

KNZ Contribution to: ‘Electronic Monitoring System and Reform in Malta’s Corrective System’

The debate surrounding the corrective methods adopted in our prisons and criminal justice system is an age old one, and one which has remained relevant to the current day. The debate has seen advocacy for a punitive form of justice which calls for punishment for one’s crimes and discipline, focusing on punishment as being a deterrent, as opposed to a more rehabilitative form of justice which provides the perpetrator with an opportunity to learn, reform and redeem themselves before re-entering society.

The proposal contemplated in this consultation would create an electronic monitoring system which would assist in establishing a rehabilitative mentality within Malta’s judicial institutions. Nevertheless, rehabilitation as a judicial concept continues to generate a great deal of controversy and debate, due to many considering it to be a system which would encourage leniency, and not be steadfast enough where necessary.

This proposal may be viewed as a way to avoid prison, however, the proposed regulations are far from such. This being the case due to the fact that the proposed regulations set out specific parameters in which individuals found guilty of a crime are subjected to this system of electronic monitoring, how such a system would be administered and implemented, together with what would be required from the individuals on their part.

To this end, the proposed regulations are also aware of the maturity and responsibility which they must promote, so much so that the document clearly stipulates that this electronic monitoring system will be applicable to people *‘sentenced to an effective prison term of not more than one year, provided that the offence committed is not subject to a maximum punishment of two years’ imprisonment.*

Furthermore, the proposed regulations also state that:

A person convicted by the Court will not be eligible to benefit from an Electronic Monitoring Order if the offense is in connection with:

- *Domestic Violence;*
- *Gender-Based Violence;*
- *Cases where the individual is listed in the register in accordance with Article 3 of the Act on Registration for the Protection of Minors;*
- *An order for maintenance issued by the court or a contract that has not been adhered to;*
- *An order for access to children by the court or a contract that has not been adhered to.*

Henceforth, these policy recommendations balance out the seriousness and stature of our country's law enforcement institutions, alongside the rehabilitation and reform which it seeks to instigate. A more rehabilitative criminal justice system would not only help in fostering a sense of reform and redemption amongst individuals who have come into contact with the law, but also support these individuals in re-integrating into society, while they are monitored while doing so.

Regarding youths in particular, should such a piece of legislation come into force, it would be of immense significance in the life of young people who, for whatever reason, have come into conflict with the law. To this end, this proposal will assist youth in changing their life for the better. The system must be built in a way to assist the convict in reforming and rebuilding their lives, together with being welcomed back into a society which is not judgemental and harsh, but one which is compassionate, caring and understanding.

There still needs to be harsh parameters in order to ensure that the sentence is being followed and not viewed as a way to escape a prison sentence. To this end, the regulations and proposed Electronic Monitoring Act which have accompanied this white paper clearly stipulate what punishments would be initiated should any person who is wearing an

electronic be caught breaking any of these conditions. Furthermore, the regulations contained within the aforementioned act clearly state that:

3. The responsible authority shall monitor the person concerned and shall make immediate contact with that person whenever:

(a) the person has left or entered any area or premises in breach of the electronic monitoring order;

(b) it is suspected that a breach of article 10 of the Act has occurred; or,

(c) the person appears to have breached, or has breached, any condition listed in the electronic monitoring order.

In terms of what is found within the Electronic Monitoring Act itself, it clearly sets out what penalties will be levied should any of the conditions be violated. Apart from an arrest, and a possible subsequent arraignment, any person who is caught to have committed a contravention according to the contents of the aforementioned Act, will be punished in the form of financial and legal penalties which are to be levied should:

(1) Any unauthorised person, including the person concerned, who attempts to or knowingly or deliberately tampers with or removes the electronic monitoring equipment device shall be guilty of an offence and shall be liable, on conviction, to imprisonment of not less than six (6) months and not more than two (2) years and to a fine (multa) of not less than eight hundred euro (€800) and not more than five thousand euro (€5,000) or to both such fine and imprisonment:

Provided that it shall be a defence for a person brought before the Court for the removal of the said electronic monitoring equipment to prove to the satisfaction of the Court that the electronic monitoring equipment was removed in a situation of emergency.

(2) Any person who acts in contravention of any provision of this Act in respect of which an offence is not established under any other article of this Act shall be guilty of an offence and shall be liable to imprisonment of not more than six (6) months, or to a fine

(multa) of not less than two hundred fifty euro (€250) and not more than seven hundred euro (€700), or to both such fine and imprisonment.

In conclusion, the proposed white paper proposes a way forward to changing the way prison is viewed in a more progressive and rehabilitative way. Whilst reminding every citizen of his/her own responsibilities and duties, this white paper positions itself as being the first step of many so as to move away from a punitive criminal justice system based on discipline and punishment, to one based more in rehabilitation and reform.

A handwritten signature in black ink, appearing to read 'Liam Axisa', written over a horizontal line.

Liam Axisa

KNZ President