MORAL AND ETHICAL ISSUES OF USING TECHNOLOGY IN CORRECTIONS

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Abstract: By definition, prisons and jails are places full of unethical people who have made poor choices. They are also places of power where officers have authority over inmates and must choose not to abuse that power. Therefore, in order for an agency to run effectively, it must not only acknowledge the role of ethics in corrections, but also to encourage ethical behaviour by all of those within its walls.

It is common knowledge now to admit that information is present everywhere in human activities, and information and communications technology – from PCs to the internet network and from mobile phones to world communications networks – is at the height of its development and it transforms our lives, our relations and the organisation of society. Technology may be used for institutional corrections or for community corrections. It may equally protect the lives of officers and inmates and may improve the efficiency and the effectiveness of correctional practices.

Keywords: prison, detention conditions, technology, ethics.

INTRODUCTION

An individual's public or private life has become more and more governed and governable due to the exponential growth of information technology. This brings about a set of ethical considerations. Being aware of these issues may be an important part of our development as citizens and it may help us be a little more vigilant and more willing to give up a bit of our privacy and assume a constraint which limits our comfort and a digital indulgence.

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Technology is a help in many ways, but also a hindrance for the corrections field. The challenges are numerous, and technology sometimes evolves faster than people can keep up with it. Therefore, we can say that challenges coming from the use of computers and the internet, cell phones and their applications, body cameras, biometrics and facial recognition, surveillance drones, electronic monitoring and GPS systems, X-rays and scanners are the big trends in corrections technology.

Among others, technology may help detect smuggling in prisons, get information under cover, monitor behaviour and it may alert the staff in case of crisis situations in prisons. Moreover, it may be a viable and less expensive alternative to incarceration for those offenders who committed less serious crimes, provided that their monitoring is efficient.

Mobile phones are one of the biggest concerns for the prison management. There are concerns, on one hand, related to the use of mobile phones in prisons, to phone smuggling, and on the other hand, the use of mobile phones as aids after release from prison.

In 2013, a study was conducted in the United States to determine to what extent the mobile phone technology is helpful in the recovery management after release[2]. Therefore, the study revealed that the Background Mobile technology promised to help people with behaviour disorders due to the use of prohibited substances in the management of their rehabilitation. Incarcerated women had the highest risk. According to the study, women were questioned about the possession of a mobile phone and whether they frequently used text messages, social networks or internet browsing. The survey showed that 83% of the respondents possessed mobile phones, 30% even smartphones, 77% used their mobile phones to keep in touch with friends or family, and they were acquainted to the use of cell phone technology (although most of them had prepay phone cards and not subscriptions), accessing applications or using social networks also on their mobile phones. This led to the conclusion that the large-scale use of cell phone technology by ex- female prisoners was a guarantee of the support they might receive after being released from prison.

As to the use of mobile phones in prisons, there are various issues, from surveillance and intercepting the smuggling or the illegal use of mobile phones to the possibility of permitting their use, hence the ethical issues raised by the matter itself. Mobile phones in prisons are used by some inmates to communicate outside their directions on crimes to be committed by group members who were not incarcerated, to order criminal actions by members of incarcerated groups, to send threats, to bully other prisoners or prison officers or their families, to get prohibited substances or objects inside, etc.

In 2016, a prison in South Carolina[3] implemented a monitoring and interference system of smuggling mobile phones after a prison officer narrowly escaped death from an execution action right in front of his house, which was ordered by mobile phone by an inmate.

There have been reports that old methods like metal detectors and sniffer dogs are no longer sufficient today to detect mobile phones in prisons. A modern alternative exploiting the possibilities of technology could be the use of transmitters that interfere with the cell phone signal, however this matter raises several questions of an ethical nature concerning the protection of health for people who are incarcerated, considering their long exposure to electromagnetic radiations.

