

## Victims & Offenders

An International Journal of Evidence-based Research, Policy, and Practice

ISSN: (Print) (Online) Journal homepage: <https://www.tandfonline.com/loi/uvao20>

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To cite this article: Esther Montero Perez de Tudela (2020): Telematic Control and Semi-Freedom as a Response to the Pandemic: The Spanish Penitentiary System Experience, *Victims & Offenders*, DOI: [10.1080/15564886.2020.1819496](https://doi.org/10.1080/15564886.2020.1819496)

To link to this article: <https://doi.org/10.1080/15564886.2020.1819496>



Published online: 21 Oct 2020.



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# Telematic Control and Semi-Freedom as a Response to the Pandemic: The Spanish Penitentiary System Experience

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## ABSTRACT

In response to the pandemic that started in early 2020, prison systems around the world have adopted various strategies to prevent the spread of Covid-19 (coronavirus disease 2019). In Spain, the main strategy used by the State Penitentiary Administration against the pandemic has focused on the use of the “third degree” of prison or “semi-freedom” with telematic control (or electronic monitoring, as it is better known in the rest of the world). While in closed prisons the main measures to manage the pandemic have been focused on avoiding contact with outside, in open prisons inmates who could have introduced the virus into prison facilities due to their semi-freedom have been released and sent “home,” in order to prevent the spread of the virus. The author analyzes the data provided by the Spanish prison statistics during the pandemic, illustrating the evolution of the numbers of convicts classified in “open regime” and under electronic monitoring. At the same time, the author highlights some of the ethical and public security implications that might be posed by the quasi-massive release supported by the expansion in the use of open regime with telematic control, and some recommendations thereon are proposed.

## KEYWORDS

Spanish penitentiary system; Covid-19; prison population; electronic monitoring; semi-liberty; pandemic; alternatives to incarceration; early release mechanisms; prison reform

## Introduction

As in other countries, in Spain the coronavirus disease 2019 (Covid-19) crisis has had an important impact on the penitentiary system. Leaving aside the measures adopted within the penal system’s prisons to face the pandemic (suspension of prison leave, suspension of communication and visits, etc.), the most important effect of Covid-19 on the penitentiary system has been the reduction of the prison population, not only in absolute numbers, but also in the number of inmates serving their sentence inside the prison walls. This article will cover mainly the administration of Spain—the State Administration. The autonomous region of Catalonia enjoys extensive autonomy in the field of sentence execution, and therefore can deviate from state policy and practice in this respect. This article does not cover Catalonia.

According to the most recent data provided by the statistic of the Council of Europe (called Space I), from mid-March to mid-April, “the spread of the pandemic had a direct effect on imprisonment: the vast majority of prison administrations showed decreasing

or stable prison population rates” (Aebi & Tiago, 2020, p. 1). According to this data, Spain is considered as one of the countries showing a stable evolution during the first month of the confinement.<sup>1</sup> Aebi and Tiago (2020) argued that there are three reasonable explanations that can explain the decrease (or stability) of the prison population in Europe: a drop in crime, a reduction of judicial activity in the penal system, and the release of inmates. Concerning the first explanation, and according to the situational-based criminological theories (Clarke & Felson, 1993; Wikström, 2014; Wikström & Treiber, 2016; Wortley & Tilley, 2014), it makes sense to think that the confinement or lockdown has had an impact on the criminal activities, reducing opportunities to commit a crime. On the one hand, the restrictions on leaving one’s home and the closures of businesses affect crime rates, at least as far as traditional crimes are concerned. On the other hand, judges, prosecutors, and judiciary staff have been confined as the general population, and consequently fewer people has been involved in a penal process during this period, and fewer therefore sent to prison. Concerning the third explanation, the release of inmates, one should exercise some degree of caution. There are various types of “release” from prison around the world (e.g., conditional release, open regime or semi-freedom, home detention, liberty under telematic control [or electronic monitoring, as it is better known in the rest of the world], etc.; Van Kalmthout & Durnescu, 2008, see also Dünkel et al., 2018; Padfield et al., 2010), and some of these mechanisms do not reduce the total prison population number. A person placed in open regime or under telematic control continues serving the prison sentence initially imposed. In Spain, prison population data includes, in addition to the persons on pretrial detention or remand (i.e., persons being in prison awaiting trial), all sentenced persons serving their prison sentences, even if they are doing it outside prison walls. Therefore, convicts placed in open regime and under telematic control are still counted as part of the prison population.

