go-further/), [Le point sur le bracelet anti rapprochement en France \(protegerlenfant.fr\)](https://protegerlenfant.fr/le-point-sur-le-bracelet-anti-rapprochement-en-france/)

## Victim Centred Electronic Monitoring

The Istanbul Convention at Article 7 requires states to take a victim centred approach to protection. Victim centred bilateral monitoring with close ties between the authorities operating the systems, the victims and any relevant victim support service ensuring that the victim is heard and listened to tends to 'promote a greater integration of the victim into the justice system process'<sup>12</sup> It may also enable them to feel better informed and improve their perception of safety. Evidence of breaches are more easily evidenced by electronic monitoring technologies and victims may feel more supported to report.<sup>13</sup> These types of programmes also help to prevent a mismatch between the victim's expectation and the limitations of any monitoring system. Studies conducted in the USA noted that victims felt empowered and that they were given the space required to safety plan, reassess their relationship and options for the future.<sup>14</sup>

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<sup>9</sup> Privacy International (2022)

<sup>10</sup> France, Law No. 2019-1480 Section 4 amends the Civil Code to include a new article (Art. 515-11-1) providing for electronic monitoring

<sup>11</sup> Domestic violence: 'Electronic bracelets are a first step, but we have to go further' (france24.com)

<sup>12</sup> Ibarra, P et al (2023)

<sup>13</sup> Scottish Government (2019), p53

<sup>14</sup> Ibarra P. Gur O. and Erez E. (2023)

The requirement that a victim carry a monitor or wear a bracelet can become a source of stress and make the victim feel like she is suffering a penalty. She may feel like it assists the abuser to find her in her place of safety.<sup>15</sup> If the alarm goes off too often it can cause more fear in the victim and real time alerts can create a sense of panic in a victim even if the geographical limitation breach was unintentional by the perpetrator. This can be significantly worse where an abuser uses an approach to the proximity zone to harass the victim. Some victims will not wish to participate in the scheme either owing to fear or because they are still under the control of their abuser. Electronic monitoring programmes that do not inform the victim about participation of the perpetrator in a system of electronic monitoring and programmes that do not issue text or other notifications in response to concerning perpetrator behaviour for example tampering or interfering with the tag, breaching the exclusion zone or a proximity alert have been identified as bad practice in the USA.<sup>16</sup>

#### **Victim centred indicators**

- ✓ Victim is contacted regarding the perpetrator's participation
- ✓ Victim receives notifications when the perpetrator violates the terms of the order such as interfering with the bracelet, breaching the exclusion zone
- ✓ Appropriate review by the monitoring centre before notifying the victim
- ✓ Victims are informed of and required to sign acknowledgement of the capabilities and limitation of the GPS program in a language they understand
- ✓ Victims receive training on how to use the device
- ✓ Victim participation is required for the perpetrator to be placed in the programme

## **Monitoring from the Perpetrator perspective**

For the perpetrator, GPS tracking is invasive and provides a high level of detail, sometimes intimate personal detail. Without appropriate safeguards it can be used by police for purposes other than simply ensuring the relevant restriction or barring order is complied with. Constant surveillance can result in perpetrators experiencing negative impacts on their health and wellbeing such as anxiety about breaching conditions or physical discomfort owing to the size and weight of the bracelet.<sup>17</sup>

Electronic monitoring increases the effort required to commit offences and avoid detection both because it is necessary to tamper with the device or to locate a victim outside the exclusion zones.<sup>18</sup> It can however, also help perpetrators remember the boundaries of an exclusion zone if they forget.<sup>19</sup>

Challenges identified in the Nordic countries included the use of electronic monitoring in sparsely populated areas which may require long journeys, sometimes by aeroplane for staff to fit and check equipment and for monitored individuals to attend appointments. Cross border travel was also identified as a potential issue.<sup>20</sup>

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<sup>15</sup> Le point sur le bracelet anti rapprochement en France (protegerlenfant.fr)

<sup>16</sup> Ibarra P. Gur O. and Erez E. (2023)

<sup>17</sup> Kerr J. et al, (2019) p5

<sup>18</sup> Belur J. et al, (2020)

<sup>19</sup> Kerr J. et al (2019)

<sup>20</sup> Holdsworth Dr E. and Párkányi Dr E, (2022) p3

## Ethical use of Electronic Monitoring

**27. Under no circumstances may electronic monitoring equipment be used to cause intentional physical or mental harm or suffering to a suspect or an offender. CM/Rec(2014)4**

Intentional physical or mental harm would cause the state to be in breach of article 3 ECHR.

## Non Discrimination

*7. There shall be no discrimination in the imposition or execution of electronic monitoring on the grounds of gender, race, colour, nationality, language, religion, sexual orientation, political or other opinion, national or social origin, property, association with a national minority or physical or mental condition. CM/Rec(2014)40210*

Monitoring and evaluation of the use of electronic monitoring in domestic violence cases should take place at regular intervals to ensure in particular that there is no discrimination in the decision to use monitoring. Particular attention should be paid to the characteristics of race, colour and nationality as sometimes minority communities are disproportionately sanctioned.

## Children

*26. Age, disability and other relevant specific conditions or personal circumstances of each suspect or offender shall be taken into account in deciding whether and under what modalities of execution electronic monitoring may be imposed. CM/Rec (2014)4*

A comparative European study of the use of electronic monitoring in the youth justice system identified that electronic monitoring has potentially harmful consequences for children ordered to wear tags owing to a failure to adopt child friendly approaches. Electronic tags limit children's involvement in age-appropriate activities and the visibility of a device increases the risk of the wearer being identified as subject to judicial measures and then stigmatised. The research identified that children would sometimes avoid sports and activities with children their own age. The well-being of children was not always prioritised.<sup>21</sup> It concluded that support would only be effective if it is provided by trained child practitioners, focuses on strategies to bring about desistance and the monitoring systems reflect the social and individual needs of children depending on their age and personal circumstances.<sup>22</sup> No examples of the use of electronic monitoring of children as perpetrators in the context of emergency barring orders, protection orders or restraining orders could be found. Given the very real concerns about the impact on child health and well-being it would only be appropriate in the rarest of cases, if at all. If electronic monitoring is considered for juvenile perpetrators very careful consideration must be given to the impact on the child and efforts must be made to combine it with other interventions.<sup>23</sup> Voice verification could be used as an alternative to GPS monitoring as it is considered more acceptable for juveniles and young offenders.<sup>24</sup>

In implementing electronic monitoring in domestic violence cases, the main consideration therefore will be child victims. The legal and policy framework should consider the best interests of

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<sup>21</sup> Párkányi E. and Hucklesby A, (2021)

<sup>22</sup> Párkányi E. and Hucklesby A, (2021)

<sup>23</sup> Draft Commentary to CM Recommendation (2014)4 p3 <https://rm.coe.int/16806f97b1/>

<sup>24</sup> Draft Commentary to CM Recommendation (2014)4 <https://rm.coe.int/16806f97b1> p17

the child and the impact of monitoring on their daily life. For children of lower intelligence, who are younger or who have a disorganised lifestyle electronic monitoring may be unsuitable.<sup>25</sup>

Key issues to consider:

- ✓ Best interests of the child
- ✓ Age and level of maturity- will the child understand how the device works and what to do if an alarm sounds?
- ✓ Consent of the child
- ✓ Views of the parent or caregiver
- ✓ Installation of the equipment: parent or guardian present, location, electricity supply,
- ✓ Information should be provided in a child friendly manner using straightforward language

In **Georgia** Law article 10 bis 1 paragraph 6 requires the consent of the victim or their legal representative before electronic surveillance can be implemented. If a minor victim consents to the implementation of electronic surveillance but their legal representative or prosecution representative refuses the decision is made in accordance with the best interests of the minor.

## People with disabilities

There may be occasions when age or disability including psychiatric condition may result in electronic monitoring being unsuitable or will require a more tailored individual approach.<sup>26</sup> For example specific consideration to the suitability of the technology for individuals who are profoundly deaf and are unable to hear the alarms or telephone is necessary. Any mental health condition that might be exacerbated by the use of electronic monitoring should also be taken into consideration when deciding whether to implement electronic monitoring.

## Pregnancy

Electronic monitoring devices attached to pregnant women may constitute a health risk and there is more risk of them being exposed and therefore stigmatised because of the need for healthcare visits. Health risks arise in particular from week 18 of pregnancy when a woman may experience oedema primarily in the ankle where an electronic device is most likely to be worn.<sup>27</sup> Women may continue to experience swelling to the ankles and other conditions linked to pregnancy after they have given birth and may in any event require physical examinations by a medical practitioner.