2 https://nicic.gov/technology-corrections

3 https://www.correctionsone.com/products/communications/articles/222726187-SC-prisons-get-green-light-for-anti-cellphone-tech/

ROMANIAN CONTEXT

In Romania, according to Law 374/2013 on the use of systems designed to block and interrupt radiocommunications within the perimeters of settings subordinated to the National Administration of Prisons[4], "blocking and interrupting radiocommunications are only for preventing unauthorised use by people who have been deprived of their liberty, inside the prison, of devices capable to send or receive images, sounds and information, including mobile phones."[5]

Ethical issues which might be raised in connection with the implementation of the mentioned rules cannot be taken into consideration at the time being, given that their enforcement has encountered challenges related to legislation and logistics. Therefore, Law 254/2013 on the execution of punishments and measures with deprivation of liberty ordered by judicial bodies in the course of a criminal trial, in Article 15 paragraph 3, refers to a regulation approved by an Order of the Justice Minister on the safety of detention facilities subordinated to the National Administration of Prisons, a regulation which is also mentioned in the Implementation Regulation of Law 254/2013, in Article 13 paragraph 2, but which is still a draft at the moment[6]. Consequently, commenting on how the measures necessary for the safety of detention facilities are implemented and their effects, as well as on setups, devices, their staff and endowment, technical means for surveillance and control of perimeters, indoor areas and access ways, becomes an insignificant endeavour given the lack of required regulations.

The same is valid for the existing Deontological Code of Staff in the Prison Administration System[7], meaning it is not anchored in the immediate actuality considering the amendment of the legislation in the matter, the current needs of technology advances, as well as the implementation of the solutions they provide. Knowing the admissible limits of a prison officer's behaviour in relation to the limits of the morals accepted by society at a particular moment is very important for appraising the ethics of actions, especially in crisis situations, and also for handling the applications concerning the exercise of rights by convicted people.

With regard to the technology used in corrections, we can also discuss the video surveillance of different places inside a prison. Video surveillance systems are vital for ensuring effective security in prisons and facilitating some particular corrections in custody. Incidents involving violence between prisoners, drug use and inappropriate behaviour of officers are only a few examples of unfortunate acts that may happen within the walls of a prison. The advances in the video surveillance technology make it possible for these facilities to update their systems to ensure comprehensive monitoring and a higher level of safety for prisoners and workers.

There are many benefits related to the use of video surveillance equipment. So, it helps to:

- Better cover the monitored area, given its size. While guards and officers cannot be everywhere at the same time, security cameras may provide continuous coverage of a whole facility.
- Constantly monitor a prisoner's activity – the steady presence of surveillance cameras helps officers detect a prisoner's suspicious activity and may prevent the escalation of incidents in prisons.

4 Published in the Official Gazette of Romania No. 825 of December 23, 2013.

5 Article 2 paragraph 1. Paragraph 4: "The system is composed of a specific combination of several types of appliances and, as appropriate, of other devices which are assembled, installed and designed for a permanent use to block and interrupt radiocommunications within the perimeters of settings subordinated to the National Administration of Prisons."

6 http://www.just.ro/proiectul-de-ordin-al-ministrului-justitiei-pentru-aprobarea-regulamentu-lui-privind-siguranta-locurilor-de-detinere-din-subordinea-administratiei-nationale-a-penitenciarelor/

7 Order no. 2794/2004 on the approval of the Deontological Code of Staff in the Prison Administration System, published in the Official Gazette of Romania No. 1098 of November 25, 2004.

- Provide visual evidence – archived recordings of security cameras are a very valuable resource for the investigation of incidents inside prisons.

- Maintain order in common areas – locations were large groups of prisoners are brought together, like dining or leisure areas, need strict surveillance from several security cameras.

- Lower the frequency of attacks – tension is high in prisons, and fights are inevitable. Security cameras may discourage such behaviours and they also help analyse violent incidents.

- Prevent drug smuggling – video surveillance systems help to prevent prisoners from smuggling drugs coming from outside.

- Monitor the behaviour of officers – using images to investigate situations where guards or prison officers acted abusively.

- Make moving around safer – security cameras mounted on hallways and in all cells blocks provide an increased level of safety when prisoners are escorted inside the prison.

- Remote video monitoring – with a network digital surveillance system, users may access images remotely on the internet. Authorised users are able to view several camera streams from their PCs instead of a lonely monitoring camera in the prison.

At the same time, there are collateral risks, such as: inmates manipulating (tampering with) the equipment, and in this case backup security plans should be provided; overdependence, which involves relying too much on this kind of equipment, which may break or have signal interruptions and therefore it should be only a part of the security effort together with appropriate security and surveillance staff, alarm systems and safety measures; violation of privacy – it is a much debated topic, if the cell is a private area, and there are correction systems which acknowledge this status, as well as systems which permit the surveillance of cells in which convicts are detained. Hence the discussion on the ethics of using such surveillance systems.