In Spain, custodial sentence implementation is quite flexible. The judge establishes the formal sentence (the length of the sentence). Still, the manner in which it is implemented depends on several factors, mainly relating to the behavior of the convict. Thus, the sentenced person can progress to the open regime or third penitentiary degree (the semi-liberty regime, which will be explained subsequently) from the very beginning of the sentence, with a few exceptions.<sup>2</sup> Spain’s open regime has several different modalities, each offering different levels of freedom. One involves electronic monitoring or telematic control (as it is called in Spanish legislation), resembling conditional release in other jurisdictions: the convict has a normal life, is living at home, and, among other possible measures, has to communicate regularly (call, visit, or meet) with the prison officer in charge of their case.

Covid-19 confinement was ordered on March 14<sup>3</sup> in Spain, and although during the first month the confinement did not have a significant impact on the prison population, one can observe a decline in the following months. In addition to this decline, an increase in the use of the open regime in its “remote control” modality has taken place, decreasing de facto the Spanish prison population. In order to better understand the evolution of the prison population in Spain and the most important effects of Covid-19, this article will be divided in four sections. The first section will be focused on a brief introduction of the Spanish penitentiary system, to provide the reader with a global overview of its functioning and with information that can be useful to understand the data presented subsequently. The second

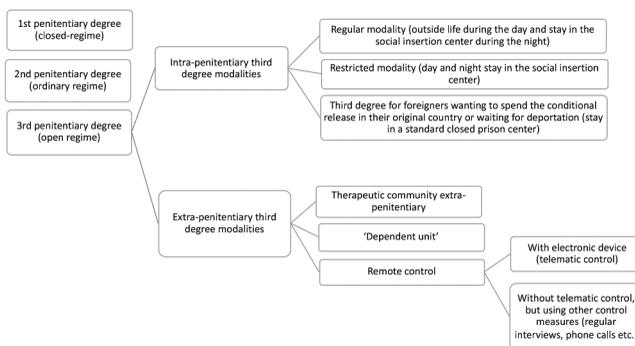
section will be focused on the evolution of Spanish prisons during the last months. The Spanish strategy against the pandemic will be covered in the third section. Finally, the fourth section will be dedicated to discussing some of the eventual ethical issues related to the expansion in the use of electronic monitoring, and some possible recommendations to monitor or supervise the eventual impacts of the Spanish penitentiary strategy in the face of the Covid-19 pandemic.

### **The Spanish penitentiary system in brief: The use of open regime and telematic control**

The Spanish Penitentiary Administration is responsible for the execution of almost all sanctions and measures imposed by the Spanish penal justice system. Leaving aside the execution of some penal measures (mainly disqualifications)<sup>4</sup> that are under the supervision of the State Security Forces, custodial penalties and the community sanctions and measures are the domain of the Penitentiary system. Thus, the Spanish Penitentiary Administration involves the prison and probation systems in Spain (Montero Pérez de Tudela & García, 2016).