Further resources:

- ✓ *Standards and Ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of Electronic Monitoring, Nellis. M, Council of Europe 2015*

## Consent

*The nature of an electronic monitoring regime needs to be explained to suspects/offenders/ prisoners (and their families), so that they can give informed consent to it – or not. It is crucial that they have a clear idea from the outset of what compliance requires and what the criteria for breach are. They also need to be given a clear and simple understanding of how particular EM technologies actually work to*

<sup>25</sup> Párkányi E. and Hucklesby A, (2021)

<sup>26</sup> Draft Commentary to CM Recommendation (2014)4, p12 <https://rm.coe.int/16806f97b1>

<sup>27</sup> United Kingdom Government (2023) (there in the context of GPS tagging of migrants)

*detect presence or absence (or in the case of GPS, location) otherwise they may not realise how easily and reliably violations will be registered at the monitoring centre. Some jurisdictions use brochures which explain what is required and give contact numbers (of the monitoring centre, for example) but this does not obviate the need for a verbal explanation, which allows offenders and families to ask appropriate questions of monitoring officers.<sup>28</sup>*

### **A victim must not be forced to consent to electronic monitoring.**

*'18. Where there is a victim protection scheme using electronic monitoring to supervise the movements of a suspect or an offender, it is essential to obtain the victim's prior consent and every effort shall be made to ensure that the victim understands the capacities and limitations of the technology.' CM/Rec (2014) 4*

Consent must be free and informed to be valid. Particular care must be taken where multiple vulnerabilities exist such as language barriers, disabilities, race or ethnic origin.

Using electronic monitoring to protect victims necessarily involves the police in its use. It is only ethical to use electronic monitoring devices with crime victims if the effect of doing so is empowering for them- if they feel less vulnerable to re-victimisation, more protected (knowing that the police know both her and the suspect/offenders whereabouts) safer in their homes and when they move about in public space.<sup>29</sup>

### **Victims should not be sanctioned for breaches to the EBO, including by a termination of the order**

It is also important to remember that the victim is not restrained by an Emergency Barring Order or a Protection Order. There may be many different reasons why the victim may want to contact the perpetrator or does not hinder him or her from entering the home, including fear.<sup>30</sup>

### **What happens if the perpetrator does not consent?**

*15. In order to ensure compliance, different measures can be implemented in accordance with national law. In particular, the suspect's or offender's consent and co-operation may be sought, or dissuasive sanctions may be established. CM/Rec (2014) 4*

Compliance with the order and the monitoring is likely to be higher if the perpetrator consents to wear a bracelet. If the perpetrator refuses to agree to the wearing of a bracelet the risk to the victim should be assessed to decide whether either the perpetrator should be detained, or alternative dissuasive sanctions applied.

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<sup>28</sup> Nellis M. (2015)

<sup>29</sup> Nellis M. (2015)

<sup>30</sup> <https://rm.coe.int/article-52-convention-istanbul-english-version/168073cae6/>

In **Portugal** Article 36 of Law 112/2009 creates a statutory requirement of consent to be given by the perpetrator, the victim where they are required to participate in the monitoring and any person who lives with the perpetrator or may be affected by the mandatory stay of the perpetrator in a certain place. This article and Article 4 of Law 33/2010 detail the procedural requirements for consent to electronic surveillance. The key factors are:

- ✓ Consent of the perpetrator is given personally before the judge in the presence of the defender and reduced to a document
- ✓ If the perpetrator or convict requests electronic surveillance consent is deemed provided by the simple personal declaration in the application
- ✓ All persons over the age of 16 who live with the accused or convicted person must also consent by means of a simple written declaration that must accompany the information sent by social reintegration services prior to the decision or may subsequently be sent to the judge
- ✓ The consent is revocable at any time

Article 14(a) provides that if an accused or convicted person revokes consent the decision establishing electronic surveillance is revoked.

**Spain** also requires consent of both the victim and the perpetrator.<sup>31</sup>

On the contrary, in **Georgia** the police are authorised to summon a person to the authorised body of the Ministry of the Interior to attach the electronic device, to search for them if they do not appear and to use appropriate coercive measures to attach electronic devices to a perpetrator if necessary. (Order No. 126, art 3(9)-(11)). The results of this approach should be evaluated as there is a risk that such an approach may result in more danger to the victim and less compliance. If there is a risk of violence and the perpetrator does not wish to participate in the scheme, they either they should be detained, or other restrictive measures applied that reduce the risk.

## Threshold for implementing Electronic Monitoring

### **Electronic Monitoring should be used in domestic violence cases following an assessment of the risk of lethality and likelihood of violence**

In order to be in a position to know whether there is a real and immediate risk to the life of a victim of domestic violence the authorities are under a duty to carry out a lethality risk assessment which is autonomous, proactive and comprehensive.<sup>32</sup> Whenever there are any doubts about the occurrence of domestic violence or violence against women, an immediate response and further special diligence is required of the authorities to deal with the specific nature of the violence in the course of the domestic proceedings.<sup>33</sup>

In **Georgia** the threshold for imposition of an electronic surveillance measure is established in special cases if there is **a real threat of repetition of violence on the part of the abuser** and the consent of the victim or his legal/procedural representative to the implementation of electronic surveillance. The risk of recurrence of violence is assessed by an authorised police officer on the basis of the risk assessment questionnaire determined by the restraining order protocol.<sup>34</sup>

<sup>31</sup> Spain, 2013 Protocol at 1.1.3

<sup>32</sup> *Kurt v Austria*, [2021] ECHR 508 (Grand Chamber) para 168

<sup>33</sup> *Tkheldze v Georgia* [2021] ECHR 614 (Grand Chamber) para 48

<sup>34</sup> Georgia, Order No. 126 of 2020, Article 3(2)



In **Portugal** the test for applying electronic monitoring is for the court to determine 'whenever this proves to be essential for the protection of the victim'<sup>35</sup>

**The focus should be on the prospective risk and protection needs of the victim. Reliance on risk of repetition may lead to a situation where protection cannot be provided unless the person has already experienced violence.**

## Robust risk assessment

Article 51 of the Istanbul Convention and explanatory report make clear that **concerns for the victim's safety must lie at the heart of any intervention in cases of domestic violence** and the authorities are obliged to effectively assess and devise a plan to manage the safety risks faced by a victim on a case by case basis. The risk assessment must consider the threats made, previous instances of violence and in particular the probability of repeated violence including the risk of death and the seriousness of the situation including the possession of firearms by perpetrators. Any measures taken to assess and manage the risk of further violence must also ensure that the rights of the accused are respected at all times. Measures taken should not cause secondary victimisation or increase the harm experienced by victims.<sup>36</sup>

It should be underscored that the perpetrator's temporary inability to access his/her right to property and private and family life cannot be supersede the victim's rights to life, and the right to physical and mental integrity.<sup>37</sup> The priority is to be placed on the victim's safety and that of his/her children.

### Caution:

**Even where the process and documentation for risk assessment is strong the application in practice can still lead to protection gaps for women.** Care should also be taken to make sure that perpetrators that do not pose a sufficiently high risk or threat to the victim are subject to the restrictions on their liberty that tagging or electronic monitoring entails.

In **Spain**, two risk assessment tools are used to evaluate the level of risk against violence. The first identifies the exposure to the reoccurrence of violence. The form requires the police to specify the source of information and to evaluate among four levels of risk: extremely high, high, average and low. If the officer filling out the form believes the risk to be different from the one automatically generated by the form, the degree of risk can be increased. It cannot be decreased. Each degree of risk has a corresponding date at which the risk should be reassessed:

- ✓ Extremely high = 72 hour
- ✓ High = 7 days
- ✓ average = 30 days
- ✓ low = 60 days

After the imposition of court-ordered protection measures a second form is used to monitor the ongoing evolution of risk within deadlines established according to identified risk.

<sup>35</sup> Portugal, Law No. 112/2009, Article 35 (3)

<sup>36</sup> Article 51 Istanbul Convention, Explanatory Report to the Istanbul Convention paragraphs 260-263

<sup>37</sup> See e.g. Yildirim v Austria, Communication no. 06/2005, CEDAW/C/39/D/6/2005 para 12:1:5, 2005 stating that "the perpetrator's rights cannot supersede women's human rights to life and physical and mental integrity".

The GREVIO baseline report<sup>38</sup> recognised the use of electronic bracelets as good practice however also noted that the data collected by the Spanish authorities showed that a significant percentage of women killed by their partners or ex partners had been considered as low-risk cases by the Integrated Monitoring System for cases of Gender Violence (VioGen) raising the question of whether breaches of restraining and protection orders were taken seriously enough.