The Romanian legislation does not provide for any interdiction related to the use of video surveillance equipment in correction facilities. The surveillance of perimeters inside prisons involving common areas, like hallways, entrances or confinement walls is widely used. The law neither prohibits, nor does it stipulate or justify the situations when areas in prisons may be subject to video monitoring. An analysis of the content of the right to privacy has, in my view, with regard to the video monitoring of prisoners, much relevance. Therefore, monitoring the activities of a prisoner within the prison area, as long as the prisoner is in the state's custody and the state is liable for any fact which could affect a prisoner's rights, is justified by a need for authorities' intervention so as to ensure a safety climate in prison, concerning both a particular prisoner, and the other prisoners, generally, or the officers inside the premises. The only limit where the monitoring activity exceeds the general interest is the toilet area, as well as the place where prisoners meet their attorneys, where the confidentiality of the meeting must be ensured.

However, our national legislation provides for the possibility of using remote electronic surveillance systems[8], and the situations when such systems may be used are stipulated by the Implementation Regulation of Law 254/2013 in Article 32. It specifies that these systems may be used only if they meet the requirements of safe use, respect human dignity and are not a hazard for prisoners' health or physical integrity. Such systems have not been implemented in our country, although the legislation allows this

8 Article 27 of Law 254/2013 on the execution of punishments and measures with deprivation of liberty ordered by judicial bodies in the course of a criminal trial.

and provides for such means, for financial considerations and less for reasons related to a non-compliance with legal requirements. These systems would have been a very efficient means for monitoring people on parole or would have contributed to avoid overcrowding in prisons, as a postponement in the enforcement of a punishment, under electronic surveillance, is preferable to incarceration.

NEW TECHNOLOGICAL CHALLENGES

Electronic surveillance tags have not been spared of criticism. They are tools meant to discourage, and not guarantee that people won't commit any more crimes. In the context of the corrections system, electronic monitoring refers to monitoring a person as a form of surveillance, usually in the form of an ankle tag, with the help of GPS. Practices vary widely between jurisdictions, even within a state (as in Australia or USA). Moreover, the application of monitoring differs even between offenders, where specific motives are used for every person, depending on relapse, status or procedural stage, or on offences.

As concerns this surveillance method, there are both appreciations and criticism. Therefore, it may be efficient in assuming the offenders' liability, protecting victims and improving the safety of the community and preventing crimes. All these come with important cost savings, especially when offenders may be securely monitored in the community instead of a prison, or as a mechanism of early release from prison.

Failures came from offenders being able to tamper with the devices and there may be zones without GPS coverage, especially in vast geographic areas. Moreover, human errors in the use of systems may be involved, such as inappropriate monitoring or making unreasonable decisions after an alert.

However, most of research underlines that electronic monitoring may be an efficient tool to discourage relapse. The most efficient practices for the surveillance of offenders in a community are those which identify and reduce the risks of continuing a criminal behaviour. Electronic surveillance is such a practice if, beyond offering offenders a long list of rules for what they should not do, helps them redesign their daily routine diverting it from inclinations for risky activities towards attitudes with much higher positive influences.

Generally, it is imperative that correctional authorities offer rehabilitation solutions which take into account the factors underlying an individual's criminal behaviour. The most efficient approaches employ cognitive-behavioural techniques to provide offenders with skills in making good decisions. Nevertheless, electronic monitoring cannot "repair" the impulsiveness of an offender, their lack of empathy or any other characteristic conducive to crime. Therefore, a technological aid should not be mistaken for a significant treatment.