The Spanish penitentiary system is not in a strict sense a “progressive system.” Aiming to achieve the full re-education and social reintegration of sentenced persons, the Spanish system is based on the “scientific individualization principle” (Aranda Ocaña, 2013; Cid & Andreu, 2017; Montero Pérez de Tudela, 2019, p. 230; Pastor & Torres, 2017, p. 127). This principle implies that an individual treatment program (oriented to the rehabilitation of the offender) is developed for each convict. In addition, the Spanish Penitentiary system is divided in three “degrees” or regimes (each degree corresponds to a regime). In the context of custodial sentences, depending on the content of the treatment program and the profile of the offender, the individual will be classified in one of the three penitentiary treatment degrees (Cid Moliné, 2002; Montero Pérez de Tudela & García, 2016, p. 4; Nistal Burón, 2016). The first degree is dedicated to the most dangerous offenders and is focused on security and restricted movement. Inmates classified in first degree are placed in the closed regime. The second degree constitutes the ordinary regime, and is open to the vast majority of prisoners. This last regime is characterized by more freedom of movement within the prison and the availability of many activities. The ordinary regime is applied to inmates classified in second degree, but also to those awaiting trial (in pretrial detention) or not yet classified. The third degree, or open regime, comprises a semi-free mode of life (see Cid Moliné, 2005). There are different modalities of third degree (see Figure 1), some of which fall within the concept of “probation,” as understood in the rest of Europe and United States (i.e., a set of measures and sanctions—alternatives to imprisonment—involving the supervision of the offender in the community; Abadinsky, 2009; Labrecque, 2017; Taxman, 2012; Van Kalmthout & Durnescu, 2008).

Broadly, in order to classify a convict into one of the three penitentiary degrees, an assessment of the behavior and evolution of the sentenced person is made by a technical team, taking into account factors such as their personality, the seriousness of the offense, their criminal history, family and social circumstances, etc. In the Spanish penitentiary system, each convict has a technical team responsible for their case, composed of jurists (prison lawyers), psychologists, educators, and social workers. This team plans and monitors the execution of sentences, develops an individual treatment program for each convict,



**Figure 1.** Spanish penitentiary modalities of third degree.

and presents its proposals to the prison's decision-making body (in both open or closed prisons), known as the treatment board. In all the prison facilities the treatment board revises the classification and the treatment program of each convict every six months.

A convict can be classified directly and initially to third degree—without having to transition through the lower grades—as long as the individual meets the necessary conditions. Briefly, to be classified to third degree (open regime) the convict has to meet the requirements both of being ready and of making good use of the semi-liberty.<sup>5</sup> Those classified in third degree are sent to the social insertion centers, a kind of “open prison” for people placed in the open regime. These establishments are usually placed near cities in order to allow their residents or those allocated to them to have a “normalized life.” Inmates classified in the third degree, including those under electronic monitoring, those conditionally released, those sentenced to an alternative penalty or measure, and those whose sentence has been suspended under certain kinds of conditions that require follow-up, are assigned to a Social Insertion Center (Montero Pérez de Tudela & García, 2016, p. 5), always depending on the Spanish Penitentiary Administration.

In this context, two major groups of third-degree modalities can be discerned: extra-penitentiary and intrapenitentiary. It is the first group that has been promoted during the pandemic.

Depending on the aim pursued by the classification in open regime (e.g., to achieve the semi-liberty, to receive drug treatment, to take care of children or another relative, to undergo supervision with electronic monitoring, etc.), and depending on the personal conditions, the convict will either stay in Social Insertion Centers, or will enjoy an extra-penitentiary third-degree regime. Thus, normally, those inmates placed in open regime live in Social Insertion Centers, can go out during the day (e.g., to work, to find a job, to visit the doctor, etc.) and spend the night in the center. But there are other situations in which they can stay at another location—one which differs from a prison facility (Martí-Barrachina, 2019, p. 215):

-To provide care for relatives and children, because of illness, or for employment which requires particular time conditions, the convict can be placed under telematic control, known worldwide as electronic monitoring, and can live at home. In these cases, electronic control can be replaced for another type of appropriate remote-control measure (regular visits to the prison officer responsible for the case, phone calls, etc.)

-When a convict had (or still has) important drug problems, instead of being sent to a Social Insertion Center, the individual can be placed—directly from prison—in a therapeutic community extrapenitentiary (i.e., external to the prison facilities).

-In addition, a convict can also stay—although this is not a common scenario—in a “dependent unit.” These units are residential facilities outside the prisons, managed through the collaboration of public or private entities, to facilitate the achievement of specific objectives of penitentiary treatment of inmates classified in third grade (e.g., to accommodate mothers with babies when the parent is serving a sentence but the child is too old to live inside the prison).<sup>6</sup>

These three modalities, which have in common that the sentenced person does not reside within the Social Insertion Center, together constitute the group of extrapenitentiary third-degree modality.