Further resources:

- ✓ EIGE A guide to risk assessment and risk management of intimate partner violence: [https://eige.europa.eu/sites/default/files/documents/20191701\\_mh0119277enn\\_pdf.pdf](https://eige.europa.eu/sites/default/files/documents/20191701_mh0119277enn_pdf.pdf)
- ✓ Intimate Partner Violence Risk Identification and Assessment Tool, September 2020, Barbra Schlifer Commemorative Clinic, Law Foundation of Ontario, United Way Greater Toronto <https://www.schliferclinic.com/wp-content/uploads/2021/10/IPV-RIA-User-Guide-Final-1.pdf>
- ✓ UK: Recognising and responding to vulnerability-related risks guidelines: Evidence review part two <https://assets.college.police.uk/s3fs-public/2021-11/Recognising-responding-vulnerability-related-risks-Evidence-review-part-2.pdf>

## Information

**Both the victims and the perpetrator should be provided with clear information about their rights and responsibilities in a language and manner that they understand. (Istanbul Convention Article 19)**

For both parties this should include:

- ✓ Information about the equipment and the technology and how it works
- ✓ What they can expect from the authorities
- ✓ Alarms or other notifications from the system: when are warnings generated? What does this mean for the victim or perpetrator? What do the authorities do in response?
- ✓ Exclusion zones- what these are and the consequence of the perpetrator entering a zone
- ✓ What to do if there is a malfunctioning of the equipment or any other issue that might affect the surveillance equipment or its operation e.g. failure in electricity supply or telephone/internet connection
- ✓ What to do at the end of the period of monitoring

For victims:

- ✓ Programmes should explain to the victim the limitations and risks that remain despite the monitoring and also require the victims to acknowledge these limitations so as not to create a false sense of security.<sup>39</sup>
- ✓ Where a child is involved information should be provided in a child friendly manner and with the assistance of a parent or caregiver where possible. Children may need to understand why they can't approach their parent or what to do if their alarm sounds.

For the perpetrator:

- ✓ What they can and cannot do
- ✓ Who will be responsible for giving instructions that they must comply with
- ✓ How they must comply with any guidelines and respond to contact made during periods of electronic surveillance

<sup>38</sup> GREVIO Baseline Evaluation Report Spain, GREVIO/Inf(2020)19

<sup>39</sup> Ibarra P. Gur O. and Erez E. (2023)

- ✓ How, when and who to contact in case of unforeseen or urgent situations such as illness or family emergency
- ✓ How, when and who to contact if authorisation is sought for alterations to the conditions of electronic monitoring
- ✓ What constitutes a justified absence from a period of surveillance

In **Georgia** Art 10 bis 1(8) of the law On prevention of violence against women and/or domestic violence, protection and assistance to victims of violence, (as amended) and Order No.126 Art 3(4) requires the police officer to explain to the perpetrator and victim their rights and duties during the implementation of EM, the instructions for the operation of the electronic monitoring and responsibility for violation of the rules.

The Protocol on bringing the perpetrator to the police station requires various factors to be documented in writing and notified to the perpetrator: the date and place of drawing up the report; position, name and surname of the author of the minutes; information about the abuser; Time and reason for bringing to the police. The protocol is signed by the official who compiled the protocol and the perpetrator. If the abuser refuses to sign the protocol, this will be indicated in the protocol.

The report on arrest is drawn up in two copies, one of which is given to the offender, and the other remains in the authority issuing the report. The offender is informed of their right to have a lawyer and for a relative and, if requested, his work or place of study to be notified that he was taken to the police.

**Spain** has a dedicated website<sup>40</sup> for victims which contains a wealth of information about violence against women and domestic violence. The website has a 'quick exit' button.

- ✓ A short video about available general protection and a longer video about the electronic monitoring system which is provided in several different languages through subtitling
- ✓ Links to the relevant legal frameworks
- ✓ Information leaflets available in multiple languages:
- ✓ A detailed explanation of the electronic monitoring system including information about the technology used, how it works, the time periods applied to installing and reporting various events.
- ✓ This information has also been adapted into an easy reading version<sup>41</sup>

## Making the application and notification

Practice differs in member states as to whether the police or the courts are responsible for issuing the order to implement electronic monitoring. If the decision is not made by a judicial authority for reasons of urgency, it should be reviewed by a court within a reasonable time.

**Ensure that, in addition to the police and courts, a victim has the right to make an application for an order if she so wishes**

<sup>40</sup> Spain,  
<https://violenciagenero.igualdad.gob.es/informacionUtil/recursos/dispositivosControlTelematico/home.htm>

<sup>41</sup> Spain,  
[https://violenciagenero.igualdad.gob.es/informacionUtil/recursos/servicioTecnico/ATENPRO\\_FACIL.pdf](https://violenciagenero.igualdad.gob.es/informacionUtil/recursos/servicioTecnico/ATENPRO_FACIL.pdf)

A clear record should exist of the reasons for imposing the order, the content of the restrictions, the date and time on which it takes effect and the duration. The perpetrator and the victim should both be given notice of the order. It is essential that the monitoring centre has a copy of the order and any relevant restrictions.

In **Georgia** the law provides for the persons in Art 11 of the domestic violence act to request electronic surveillance. Article 17(2) of the law on domestic violence (as amended) explicitly provides for a victim to request electronic surveillance.

An authorised police officer may establish electronic surveillance<sup>42</sup> to implement electronic supervision. They are required to record the protocol on the information system of the Department of the Ministry no later than 12 hours after it was issued. They must immediately notify the monitoring centre by telephone to activate the electronic means. In addition a copy of the protocol is sent to the monitoring centre and the corresponding district service of the relevant territorial body of the Ministry near the place of residence of the victim immediately and no later than 12 hours.<sup>43</sup> A protocol on the issuing of the order is sent to the court within 24 hours of its issuance and the court must approve this for monitoring. A failure to do so or if the court refuses to approve the protocol results in the electronic surveillance measure being required to stop immediately.<sup>44</sup> This prevents any delay in the decision to issue electronic monitoring but includes important safeguards for the Perpetrator of a court review.

In **Portugal** the Court must also take into account compatibility of the victim's personal, family, work or social condition with the requirements of electronic surveillance. The execution of the measure begins once the means of electronic surveillance are installed with the victim and the perpetrator. (Art 26, Law 33/2010)

## Duration of the order

The period of electronic monitoring must be clearly defined and safeguards in place to ensure that it is reviewed at appropriate intervals.

In **Georgia** electronic supervision is carried out no longer than the duration of the restraining order.<sup>45</sup>

In **Spain** a judicial decision is required for removal of the device and removal would normally take place at Court.<sup>46</sup>

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<sup>42</sup> Georgia, Law No . 20 of 2006 as amended Article 10, bis 1 (1) , Authorised officers identified in Order No.126

<sup>43</sup> Georgia, Order No, 126, Article 5

<sup>44</sup> Georgia, Law No . 20 of 2006 as amended Article 10, bis 1 (1)

<sup>45</sup> Georgia, Order No. 126, Article 3(3)

<sup>46</sup> Spain, 2013 Protocol

## Technical features of the system

### Technology risks:

*28. Rules regarding the use of electronic monitoring shall be periodically reviewed in order to take into account the technological developments in the area so as to avoid undue intrusiveness into the private and family life of suspects, offenders and other persons affected. CM/Rec(2014)42012*

Technology issues and failures have been identified in the academic literature. Factors such as equipment malfunction, loss of signal or power, battery failure, lack of communication between various databases, and inadequate broadband capacity can prevent successful implementation of electronic monitoring systems.<sup>47</sup> For example: GPS monitoring systems may not work in underground metro systems.<sup>48</sup> False alerts may be triggered due to the complex technology of electronic monitoring devices and systems.<sup>49</sup> however the general view is that the technology has improved over recent years.<sup>50</sup>

Technology failures can lead to complacency amongst the control centre and police personnel that the alarm is false and therefore they fail to act when a real violation occurs.<sup>51</sup> Following one trial in the UK between 2014-2017 the police identified that if they were to consider use of electronic monitoring in the future they would consider lease of the units rather than purchase so that units are kept up to date as part of the contract as technology advances.<sup>52</sup>

**It is important to identify, assess and manage any technology risks appropriately.**

## The devices

*Victims must only be offered portable receiving devices (to pick up a signal from the offender's tracker), never persuaded to wear a tracker themselves. If real-time location data shows offender and victim coming into proximity of each other (before they have visual contact with each other) good practice requires, in the first instance, the urgent provision of police support to the victim, and only secondarily seeking out and intervening with the offender (although both can be pursued simultaneously). Care must be taken to ensure that the offender is not inadvertently alerted to the nearby presence of a former victim if he does not know, and is not allowed to- the new area or women's refuge in which she is living.<sup>53</sup> Standards and Ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of Electronic Monitoring, Nellis. M, Council of Europe 2015*

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<sup>47</sup> Belur, J. et al (2020)

<sup>48</sup> Otero (2009) p. 142, footnote 13

<sup>49</sup> Martinovic, M. Schluter, P. (2012)

<sup>50</sup> Scottish Government (2019)

<sup>51</sup> Belur, J. et al (2020)

<sup>52</sup> Scottish Government (2019), p62

<sup>53</sup> Nellis M. (2015) p. 41

## The 'bracelet'

Minimum standards for the technical equipment are usually set out in the legislation.