The same applies to video monitoring in case of the execution of house arrest or home detention[9]. According to a project proposed by the Law School of Swinburne University in Melbourne, Australia, called the Technological Incarceration Project, the intention is to test some advanced form of home detection with the use of artificial intelligence, automatic learning algorithms and electronic motion sensors for the permanent monitoring of convicted offenders. Therefore, they could wear an electronic tag or a tag capable of issuing shocks in case that an algorithm detects an antisocial behaviour or a violation of the rules set for a convict. This assessment would be carried out through a combination of

9 According to a project of Swinburne University's Law School, Melbourne, presented at the Conference "Global Technolgy in Corrections", Lisbon, 2019, https://icpa.org/correctionstech2019/

biometric factors, such as voice recognition or facial recognition. This leads to a shift in the burden of costs related to the incarceration of prisoners from the state to the convict. The virtual prison would also allow offenders to stay with their family and so, it gives some hope that they could be more easily reintegrated into society than if they were isolated in an unnatural living setting[10].

Technology is increasingly playing a role in encouraging prisoners to attain their educational goals and adhere to their counselling programmes on mental health and substance abuse. Beyond these main objectives, technology has also become an integral part of helping prisoners deal with their release, gain technical certifications and acquire new skills to help them qualify for jobs. In this context, there is an issue related to their access to computers and the internet. The fears of imprisonment authorities concerning the inmates' access to the internet are in connection with the possibility of using this means to harass victims, witnesses or to keep in touch with members of criminal groups in order to commit new crimes. Therefore, the recognition of this right to internet access is weighed against limiting or even completely denying online access. Which one will take precedence over the other: the possibility of a prisoner's personal, educational, professional or civic development by keeping them in contact with the progress of the society they have been isolated from or the strict measures blocking any contact of a prisoner, difficult to control, with the outside world? It will be a difficult choice. Any variant has its risks and its subsidiary shortcomings. When weighed, the majority interest will probably come first, but it only can be found out by trying new methods, like the one of slightly loosening restrictions on the use of computers and the internet by inmates. At present, there are several projects in progress in a few states from the United States and in Australia, especially in the area of juvenile delinquency, where access to computer technology was introduced in the educational area for minors in custody, who can use tablets with applications installed to help them learn easier, which are also used for the well-known "video visiting & calling", standing out as a very good remedy for inmates' depressive moods.

An issue has been raised concerning the relations with the new generations of minor delinquents, who are extremely familiar with the information technology and have, due to the massive digitalisation of life, a different approach to all aspects of personal life. In detention centres for minors, there are several categories of expertise in the field of school or digital instruction. Therefore, for common law offenders, school attainment is extremely low (school dropout or multiple school dropout), although, most of them have user skills for IT devices (mobile phones, tablets), and the delinquents who committed technology-related crimes are highly trained (many of them by self-learning) in the IT field. Modern psychological-pedagogical methods consider the possibility of using technologies for learning techniques. The use of information and communications technology in education by rethinking how educational contents are delivered may lead to an improvement of student performance without excessive costs and in a way that is familiar and attractive to them. There are also risks associated with this modern instruction process, as the excessive use of computers may lead to a loss of practical skills in computation and investigation of reality and to a deterioration of human relations. Also, the excessive individualisation of learning leads to a denial of the student-teacher dialogue and the isolation of learning in its psychological and social context. Nevertheless, introducing ICT[11]-based learning methods in a minor's detection environment in connection with their educational process will help them deal confidently with the changes in the labour market, as they are trained for the new types of occupations anticipated in the labour market. Moreover, offenders with IT expertise may be valorised by involving them in the training of their detention mates in their area of expertise.

10 https://www.techdirt.com/articles/20170817/05530038015/welcome-to-technological-incarceration-project-where-prison-walls-are-replaced-sensors-algorithms-ai.shtml

11 Information and Communication Technology.

In countries where projects on the use of ICT have been implemented in detention centres for minors, the outcomes were that, for example, the use of audiobooks helped young people with learning difficulties related to reading and concentration, promoting positive emotions and efficient memorising, led to a familiarisation with technology, having the capability of creating a positive influence and a new social paradigm by focusing on inter-activity.

Using information and communications technology in prisoners' learning was also discussed with regard to adults. So, German correction institutions were interested in the use of an eLearning platform, initially designed for immigrants, which combines Avallain software architecture with high quality learning, and the contents which have been created use Avallain Author as an eLearning tool[12]. This makes it possible to install the software on individual computers or on intranet in a prison, offering easy access for inmates, even if the rollout of updates takes a little longer due to the limited connectivity to the internet of computers in a prison. This measure has led to the development of some useful skills in the inmates' social reintegration process, and also to a better management of their time in prison or a successful communication with the prison staff.