It can be also noted here that foreigners may have access to the third degree when they want to spend their conditional release in their country of origin, or when they are going to be deported, but these cases have not increased (rather the opposite) during the pandemic. In the same line, together with this modality, there is another category of third degree that has decreased drastically during the pandemic: restricted modality of third degree (Cid & Ibáñez, 2019), which involves the obligation for the convict to remain in the Social Insertion Center the whole day (with a few exceptions).<sup>7</sup> As will be argued subsequently, the cases classified in third degree in these last two modalities have decreased during the pandemic in favor of extrapenitentiary modalities, mainly in favor of open regime under telematic control.

Focusing on telematic control, it should be noted that the Spanish penitentiary system has several varieties of means available to control inmates from a distance. Specifically, a bracelet or anklet linked to a telephone detector and the personal locator via GPS are the most used measures for inmates classified in third degree and for prison leaves.<sup>8</sup> When electronic monitoring is used for those classified in third degree, convicts enjoy a regime of life practically akin to freedom. As understood throughout the rest of the world and explained by Nellis (2015), the long established and widely-used “term ‘semi-liberty’ captures quite well the kind of control that electronic monitoring imposes” (p. 16). Certainly, in Spain, although the open prison regime or third degree might be regarded as a semi-parole system (Cid & Ibáñez, 2019), and when used with electronic monitoring or other kind of remote control (and therefore without the obligation of being in a prison facility), it constitutes a regime of life in practical terms similar, if not equal, to the conditional release or parole regime (as known in United States). Of course, these electronic monitoring systems can provide restrictions on movement that may be considered appropriate, depending on each case, to support social integration and public safety (Secretaría General de Instituciones Penitenciarias, 2014, p. 24). Nevertheless, the same disposition allowing the use of telematic control also allows the use of “other measures” to monitor the convict remotely. The Spanish Prison Rules, dating from 1996, states that “in general, the minimum time of stay at the Center (social insertion center) will be eight hours a day, having to spend the night in the Establishment, except when, on a voluntary basis, the convict accepts the control of his presence outside the Center by means of adequate telematic devices, provided by the Penitentiary Administration, or other sufficient control mechanisms, in which case the convict will only have to stay in the Establishment during the time established in his (or her) treatment program to carry out treatment activities,

interviews and face-to-face controls” (art. 86.4). Note that the remote control regulated in this modality of third degree can be implemented through electronic devices or not, requiring only “sufficient” control measures (e.g., regular interviews). This is an important point because this possibility allows to apply this remote control modality of open regime even when electronic devices are not available, which has been also used eventually to face the pandemic situation in the penitentiary facilities in a few cases, as will subsequently be seen.

In the Spanish State General Administration,<sup>9</sup> when telematic control is applied during the execution of the custody sentence—as an extrapenitentiary modality of third degree—is directly managed by the Penitentiary Administration. The electronic devices are provided by a private enterprise (Attenti Group)<sup>10</sup>; however the management of telematic control falls within the Penitentiary Administration’s central services, in practice under the competence of the Telematic Control Area.<sup>11</sup> The central management of the available electronic devices and the centralized control of the users under telematic control is implemented by the Electronic Surveillance Operational Center (sp. COVE), located in the Social Insertion Center of Victoria Kent (in Madrid). In relation to the facility-based services, to monitor those users under telematic control in each province, social insertion centers generally have a telematic control unit, responsible for the supervision of convicts placed under electronic monitoring.

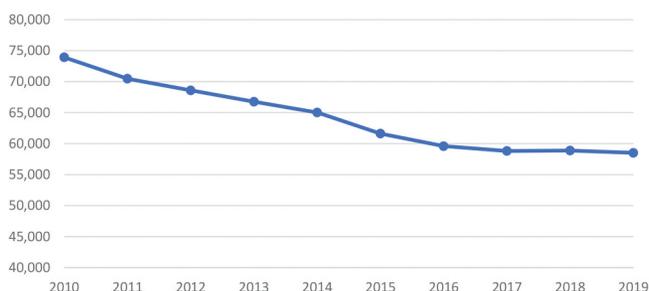
## Evolution of the prison population before and during the pandemic

The Spanish penitentiary population has been decreasing during the last decade, being somewhat stable during the last three years (Secretaría General de Instituciones Penitenciarias, 2019, p. 21).