In **Portugal** the general technical characteristics of the equipment are set out in Ordinance No. 26/2001.<sup>54</sup>

The device is:

- ✓ designed for uninterrupted use on the wearer's ankle or wrist and
- ✓ must not under any circumstances, endanger the health and safety of the individual
- ✓ must not restrict the activities that are permitted
- ✓ uses wireless communications to send data to the receiver
- ✓ permanently interrupts the signal if the integrity of the device is damaged or it is removed
- ✓ operates autonomously
- ✓ is shock resistant, waterproof and hypoallergenic

Similarly in **Georgia** a set of technical characteristics is defined at articles 6-8 of the Order No, 126 defining where the electronic bracelet is fixed (the shin unless this is impossible and in that case the wrist), that it cannot be removed without damage, it is waterproof and can withstand extremes of temperature (-25 to + 50 degrees Celsius).<sup>55</sup>

These general features are mirrored in the Annex to the 2013 Protocol in **Spain**.

### *Attaching the bracelet*

Generally, regulations define when, where and how a bracelet is attached to a perpetrator. This is required because otherwise there is a risk that the person attaching the bracelet is committing an assault.

In **Spain** the 2013 Protocol states at paragraph 1.2.2 that the bracelet fitting will take place in court once it has been notified and within the period agreed by the judicial authority by the installation company and a record shall be made in writing that the person has been provided with the device and the user guide and that the operation and basic maintenance rules have been explained to him.

In **Georgia** the public security management centre "112" hands over the electronic devices to the relevant head security official who then provides them to the authorised police officer. It is mandatory to register each case of issuance and return.<sup>56</sup> A bracelet is attached to the perpetrator and both the perpetrator and the victim have reception apparatus. The perpetrator's receiver has SIM cards from 2 different mobile operators, one is active and the second a spare. The cost is borne by the Public Security Management Centre 112. Detention for the purpose of attaching the electronic monitoring bracelet is authorised but the total duration of the procedure should not exceed 6 hours.<sup>57</sup>

<sup>54</sup> Diário da República n.º 12/2001, Series IB of 2001-01-15 , pages 228 – 229

<https://dre.pt/dre/detalhe/portaria/26-2001-337579>

<sup>55</sup> Georgia, Order No. 126 of 2020, Article 6

<sup>56</sup> Georgia, Order No. 126 of 2020, Article 4

<sup>57</sup> Georgia, Order No. 126 of 2020, Article 3(9)

## The Receiving Apparatus

The receiving apparatus is broadly the same for both perpetrator and victim but the two devices may have different functions.

In **Portugal** any mobile monitoring mechanism must comply with the following<sup>58</sup>:

- a) It must be light and easy to use;
- b) It must use wireless communications to receive DIP and UML signals;
- c) It must have the capacity to store transmissions and record their date and time;
- d) It must be able to communicate its data to a personal computer;
- e) It must have the capacity to operate with battery;
- f) It must allow the detection and recording of personal identification device or local monitoring unit violation signals.

In **Spain** 2Track devices are used for both perpetrator and victim. The victim is equipped with a GPS moving alert device that provides an audible visual and/or vibration alert when the perpetrator's transmitter is within the established range. When the Radio Frequency signal from the perpetrator's transmitter is detected on the victim's device, the victim sends an alert to the control centre. In a panic situation the victim can use the emergency button to generate an outgoing call to a predefined emergency number.<sup>59</sup> The installation company delivers and installs the reception apparatus to the victim's home. If this is not possible it will be provided at court or in the most convenient police station. The victim's device is always installed prior to the device of the perpetrator. The installation company explains the operation and basic rules for maintenance and provides the guide for use and maintenance. The victim will then record this fact in writing and that they have given consent for the use of the data provided by the personal data regulations. These provisions as to the location of the installation remove one barrier to the victim's participation in the scheme.

## Reception apparatus of the perpetrator

The perpetrator's monitoring device ideally will be required to monitor the approach of the perpetrator to either a geographical exclusion zone or the victim or both. It will need to generate an alarm in prescribed circumstances and ideally operate on both GPS and mobile systems and have some offline functionality so that in the case of data loss the perpetrator is still warned if connection to the surveillance system is lost.

In **Georgia**<sup>60</sup> Order No. 126, Article 7 provides for the perpetrator's device to:

- ✓ monitor the approach of the perpetrator to the victim/victim's work, home and other prohibited area.
- ✓ be equipped with a battery that lasts for 24 hours. In order to charge the battery, the receiving device of the perpetrator periodically needs to be connected to a power source.
- ✓ have SIM cards from two different mobile operators. Of these, one SIM card is active, and the other serves as a spare card. The cost of providing SIM cards is borne by the Public Security Management Centre "112".
- ✓ enables communication with the perpetrator. However, the receiving device can only connect to two predetermined numbers. These are: single emergency number "112" and the corresponding number of the monitoring centre - 2-41-81-12.

<sup>58</sup> Portugal, Ordinance No. 26 of 2001, article 7

<sup>59</sup> Spain, 2013 Protocol, Annex 1

<sup>60</sup> Georgia, Order No. 126 of 2020, Article 7

- ✓ notify the perpetrator of entering the alarm zone, even if the connection to the electronic surveillance system is lost. The message is reflected on the screen of the perpetrator's electronic device with the specified text. The electronic device also communicates with the perpetrator using an alarm signal and vibration.

## Reception apparatus of the victim

The device for the victim should calculate the distance between her and the perpetrator and include a panic button to enable her to contact the monitoring centre in an emergency.

In **Georgia** Order No, 126 Article 8 provides for the victim's device to:

- ✓ calculate the distance between the victim and the perpetrator and notify the victim through an alarm signal of the approach of the aggressor according to the parameters of 2 geographical zones. (see below on exclusion zones)
- ✓ have a function for activating the help (SOS) button. When the SOS button is activated, an alarm signal is sent to the electronic surveillance system.
- ✓ Comply with the same other general conditions on batteries, SIM cards, communication, SIM cards and notification as the perpetrators device (see above)

## The exclusion zones

*19. In cases where electronic monitoring relates to exclusion from, or limitation to, specific zones, efforts shall be made to ensure that such conditions of execution are not so restrictive as to prevent a reasonable quality of everyday life in the community. CM/Rec (2014) 4*

In rural areas and small communities with a great deal of common space this may result in a higher likelihood of victim and perpetrator meeting by chance. In larger places exclusion zones must be large enough to enable police to attend in the event of an emergency however care must be taken to ensure that the exclusion area is also proportionate to the risk posed by the offender.<sup>61</sup>

In **Georgia** two geographical areas are covered. The first is an alarm zone which is set as within 100 meters radius from the location of the victim, her residence, work and other places as required. The second is a buffer zone which is set at 500 meters around the alarm zone. The 'static' zone refers to zones around pre-specified places such as home, school, workplace indicated in the protocol. The dynamic warning/buffer zone is formed according to the location of the victim when she moves. Entry into a static zone can be either intentional or accidental. Entry into the buffer zone is designed to protect the victim in a more dynamic way and the perpetrator will not always be aware.<sup>62</sup>

If two types of exclusion zone are set up it may be necessary to have two different approaches to a breach.

### **Static zone breach:**

The perpetrator's device notifies him that he has entered the static buffer zone.

On entry he will receive a warning from an authorised employee about the requirement to leave the area and the consequence of not leaving.

<sup>61</sup> Nellis M. (2015) , p41

<sup>62</sup> Georgia, Order No. 126 of 2020, Article 16



If the perpetrator does not leave the area an offence is committed, and the monitoring centre sends the information to the relevant judicial or prosecutorial body.

### **Dynamic buffer zone**

If the perpetrator accidentally enters the dynamic buffer/alarm zone in a public space, an authorized employee contacts the perpetrator and gives an instruction to leave the buffer/alarm zone in order to avoid an accidental encounter between the perpetrator and the victim. Failure to comply with the requirement leads to criminal liability, unless the victim and the aggressor accidentally approach the buffer/warning zone in a short time interval, and it was impossible to avoid taking into account the objective circumstances.<sup>63</sup>

## **Monitoring breach**

### **The monitoring centre**

The monitoring centre or control centre is responsible for monitoring compliance with the relevant order, contacting the perpetrator in case of breach or technical failures and warning the victim of actual or potential breaches of the order depending on the circumstances.

Staff must be adequately trained and sufficient operational safeguards, technical and other data protection measures must be taken to ensure the reliability of the system and confidentiality of the information.

(see also: section on data security and protection)

**Portugal** has established operating safeguards for the control centre. This includes:

- ✓ The system and the respective computer applications to be installed in the monitoring centre must be, as much as possible, protected against failures, through the use of information storage and redundancy systems, in order to avoid interruptions in the operation of the control centre.
- ✓ The computer applications to be installed in the monitoring centre must guarantee the following aspects:
  - a) Configuration of the local monitoring unit from the monitoring centre, in order to establish or change the periods of stay and the frequency of establishing contacts with the monitoring centre, from the local monitoring unit;
  - b) Uninterrupted recording of all information from the local monitoring unit in a database;
  - c) Possibility of introducing, by the operator, information in text mode regarding the occurrences of the monitoring process;
  - d) Automatic issuance of reports on monitoring processes
- ✓ The equipment to be installed includes:
  - a) Computers, printers and other computer equipment
  - b) Modems, faxes and other equipment for communications with the local monitoring unit and other control points
  - c) A Uninterruptible Power Supply (UPS) backup battery

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<sup>63</sup> Georgia, Order No. 126 of 2020, Article 16

In **Georgia** provision is made to ensure that the centre is located in a properly secure room and staffed 24 hours a day. It has the function of sending text messages and communications to the receiving devices of the perpetrator and the victim.<sup>64</sup>

## Types of Breach

The monitoring centre or control centre should provide monitoring 24 hours a day, 7 days a week. If an alarm or alert is generated by the monitoring device it will be relayed to the centre. The centre will need instructions on what actions to take on receiving an alarm.