Not lastly, another area where the information technology captured the attention of correction institutions is telemedicine[13]. Today, due to satellite technology, high speed digital connections are available, so that patients may receive a diagnosis and specialist help even in areas far away from civilisation or in the middle of the ocean. Doctors may monitor vital functions, communicate through video transmission with rescue teams and give instructions. The scope of telemedicine also includes medical counselling of patients via the internet or the exchange of documentation and medical records between doctors who are in different places or even in different countries.

The states who opted for this interaction method between prisoners and doctors intended to cut down on costs, improve health or diminish risks resulting from keeping them in hospital. Most states resorted to telemedicine to some extent for treating prisoners who most of times found themselves in remote areas[14]. This allowed the correction officers to keep potentially dangerous prisoners behind bars for treatment rather than bearing the cost and the security risk of taking them to hospitals[15].

There are voices that criticize the excessive use of telemedicine when instead of being used as a supplement for the medical staff in hospitals or medical offices in prisons it becomes its substitute, and sometimes it is necessary, for a precise diagnosis, that the doctor examines the inmate directly.

In Romania, a telemedicine system in the public health system has been implemented for emergency medicine and a project is prepared for primary assistance in order to help family physicians, especially those in rural areas. The first telemedicine network for epilepsy in Romania was inaugurated in Cluj-Napoca. The implementation of the telemedicine system in prisons involves some substantial investment in specific technology, which initially raises a major issue of financial resources.

The issue of using technology in our lives has come with concerns regarding the protection of personal data.

12 https://www.checkpoint-elearning.com/node/17987

13 Telemedicine is the use of telecommunications and technology to provide remote medical assistance. Telemedicine helps to remove barriers related to distance and may improve access to medical services, which, otherwise, would not be available in some communities.

14 Florida and Texas were the first states that implemented telemedicine as early as in the 1980s.

15 https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/01/21/state-prisons-turn-to-telemedicine-to-improve

In the implementation of solutions provided by artificial intelligence or information and communications technology in the corrections system, the protection of personal data should also be considered, and national laws in the area should provide protection and observe the related rights.

The national laws regarding the protection that have been adopted so far in other countries provide for some individual rights, such as:

- the right to automatically receive particular information, irrespective of where it is collected from;

- he right of access to data, generally, and, particularly, to stored personal data and an individual's right to require, closely in accordance with reality, the correction of stored data concerning them directly;

- the right to object to some particular data processing or data communication.

These laws require that institutions processing data have good experience, ensure efficient and safe management and comply with some obligations.

CONCLUSIONS

Our laws concerning the execution of punishments or educative/preventive or safety measures leave for the Implementation Regulation only one law in the field of execution, that is Law 254/2013, to regulate the issue of personal data protection. It is also true that artificial intelligence in the area of correction in Romania is not so used as to create a legislative basis for the protection of related rights.

According to the Regulation, the National Administration of Prisons may use or create computerised applications for the management of data referring to the purpose of punishment, as well as of data referring to related or auxiliary activities. Moreover, taking photographs and audio-visual recording of prison activities are allowed only with the permission of the detention director. But neither the law, nor the regulation specifies what rights are protected in connection with personal information, such as informing the prisoner about their surveillance within the walking perimeter or when a request is made for information of public interest included in documents containing personal data of a prisoner.

According to a decision of the High Cassation and Justice Court, in case of requests for free access to information of public interest based on the provisions of Law 544/2001, when the information of public interest and the information concerning personal data is included in the same document, irrespective of its support or form or the manner in which it is expressed, the access to information of public interest is provided with the anonymisation of information regarding personal data. A denial of access to information of public interest, when the information concerning personal data is anonymised, is unjustifiable[16].

Considering, probably, the dynamics of innovation in the field of information and communications technology, the implementation of a solution in this field encounters many times people's incapacity to quickly process these solutions, to integrate and sustain them in legislative and financial terms or with appropriate human resources. Public services have many times significant difficulties in taking over state-of-the-art solutions from the fields of science and technique, bureaucracy being most times the cause. The correctional system is not an exception.

16 Decision of the High Cassation and Justice Court No. 29/2015, published in the Official Gazette of Romania, No. 51 of January 25, 2016.

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