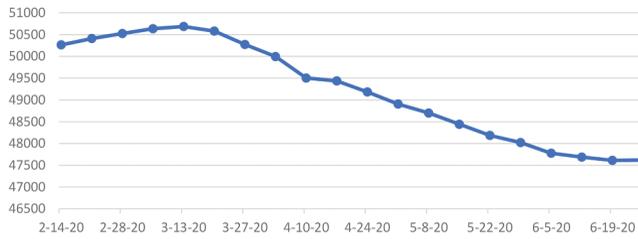
As illustrated previously in [Figure 2](#), from mid-2016, the evolution of the Spanish prison population has had almost no variation.

Nevertheless, during the period of Covid-19 confinement the decrease of the prison population has been more pronounced. Focusing on the pandemic period, from the beginning of March to the end of June 2020, can be observed a decrease of, approximately, 3,000 persons in the Spanish prison population ([Figure 3](#)).

The State of Alert was decreed in Spain on March 14, 2020, establishing the period Covid-19 confinement one day later. The de-escalation started on May 4, with the State of



**Figure 2.** Evolution of the Spanish prison population from 2010 (data at December 31 each year). Source: based on the data provided by General Secretariat of Penitentiary Institutions.



**Figure 3.** Evolution of the Spanish prison population during the State of Alert. Source: based on the data provided by General Secretariat of Penitentiary Institutions.

Alert ending completely on June 21, 2020. The evolution of the Spanish penitentiary population thus shows a clear decreasing trend during the whole State of Alert.

If these figures are compared with those from last year, the variation results in an important decrease. At the end of June 2019<sup>12</sup> the prison population was 59,398, compared with the same date in 2020,<sup>13</sup> at which it was approximately 47,600 (a variation of  $-19.83\%$ ). Focusing on the pandemic period, in March 2020,<sup>14</sup> at the beginning of State of Alert, the prison population in Spain was 50,635, so the resulting percentage variation was finally, approximately,  $-6\%$ .

That means that Spain, in relation to the impact of Covid-19 on the penitentiary systems in the European context, the prison population can be considered as “decreasing,” rather than “stable.” In fact, in June 2020 the Spanish prison population figures dropped to an all-time low.

There is one main cause of this decrease in absolute figures: a fall in admissions to prison during this period. People from outside the penitentiary system, especially those who are not familiar with the accounting treatment of the prison data, may conclude that the diminution of the prison population in Spain is due to the expansion in the use of the open regime. It is a fact that (as will be seen in the next section) thousands of inmates have been sent “home” in third degree under remote control, but as explained in the first section of this article, all these convicts placed in third degree (even in an extrapenitentiary modality) are included in the total prison population figures in Spain.

According to the data provided by the General Secretariat of Penitentiary Institution, between March 14 and June 18, 2020, there were 3,847 new admissions into prison facilities, compared with 7,273 releases from penitentiary centers. Certainly, before the Covid-19 confinement, approximately 2,000 new persons per month were placed in the penitentiary institutions regularly. In April 2020, this figure was 806,<sup>15</sup> which was also the figure for May.

Differentiation should therefore be made between two distinctive aspects. The promotion of the open regime and the expansion in the use of the telematic or remote control is the strategy adopted by the Spanish Prison Administration to face the pandemic, in order to stop the spread of the Covid-19 virus. This involves an active role by the administration. But the main cause explaining the reduction of the prison population in absolute figures is the sharp reduction of the prison admissions since March 2020, principally due to the slowdown of judicial activity in the penal system (and the eventually diminution of the traditional criminality), as natural consequence of the confinement.