The types of issues that should be monitored include:

✓ **Technical failures:**

- Damage/tampering with the devices
- Connection failures including leaving the GPS coverage area and potential backup systems
- Battery life/charging level
- Level of cellular reception

Equipment may fail for several reasons. Firstly, owing to accident or matters beyond the victim or perpetrator's control. For example, the battery may be discharged, the bracelet may break, the victim may lose her device. Alternatively, there could be deliberate attempts to tamper with the equipment, remove it or otherwise stop it from working by the perpetrator.

✓ **Breach of geographical exclusion zones: both fixed and mobile zones**

Entry in fixed exclusion zone may happen deliberately in order to pursue the victim or by accident, for example if the perpetrator forgets the limits of the zone or does not know where they are (for example if they have drunk alcohol or taken drugs or are a passenger of a car). A mobile exclusion zone breach could happen by accident for example if the victim is in a safe house or refuge the perpetrator will not necessarily know he is in the proximity of the address.

✓ **Violation of prohibition of approaching the victim**

✓ **Activation of panic button**

It is possible that a panic button can be pressed or activated by mistake. Repeat alarms can cause distress in victims and therefore it may be preferable to take immediate initial steps to check whether the alarm has gone off by mistake. If no immediate response to the check is received it should be treated as a genuine alarm and responded to appropriately.

✓ **Other circumstances**

## Notification and response

The key points to note are who is responsible for contacting the perpetrator and victim, in what order and how the breach is escalated if the perpetrator does not respond. Evasion or breach usually results in criminal sanction.

In **Spain** the following will trigger a notification generated automatically by the monitoring system<sup>65</sup>:

<sup>64</sup> Georgia, Order No. 126 of 2020, Article 10

<sup>65</sup> Spain,

<https://violenciagenero.igualdad.gob.es/informacionUtil/recursos/dispositivosControlTelematico/home.htm>

**ENTRY INTO A FIXED EXCLUSION ZONE:** The accused/convicted person has entered one of the exclusion zones that the Judicial Authority has established; that is to say, the distance of the position of the perpetrator with respect to the specific places to which he is prohibited from approaching (workplace, home, school, municipal area, etc.) established in the Judicial Resolution is less than that established in said Judicial Resolution.

**ENTRY INTO A MOBILE EXCLUSION ZONE:** The distance of the position of the perpetrator with respect to the victim is less than that established in the Judicial Resolution, as the distance to which he is prohibited from approaching.

**DETECTION OF THE RF SIGNAL BY THE VICTIM'S 2TRACK UNIT:** The victim's location device detects said radio frequency signal, which means that the perpetrator is (in optimal conditions) less than 500m from the victim.

**BREAK OF THE 2TRACK UNIT - BRACELET:** The perpetrator's/convict's location device or his bracelet (radiofrequency transmitter) has been broken or has been tampered with.

**2TRACK UNIT LOW BATTERY - BRACELET:** The perpetrator's tracking device or bracelet is running out of battery. A low battery is notified 7-10 days before it is likely to drain so that remedial action can be taken.

**PANIC BUTTON PRESSED:** The victim has generated a panic alert from their tracking device. Automatically, in addition to the entry of the event in the system, a voice call is established with the control centre to verify the reason.

**ENTRY IN A PROXIMITY AREA:** The perpetrator is in an area close to one of the fixed exclusion zones that the Judicial Authority has established or to the victim.

**BRACELET SEPARATION - 2TRACK UNIT:** The bracelet worn by the perpetrator has moved a few meters away from his GPS tracking device.

When an alarm occurs, the COMETA Control Centre carries out the communications provided for in the Action Protocol for each type of alarm and, in addition, prepares a report that will be sent to the police unit responsible for the protection of the victim, to the Authority Judiciary and the Public Prosecutor's Office.

Reports to the relevant judicial or prosecutorial officers are sent the first business day after the alarm.

Notifications are divided into Alarms and Alerts depending on the potential risk to the victim and corresponding action that must be taken is also set out:

<b>Alarm</b>	<b>Alert</b>
<i>Serious technical incident</i>	<i>Minor technical incident</i>
Control Centre must communicate to competent security forces through telephone numbers provided for this purpose  The police protection operation will be activated whenever necessary and, in any case, where the bracelet breaks, it is removed without	If the system starts operating abnormally but is not interrupted the Control Centre will need to take a judgment decision about the level of risk. If the risk is high, it should be treated in the same manner as a serious technical incident  In general, this does not give rise to immediate

<p>damage or the battery discharges</p> <p>If resolution requires a meeting with the accused the control centre will contact the competent police unit to determine if it is necessary for him to go to a police station. If it is the control centre will contact the accused and inform him where he should go.</p> <p>If the perpetrator refuses to cooperate the police must immediately inform the relevant judicial body authorising the measure or the duty court.</p> <p><b>Communication with victim?</b>  <b>Yes. Victim is informed about the technical failure and that it has been brought to the attention of the security forces unless it was resolved during the communication with the security force. After resolution the victim is informed that the incident has been resolved.</b></p>	<p>communication by the control centre unless in cases where it is considered there is a risk situation.</p> <p>If there is a risk situation the serious technical incident procedure must be followed</p>
<p><i>Entry of accused into the exclusion zone</i></p>	<p><i>Approximation of the accused to the exclusion zone</i></p>
<p>the incident is communicated to police forces through telephone numbers provided for this purpose.</p> <p>Communication is then maintained between the control centre and the police to facilitate the location of the perpetrator and victim.</p> <p>The police protection protocol is activated <b>immediately</b></p> <p><b>Communication with victim?</b>  Victim is contacted by control centre to obtain status and location and provide appropriate guidance.  If the person approaches the exclusion zone but has not entered it the Control Centre will presume that an entry or breach is imminent and therefore contact the victim.</p>	<p>If the perpetrator is near to the exclusion zone in circumstances where an imminent entry into it is presumed so that the perpetrator can take steps to avoid it.</p> <p>If entry occurs, it is classed as an alarm and action will be taken in accordance with the provisions on entry into the exclusion zone.</p>
<p><i>Approach to the victim and the exclusion zone with loss of coverage of the location system</i></p>	<p><i>Pressing the panic button by the victim</i></p>

Depending on the circumstances in cases of temporary loss of coverage of the location system the Control Centre will communicate the incident to the territorially competent Security Forces and Bodies through the telephones provided for this purpose (091, 062 and those corresponding to the regional police).  
As soon as coverage is restored, the Control Centre shall immediately inform the same police units of the location of the victim and the accused or convicted person.

The Control Centre contacts the victim to verify if it is an accidental call or due to a dangerous situation. If communication is not achieved or it is confirmed that it is a situation of danger the same action is taken as when the perpetrator breaches the exclusion zone

In all cases where an alarm occurs a report will be sent to the responsible police unit responsible for the protection of the victim, the judicial authority and the Public Prosecutor's Office. If the alarm occurred as a result of entry into the exclusion zone the control centre will also send the report to the police, contact point for referral to the unit responsible for considering possible violations of the measures.

In **Georgia** a series of actions are set out in Order No.126 for the relevant bodies to follow in case of a violation.<sup>66</sup>

- ✓ After displaying a message in the electronic surveillance system regarding the violation of the operation rule, the authorized employee contacts the offender and warns about the elimination of the violation.
- ✓ Communication with the aggressor/victim is done by the authorized employee both through the receiving device and alternative means of communication (if any).
- ✓ If it is impossible to contact the abuser as a result of the violation of the operating rules, the authorized employee shall notify the authorized body of the Ministry. Before determining the location of the perpetrator/contacting him, the representative of the authorized body of the Ministry contacts the victim and, in agreement with the victim, the necessary measures are taken to protect the victim.
- ✓ The warning given by the authorized employee is recorded, as well as the content of the communication with the perpetrator/victim is stored.
- ✓ If, as a result of violation of the rules of operation by the perpetrator, it is impossible to implement electronic surveillance, this will be considered as evasion of electronic surveillance, which leads to criminal liability.

## Interagency cooperation

Weak or absent cooperation between agencies has been identified as a factor that can be counterproductive and reduce the effectiveness of monitoring.<sup>67</sup> In particular, where parties are involved in both civil and criminal proceedings and there are conflicting court orders such as decision requiring a victim to meet a perpetrator who is subject to electronic monitoring to facilitate child contact this can result in confusion, non-compliance and other problems.

