



The role of the practising lawyer in Electronic Monitoring in Portugal

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The role of the practising lawyer in Electronic Monitoring in Portugal

- **The role of the lawyer in criminal proceedings**
 1. **Practising criminal lawyers are a fundamental element of the system of administration of justice**
 2. **The role of practising lawyers is constitutionally protected**

Art. 208 Portuguese Constitution

“The law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an element that is essential to the administration of justice.”

- Legal privilege
- Immunities
- Right to exercise the rights’ of the client in proceedings
- Right to have access and to consult with the client





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- **The role of the lawyer in criminal proceedings**

Art. 20(2) Portuguese Constitution

“Subject to the terms of the law, everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority.”

Art. 32(3) Portuguese Constitution

“Suspects/accused persons have the right to choose counsel and to be assisted by him in relation to every procedural act. The law shall specify those cases and phases of procedure in which the assistance of a lawyer is mandatory.”





- **The role of the lawyer in criminal proceedings**
 3. **Providing legal advice to suspects/defendants, victims and witnesses, from the onset of proceedings (i.e. first police interview or search, etc.)**
 4. **Representation by a lawyer is possible at any stage of criminal proceedings and also after a sanction has been imposed**
 5. **Representation is mandatory whenever:**
 - **A person is arrested**
 - **A person is interviewed, if she is arrested or if the interview is conducted by a prosecutor or judge**
 - **If the suspect does not speak Portuguese, is under 21, has a speech/hear/sight impediment, cannot read or write or might be mentally ill**
 - **In all procedural acts after a formal indictment is brought**





- **Electronic Monitoring**
 1. **As bail condition during criminal proceedings (alternative to pre-trial detention)**
 2. **As bail condition during criminal proceedings (restraining orders - domestic violence)**
 3. **As criminal sanction**
 4. **As adaption to early release**
 5. **As modification of execution of prison sentence**





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- **The role of the practising lawyer**

1. **Assessing the legal requisites for EM to be applied**

- Bail Measure alternative do PTD – applicable sanction; risks (204 CPP) + proportionality – PTD is *ultima ratio*
- Bail Measure / restraining measure – DV; risks
- Sanction – sanction to be imposed; client's personal condition; reintegration
- Adaptation to early release – objective requisites; reintegration
- Modification of execution of sanction – objective requisites

2. **Informing the client of EM requisites, conditions, benefits and contacting third persons who must give consent**

3. **Substantiating the fulfilment of the legal and factual requisites by means of reasoned request to the court**

4. **Asking for exceptional permissions to the court (or EM service)**

5. **Evtl.: using EM services to produce evidence in court (in particular DV cases)**





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Thank you for your attention!

Questions or remarks?

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