## The Spanish strategy against the pandemic: Open regime and telematic control as a remedy to prevent the spread of Covid-19

As explained previously, in order to avoid the spread of the Covid-19 virus, the Spanish prison administration has opted for relocating inmates outside prison establishments. By doing so, the administration avoided direct contact between convicts and prison officers, as well as between convicts themselves. The decision has been to downsize the number of prisoners held in the Social Insertion Centers dedicated to the open regime (and semi-liberty modalities), and to place as many prisoners as possible under telematic control.

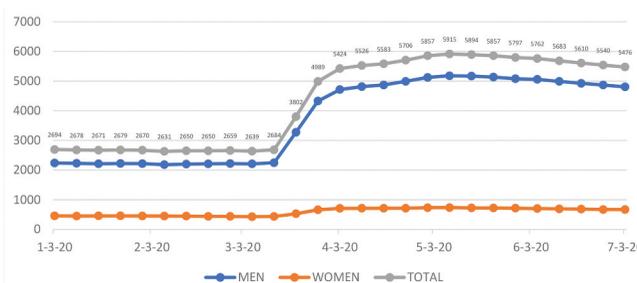
While in closed prisons (for inmates in second and first degree or those not classified)<sup>16</sup> the main measures have been focused on avoiding contact with outside (cutting communication and visits, suspending prison leave etc.), in open prisons (for those placed in third degree with daily contact with outside) the strategy has been focused on the promotion of the extrapenitentiary modalities of third degree, mainly the release of convicts under telematic control.

As explained previously, in the context of the Spanish State General Administration, the management of the telematic control falls within the competence of the Prison Administration (public administration), but the electronic devices are provided by a private enterprises. On average, approximately 6,000 electronic devices are available to be installed to users of the Spanish prison system.

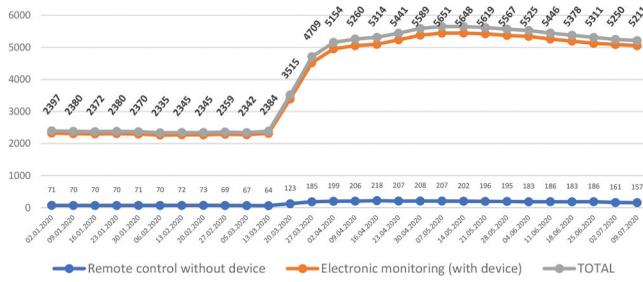
According to the data described previously, once the State of Alert Decree was issued (on March 14), the increase in the use of the extrapenitentiary modalities of third degree did not stop until the first week of May, at which point the de-escalation started, having reached record highs (see [Figure 4](#)).

Looking closely, it can be observed that most third-degree cases during the pandemic were under the modality of telematic control. Certainly, about 200–250 cases on average (per month) were placed in an external therapeutic community (for drug addicts) or a “dependent unit” (as explained previously). Almost 96% of the 5,915 convicts classified in extrapenitentiary modalities of third degree at the beginning of May 2020 were under “remote control.” Most of these inmates were carrying an electronic device ([Figure 5](#)).

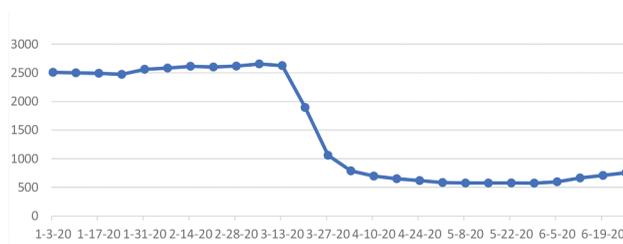
On the other hand, the number of prisoners placed in various open regime modalities, which oblige convicts to remain permanently within the social insertion center or other prison facility have decreased during the pandemic period. In practice, two modalities are included in this category: third degree for foreigners awaiting expulsion or deportation, and



**Figure 4.** Evolution of the extrapenitentiary modalities of third degree during the pandemic. Source: based on the data provided by General Secretariat of Penitentiary Institutions.