There should be clear lines of communication and allocated responsibility between the monitoring centre and the other relevant security bodies and protection agencies including the judicial authorities.

<sup>66</sup> Georgia, Order No. 126 of 2020, article 15

<sup>67</sup> Ibarra P. Gur O. and Erez E. (2023)

In **Georgia** this is set out in Order No. 126, Article 12.

1. The authorized employee of the monitoring centre and the body of the Ministry that issued the protocol on the implementation of electronic surveillance or that supervises the fulfilment of the requirements and obligations stipulated by the restraining order and the protocol on the implementation of electronic surveillance established to ensure the protection of the victim, as well as the border control implementing body of the Ministry, the electronic surveillance During implementation, mutually agreed actions are ensured.

2. The authorized body of the Ministry issuing the protocol on the implementation of electronic supervision, in order to ensure the supervision of the fulfilment of the requirements and obligations stipulated by the said protocol, in case of forwarding the protocol to another authorized body of the Ministry, is obliged to inform the authorized employee of the monitoring centre about the said fact.

3. In order to ensure the protection of the victim, the authorized employee of the monitoring centre ensures coordination with the victim and the perpetrator as necessary.

4. The body of the Ministry, which supervises the fulfilment of the requirements and obligations stipulated by the restraining order and the protocol on the implementation of electronic surveillance established to ensure the protection of the victim, is obliged to provide the monitoring centre with information about the language understood by the abuser/victim, if they do not speak the state language.

In **Spain** throughout the protocols on both electronic monitoring and prisons detailed instructions about communication between state bodies, the method, manner, content and timing of that communication is provided.

## Ending or suspending monitoring and removal of the device

An electronic monitoring system may be cancelled before the period of monitoring expires, temporarily removed or suspended, or terminated. It will be necessary to have in place procedures detailing who is responsible for removing the device and in what circumstances. It will also be important to ensure the monitoring is continued after a temporary removal or suspension where appropriate. It may be useful to consider the following:

- ✓ How urgently does the device need to be removed
- ✓ Is a court resolution required?
- ✓ Who informs the court that issued the order?
- ✓ Who informs the control centre?
- ✓ What happens if the monitoring is suspended?
- ✓ How is the monitoring restarted?

Groups of people who may have to remove the device may include the installers, the police or other security forces, prison staff, hospital staff including paramedics. They will all require training and familiarisation with the relevant protocols.

## Cancellation before the period of monitoring expires:

A change of circumstances may require cancellation or termination of the surveillance before the period originally prescribed. This would most usually arise because the risk of violence no longer exists.

In Georgia, Articles 25 and 26 of the Law provide that electronic surveillance can be cancelled before the deadline by applying to the court if there has been a change of situation including a serious illness of the perpetrator if the consequence is that risk of repetition of violence is excluded or alternatively if the victim makes an application to the police to cancel the monitoring. Within 24 hours after the change of circumstances or the request of the victim the police are required to apply to the court with the request. Within 24 hours of this application the court must consider the issue.

Automatic cancellation happens once the authorised body has cancelled the restraining order or on death of either the perpetrator or victim.<sup>68</sup>

## Temporary removal

There may be occasions where temporary removal of the device from the perpetrator is appropriate or necessary, for example, medical or security reasons or admission to prison or detention of either the perpetrator or victim. It should be clear who can authorise temporary removal, in what circumstances, who is responsible for reattaching the device and what procedures should be followed.

In **Spain** where the temporary removal of the device is necessary for medical, security reasons, and admission to prison the decision will be agreed by the judicial authority and will be carried out by the personnel of the installation company in accordance with the provisions of the resolution that authorizes it. Any subsequent installation will also proceed according to judicial decision.

In urgent cases that require the immediate withdrawal of the device the police unit that intervenes or has knowledge of the fact is required to communicate, as soon as possible, to the court that issued the measure, the withdrawal of the device and the reason for it, and also to inform the control centre. When the reasons that led to the withdrawal cease, the competent police unit will inform the court that issued the measure or, failing that, the duty court, so that it can decide what is appropriate. If the reinstallation of the device is agreed, the court will inform the Control Centre that within a maximum period of 24 hours from receiving said communication the relevant equipment will be reinstalled.

During this time the competent police force is required to take any other necessary measures for the protection of the victim.

In **Georgia** electronic monitoring is suspended where the perpetrator or victim leave the territory for a period abroad, during detention of either victim or perpetrator, if the perpetrator or victim have a period of administrative detention imposed or where imprisonment is imposed.<sup>69</sup> There is a protocol for suspending electronic monitoring at Annex 2 to Order No. 126 which requires the following details to be recorded:

<sup>68</sup> Georgia, Law No. 20 of 2006 as amended, Art 10 bis 1(27)

<sup>69</sup> Georgia, Order No. 126 of 2020, Article 17

- ✓ Name, surname and position of relevant person deciding to suspend the surveillance
- ✓ The date
- ✓ The grounds for suspending the surveillance
- ✓ The period of suspension
- ✓ The time and place the electronic strap was removed
- ✓ The name, surname, personal number, date of birth and place of residence of the perpetrator
- ✓ The name, surname, personal number, date of birth and place of residence of the victim
- ✓ A space for a note to be made of reasons for refusal to sign the document by either the victim or the perpetrator.

And a similar article<sup>70</sup> and Protocol (Annex 3) for the continuation of electronic surveillance that had previously been suspended which identifies the end of those conditions mentioned in Annex 2.

- ✓ Return of the perpetrator to the territory of Georgia
- ✓ Return of casualties to the territory of Georgia
- ✓ Release of Detained Offender
- ✓ Release of Arrested Victims
- ✓ Release of an abuser from administrative custody
- ✓ Release of victims from administrative custody
- ✓ Revocation/termination of preventive measures against the perpetrator - detention
- ✓ Revocation/termination of preventive measures against victims – detention

Electronic monitoring terminates when the electronic supervision period expires, by the death of the perpetrator or the victim or by cancelling the restraining order or where the court cancels the electronic surveillance measure.<sup>71</sup>

## What happens when perpetrator or victim is sent to prison?

On entry to prison it is likely that the electronic bracelet or tag will need to be removed. Issues to consider include:

- ✓ Who is the appropriate person to carry out this procedure?
- ✓ Who needs to be informed?
- ✓ How this is to be done and recorded?
- ✓ What happens if the prisoner is transferred to another prison?
- ✓ Are there any relevant dates that need to be noted (for example, the date the monitoring order expires)?
- ✓ Are there any concerns about visitors?

If the person previously had a bracelet but this was removed immediately prior to admission to prison, for example, at the police station or at court, this should be clearly recorded in the prison file to ensure that it is considered on release. If the person is transferred to another prison this information should also be transferred. Care should also be taken in respect of visitor orders, particularly when it is the victim who is in prison, to ensure that a perpetrator is not continuing abuse through prison visits.

The date at which the requirement to be monitored terminates should be noted and arrangements made to consider whether the monitoring needs to be re-arranged well before release.

<sup>70</sup> Georgia, Order No. 126 of 2020, Article 17(3)

<sup>71</sup> Georgia, Order No. 126 of 2020, Article 18



In **Spain** the Protocol of Action in the Penitentiary Field of the Monitoring System by Telematic Means of Compliance with the Measures and Penalties of Distance in the Field of Gender Violence (October 2015 Protocol) deals with what happens when the perpetrator enters or leaves prison

The prison communicates immediately with the control centre and the control centre staff remove the device within 24 hours. The control centre informs the prison which is the competent judicial body dealing with the monitoring. The prison should then communicate with the judicial body that the victim has been incarcerated, whether she had the device when imprisoned or whether it has been recovered so that the body can consider what the appropriate action is to take whilst the victim is in prison, in relation to the device worn by the perpetrator and where appropriate for the subsequent installation of the device in case of release. In addition, the prison will ask for information on who is the competent judicial body monitoring the implementation of the system, the period of validity of the measure and where appropriate the judicial decision implementing the decision will be sent to the prison and the control centre. A record will be made that the person was admitted whilst benefitting from an electronic monitoring device

In case of transfer to another prison the information should be transferred with the victim or perpetrator. This is to ensure that in the event of granting prison permits (visitors) or release the risk is clearly known.

The prison should be aware of the validity of the measure or expulsion order, where appropriate the period of electronic monitoring and the actions that must be followed up with the judicial body.

## On temporary release from prison

If the prisoner is allowed temporary home visits or day release (including for example owing to the death or serious illness of a relative, an accident or other exceptional circumstance) consideration should be given to whether or not the person should have their bracelet reattached in sufficient time to ensure their safe temporary release. (See also section above on temporary removal.)

## On release from prison

In preparation for release consideration should be given to whether or not the person was previously subject to electronic monitoring. If they were and the order has not expired the prison should ordinarily arrange for the device to be installed prior to release and for the victim to be informed- most likely through a control centre.

In **Spain**, if the order has expired the prison should communicate with the judicial authority or other relevant body to ensure that any appropriate action is taken prior to release.

If the prisoner has an order for release or their sentence expires without action to install a device, or it is not possible to do so prior to release they must be released without electronic monitoring. In such a case the release of the prisoner should be communicated to the Control centre and in all cases the judicial body of the monitoring system or the relevant duty body should be informed of the release and the actions followed.

If no instructions were given by the judicial body requiring electronic monitoring on release the prison should take steps 48 hours before release to communicate with the relevant judicial body so they know what steps to take in respect of reinstalling the device. Release should be

communicated to the Control Centre and the judicial body by effective immediate mechanisms (phone, fax or telematic)

What if an order is made for electronic monitoring whilst the perpetrator is already in prison?

It is important that any such order is linked to the prison file so that any of the relevant steps above relating to release, including temporary release, from prison can be properly implemented.<sup>72</sup>

## What if perpetrator or victim is deported or leaves the territory?

Article 62 of the Istanbul Convention calls for cross border recognition of court ordered protection orders. Steps should therefore be taken to ensure that the protection order is communicated to the receiving state in cases of deportation and efforts to ensure voluntary communication where the victim departs. Provision will need to be made for termination of the order and potential onward protection of the victim.

- ✓ Whether the monitoring should be suspended or terminated
- ✓ How and where to return the equipment
- ✓ Safety of the victim between the period of return and departure (if not at the airport)
- ✓ Relevant time periods

**Georgia** has a sets out rule on what should happen if either the victim or perpetrator leave the country at Article 13 (3):

3. The perpetrator/victim is obliged to:

- a) not to leave the territory of Georgia together with the electronic bracelet/receiving device;
- b) to inform the authorized body of the Ministry about the crossing of the state border of Georgia (hereinafter - the border) (about the time of departure from Georgia and the time of entry into Georgia) at least 48 hours before crossing the border;
- c) hand over the electronic device/receiving device to the authorized territorial body no more than 12 hours before leaving Georgia;
- d) report to the authorized territorial body no later than 12 hours after entering Georgia to attach/hand over the electronic device/receiver device in order to continue electronic supervision;
- e) to report to the authorized body of the Ministry immediately after the end of the electronic supervision, in order to remove the electronic bracelet and hand over the receiving device of the abuser/victim;
- f) to comply with the instructions of the monitoring centre.

The rules also refer to requirements to inform the monitoring centre of any of these changes. If any of the conditions are not complied with the perpetrator or victim is restricted from leaving the territory.

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<sup>72</sup> See for example, Spain, Protocol 2015 section 4

It is important that in implementing any such regulations the freedom of movement of the victim is not restricted and that she is not sanctioned. This could lead to secondary victimisation rather than protection.

## End of monitoring period

At the end of the monitoring period the device will need to be uninstalled or removed or returned.

In **Spain** the decision to uninstall is made by the judicial office and must be communicated within 24 hours to the relevant security force and the centralised reception point by telematic means or by fax and receipt must be recorded.

The judicial office has to inform the Control Centre of the decision that agreed the cessation of monitoring and the Control Centre must acknowledge receipt of the decision and its content. The installation company then proceeds to withdraw the bracelet or tag in accordance with the decision. As with installation this is carried out in court in the case of the perpetrator and at the home of the victim, in court of the police station closest to their home taking into account their wishes as far as possible.

Once the devices have been removed the Control Centre shall immediately inform the judicial authority and the police unit responsible for victim protection.

In **Georgia** the protocol on removal of the tag (Annex 4) is a form to complete by the person compiling the protocol and to be signed by either or both of the perpetrator or victim when the equipment is returned.

Georgian Law on domestic violence art 10 bis 1 contains the following items concerning the cancellation of the monitoring:

“25. The used electronic surveillance measure can be cancelled before the deadline by applying to the court:

- a) due to a change in the situation, including due to a serious illness of the abuser, if the changed situation excludes the risk of repetition of violence on the part of the abuser;
- b) If the victim applies to the police with a request to cancel the implementation of electronic surveillance.

26. Within 24 hours after the occurrence of the circumstances provided for in paragraph 25 of this article, the police will apply to the court with a request to cancel the implementation of electronic surveillance. Within 24 hours of this appeal, the court will consider the mentioned issue in accordance with the procedure established by the legislation of Georgia.

27. The cancellation of the restraining order by the authorized body, the death of the perpetrator or the victim leads to the automatic cancellation of the used electronic surveillance measure.

28. The authorized police officer has the right to summon the offender in order to remove his electronic device or take him to the nearest police station in accordance with paragraphs 16-18 of this article.

29. The authorized body of the Ministry of Internal Affairs of Georgia has the right, in order to prevent violence against women and domestic violence, to process the personal data of the abuser/victim, including data obtained as a result of electronic surveillance, data reflecting communication with the abuser/victim.

30. In order to implement electronic surveillance, information is exchanged between the Ministry of Internal Affairs of Georgia, the Prosecutor's Office of Georgia, the Ministry of IDPs from the occupied territories of Georgia, the Ministry of Labor, Health and Social Protection, the Ministry of Justice of Georgia, the court and, if necessary, other relevant agencies.”

## Sanctions for breach

### **Sanctions for breach must be effective, proportionate and dissuasive.<sup>73</sup>**

The Istanbul Convention states that a violation of an EBO "must lead to an official measure against the perpetrator".<sup>74</sup> Other Council of Europe Member States provide for an administrative or a criminal sanction, arrest and further criminal sanctions.

Significantly, in the case of *Yildirim v. Austria*, the CEDAW Committee found that the State's failure to detain the perpetrator after twice violating interim protection measures banning him from the victim's home, workplace and from contacting the victim violated its due diligence obligations.<sup>75</sup>

In all of the examples looked at in this report intentional breaches of electronic monitoring conditions raised the prospect of criminal sanctions. Pathways to prosecution via appropriate communication between the relevant agencies are provided for by law.

## Data protection

There are a number of detailed and binding international standards related to data protection. For example, the first such instrument is the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). In addition, Article 8 para. 1 of the ECHR states that "Everyone has the right to respect for his private and family life, his home and his correspondence". The European Court of Human Rights has defined in its relevant case law the limits to the exercise of each of these rights and, in particular, the extent to which, public authorities have the right to interfere. The development of modern technologies, including electronic monitoring, make it increasingly possible to intrude into an offender's private and family life and to collect, store, process and share large amount of personal data. It is indispensable in criminal justice as in all other spheres of social life to establish a sound framework of specific principles and standards protecting the rights of the concerned individuals.<sup>76</sup>

CM/Rec(2014)4

*12. The handling and shared availability and use of data collected in relation to the imposition and implementation of electronic monitoring by the relevant agencies shall be specifically regulated by law.*

*13. Staff responsible for the implementation of decisions related to electronic monitoring shall be sufficient in number and adequately and regularly trained to carry out their duties efficiently, professionally and in accordance with the highest ethical standards. Their training shall cover data protection issues.*

...

*29. Data collected in the course of the use of electronic monitoring shall be subject to specific regulations based on the relevant international standards regarding storage, use and sharing of data*

*30. Particular attention shall be paid to regulating strictly the use and sharing of such data in the framework of criminal investigations and proceedings.*

*31. A system of effective sanctions shall be put in place in case of careless or intentional misuse or handling of such data.*

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<sup>73</sup> Istanbul Convention, article 53(3)

<sup>74</sup> Council of Europe, Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention, 2017, p21.

<sup>75</sup> *Yildirim v Austria*, Communication no. 06/2005, CEDAW/C/39/D/6/2005 para 12.1.5

<sup>76</sup> Draft Commentary to CM Recommendation (2014)4 <https://rm.coe.int/16806f97b1/>

32. *Private agencies providing electronic monitoring equipment or responsible for supervising persons under electronic monitoring shall be subjected to the same rules and regulations regarding handling of the data in their possession.*

## Use and abuse of data

Data obtained in order to conduct and enforce electronic monitoring very often contains sensitive personal data and sharing of those data could cause a serious risk to the safety of individuals. For example, the location of a safe house or woman's refuge could be disclosed which may put not just an individual victim at risk but all of those that live in the accommodation. Legislation should clearly set out the purpose of the data collection and regulate the automatic processing, storage and sharing of such data, as well as the procedures pertaining to its deletion after a specified period of time.<sup>77</sup> Particular attention should be paid to the purpose for which the data is collected. Data obtained for the purpose of electronic monitoring should not be used for other purposes. Strong safeguards around data protection, encryption and data access are required.

In **Portugal** the creation of a database and the data permitted to be stored in that database is prescribed by law. This data consists of:

- a) Full name, date of birth, affiliation, marital status, sex, place of birth, nationality, known current residence and civil and tax identification number of the perpetrators or convicts subject to electronic surveillance;
- b) Indication of the measure or penalty applied;
- c) Start date, suspension and end of electronic surveillance;
- d) Court and number of the case to which it was decreed;
- e) Types of crimes charged;
- f) Type of relationship between the accused or convicted person and the victim, in case of domestic violence and related crimes;

- g) Date of commission of the facts;
- h) Surveillance installation site;
- i) Electronic surveillance monitoring records.

The law also determines the authority responsible for data processing. Biometric data such as facial images and voice samples are subject to special consideration and in particular the law makes clear that facial images in the database may only be accessed by agents involved in electronic surveillance operations for the purpose of recognising the person under surveillance and not for any other purpose. Voice samples can be collected and recorded to verify that the person under surveillance remains in a given location.

Technicians accredited to access the system are given permission to access the database and are bound by professional secrecy even after the end of their duties.

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<sup>77</sup> Draft Commentary to CM Recommendation (2014)4 <https://rm.coe.int/16806f97b1/>

## Staff Training

CM/Rec 2014:

*34. Staff shall be trained to communicate sensitively with suspects and offenders, to inform them in a manner and language they understand of the use of the technology, of its impact on their private and family lives and on the consequences of its misuse.*

*35. Staff shall be trained to deal with victims in cases where victim support schemes are used in the framework of electronic monitoring.*

*36. In establishing electronic monitoring systems, consideration shall be given to the respective merits of both human and automated responses to the data gathered by the monitoring centre, bearing in mind the advantages of each.*

*37. Staff entrusted with the imposition or execution of electronic monitoring shall be regularly updated and trained on the handling, use and impact of the equipment on the persons concerned.*

*38. Staff shall be trained to install and uninstall technology and provide technical assistance and support in order to ensure the efficient and accurate functioning of the equipment.*

Properly trained staff are essential for the success of any electronic monitoring programme. Because monitoring requires staff to be on call 24/7 in a stressful environment staff turnover can be high resulting in ongoing training needs and particular care to be given to well-being of staff to avoid burn out. Training should cover installing, maintaining and monitoring EM equipment, responding to alerts (genuine or false) and supervising offenders.<sup>78</sup>

Staff responding to violent incidents may feel unsafe conducting home visits and especially so at night.<sup>79</sup> Proper provision for staff safety including where necessary safety equipment should be made. A coordinated approach between all responsible agencies is also required in order to ensure both the effectiveness of the electronic monitoring programme and the safety of staff.<sup>80</sup>

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<sup>78</sup> Belur J. et al (2020)

<sup>79</sup> Tennessee (2007) staff reported feeling unsafe in the context of monitoring sex offenders

<sup>80</sup> Belur J. et al (2020)

## Key considerations

Explicit identification of programme goals and objectives, clarity of roles and responsibilities, and provision of clear lines of communication and governance between various agencies involved in the EM programme are essential for the success of any EM programme.<sup>81</sup> The following are some of the key considerations:

- 1. The state holds ultimate responsibility to protect the victim and ensure sufficient safeguards to uphold the human rights of the perpetrator. This remains the case where all or part of the monitoring process is contracted out to a private contractor. Under no circumstances may electronic monitoring equipment be used to cause intentional physical or mental harm or suffering to a suspect or an offender.**
- 2. Be clear about the type of electronic monitoring being implemented and the technology used. This may need reviewing at regular intervals to take into account new technologies.**
- 3. Take into account any factors such as age, disability and other relevant specific conditions or personal circumstances of each victim, suspect or offender in deciding whether and under what modalities of execution electronic monitoring may be imposed. It may be less suitable for those with disordered lives.**
- 4. Ensuring that all systems and authorities take a victim centred approach will help promote a greater integration of the victim into the justice system process. It enables victims to feel better informed and improves their perception of safety.**
- 5. Obtain the consent of both victim, perpetrator and any relevant household members for electronic monitoring. Perpetrators who do not consent are unlikely to comply which reduces the effectiveness of the monitoring.**
- 6. Electronic Monitoring should not be used in domestic violence cases where there is a serious risk of death to the victim. Alternative such as detention should be used instead.**
- 7. Care should also be taken to make sure that perpetrators that do not pose a sufficiently high risk or threat to the victim are not subject to the restrictions on their liberty that tagging or electronic monitoring entails.**
- 8. Ensure that, in addition to the police and courts, a victim has the right to make an application for an order if she so wishes.**
- 9. Both the victims and the perpetrator should be provided with clear information about their rights and responsibilities in a language and manner that they understand. This may require the information to be given verbally as well as in writing.**

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<sup>81</sup> Belur, J. et al (2020)

- 10. A clear record should exist of the reasons for imposing the order and the date and time on which it takes effect. The perpetrator and the victim should both be given notice of the order. It is essential that the monitoring centre has a copy of the order and any relevant restrictions. If the decision is not made by a judicial authority for reasons of urgency it should be reviewed by a court within a reasonable time.**
- 11. The duration of the order and any restrictions should be clear on the face of the order and communicated to all relevant parties.**
- 12. Minimum standards for the technical equipment including the bracelet, mobile monitoring devices for victim and perpetrator and the equipment used in the monitoring centre should be set out.**
- 13. The distance of the exclusion zones could be prescribed by law. Some discretion may be required to take into account different circumstances for example rural areas and urban areas.**
- 14. The monitoring centre is responsible for monitoring compliance with the relevant order, contacting the perpetrator in case of breach or technical failures and warning the victim of actual or potential breaches of the order depending on the circumstances.**
- 15. The types of issues that will be monitored should be set out with a clear operational protocol for relevant agencies including the monitoring centre, relevant security forces, the police, court staff, the judiciary and prisons.**
- 16. The conditions under which monitoring can be cancelled and who can make such an application should be clearly set out.**
- 17. The conditions under which monitoring may be suspended and/or resumed including for medical emergency, for security reasons, on entry to prison of either the perpetrator or victim or for other reasons should be clear and the procedure to follow in such cases set out.**
- 18. Instructions to the victim and perpetrator and relevant agencies including border guards and immigration staff should be provided to govern the process in the event of voluntary or involuntary departure from the territory.**
- 19. Sanctions for breach must be effective, proportionate and dissuasive.**
- 20. Staff must be adequately trained and sufficient operational safeguards, technical and other data protection measures must be taken to ensure the reliability of the system and confidentiality of the information.**



## Annex 1 - Risk assessment, Emergency Barring Orders and Restraining Orders

### Risk assessment Article 51

Concerns for the victim's safety must lie at the heart of any intervention in cases domestic violence and the authorities are obliged to effectively assess and devise a plan to manage the safety risks faced by a victim on a case by case basis. The risk assessment must consider the threats made, previous instances of violence and in particular the probability of repeated violence including the risk of death and the seriousness of the situation including the possession of firearms by perpetrators. Any measures taken to assess and manage the risk of further violence must also ensure that the rights of the accused are respected at all times. Measures taken should not cause secondary victimisation or increase the harm experienced by victims.<sup>82</sup>

The period of the barring order is left to the individual member state however is usually between 10 days to 1 month and often renewable. A perpetrator should have the right to challenge the order in a court.

### Emergency Barring orders- Article 52 Istanbul Convention

Emergency barring orders are the most effective way of guaranteeing the safety of a domestic violence victim in situations of immediate danger. Immediate danger refers to any situation of domestic violence in which harm is **imminent** or **has already materialised and is likely to happen again**.<sup>83</sup> They are not intended to function as a replacement for other measures such as arrest, detention and prosecution. Moreover, their issuance should not be dependent on the commission of an offence nor linked to proof of criminal responsibility.<sup>84</sup> They include

- ✓ Vacation of the residence of the victim or person at risk for a sufficient period of time
- ✓ Prohibition on the perpetrator of entering the residence
- ✓ Prohibition on contacting the person at risk

### Restraining or protection orders- Article 53 Istanbul Convention

These are complementary to short-term emergency barring orders and can prohibit, restrain or prescribe certain behaviours by the perpetrator including a prohibition on residence, geographical exclusion areas, contact with the victim and/or their children.<sup>85</sup> The key features required by article 53 Istanbul Convention are:

- ✓ Available for immediate protection and without undue financial or administrative burden on the victim
- ✓ Issued for a specified period or until modified or discharged
- ✓ Where necessary, issued on an ex parte basis which has immediate effect
- ✓ Available irrespective of or in addition to other legal proceedings
- ✓ Allowed to be introduced in subsequent legal proceedings.

EBOs and POs must be effectively monitored. Monitoring methods may include:

- ✓ Police patrols
- ✓ Initiating contact with the victim
- ✓ Electronic monitoring for perpetrators prone to violating an order
- ✓ Electronic monitoring in high-risk cases

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<sup>82</sup> Article 51 Istanbul Convention, Explanatory Report to the Istanbul Convention paragraphs 260-263

<sup>83</sup> Explanatory Report to the Istanbul Convention paras 264-266

<sup>84</sup> Explanatory report to the Istanbul Convention para 265

<sup>85</sup> Explanatory Report to the Istanbul Convention paras 267-276

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ENG

[www.coe.int](http://www.coe.int)

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