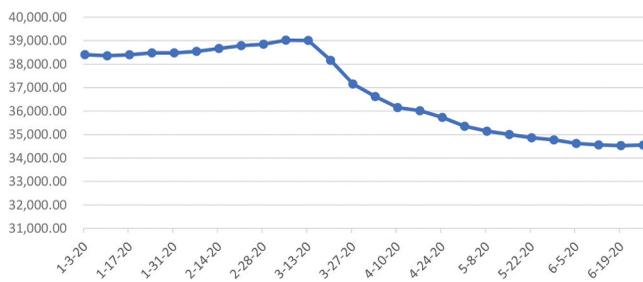
**Figure 5.** Evolution of the remote-control modality of third degree during the pandemic. Source: based on the data provided by General Secretariat of Penitentiary Institutions.



**Figure 6.** Evolution of the restricted modalities of third degree during the pandemic. Source: based on the data provided by General Secretariat of Penitentiary Institutions.

third degree restricted modality (explained in the first section of this article). These restricted modalities of third degree have decreased during the pandemic period (Figure 6).

The evolution of the total number of people placed in closed and ordinary regimes also follows a similar decreasing trend during the period of the pandemic. Looking at the number of convicts placed in ordinary and closed regimes, and also taking into account people sentenced who are placed in an intrapenitentiary modality of third degree and therefore have the obligation of staying in a social insertion center (physically occupying a cell), it can be observed how the number of persons actually placed “behind bars” has reduced (Figure 7).



**Figure 7.** Evolution of the number of inmates in ordinary and closed regime, and in an intrapenitentiary modality of open regime. Source: based on the data provided by General Secretariat of Penitentiary Institutions.

So, the real number of prisoners physically serving their sentence in prison has gone down during the pandemic period. This promotion of the extrapenitentiary modalities of open regime or third degree, together with the reduction of the number of admissions in the Spanish prisons (more than 1,000 cases less per months) has made the prison population in Spain more manageable in real terms.

Evidently, in a situation of alert, the treatment perspective behind the promotion of the open regime and semi-liberty modalities of third degree has been sacrificed in the favor of a sanitary one. To face the pandemic, the Spanish Penitentiary Institution has encouraged and promoted measures allowing the enforcement of the sentence outside the penitentiary establishments, by promoting the expansion in the use of alternative measures to imprisonment. The reason behind this decision was clear: to avoid the interaction of convicts who were enjoying regular contact with society. Therefore, more than 3,000 convicts have been placed in third degree under telematic control during the pandemic period.

Leaving aside the debate about the readiness of de facto released people to enjoy freedom, one can observe that the strategy implemented by the Spanish prison administration has been quite effective. The impact of the pandemic in the penitentiary centers of the General Secretariat of Penitentiary Institutions (eg excluding the Catalonia penitentiary centers),<sup>17</sup> has been four times less significant in prisons—in terms of the number of infections—than in the rest of Spanish society. The mortality rate and the hospitalization rate have been 10 times less and 7 times less in prisons than outside, respectively. Only two inmates have died due to Covid-19 (out of more than 50,000 prisoners held in penitentiary facilities in March 2020). In relation to the officers, this figure rises to four deceased staff out of about 24,000 penitentiary professionals working in the prison system. For the reasons described previously and observing outcomes it can be concluded that the Spanish strategy to stop the spread of Covid-19 virus was effective.

## **Discussion and recommendations. Complex and ethical issues**

Starting from the idea that the decisions taken by the Penitentiary Administration during the pandemic have proved to be appropriate and effective, it cannot be forgotten that more than 3,000 persons, who were not under telematic control at the beginning of the pandemic, have been “sent home” during the confinement. This quasi-massive release can raise some ethical questions (see Bülow, 2014). One can ask: Were all this people ready to be reincorporated into society?

As seen previously, an individual assessment of each convict is made when the penitentiary classification or revision of the classification is implemented, and several factors (e.g., personality, criminal history, family and social circumstances, treatment progress, etc.) are assessed. Thus, it can be argued that if all the people—later placed under telematic control—that had not been classified in an extrapenitentiary modality of open regime before the confinement, it is because they did not meet the conditions. Therefore, it can be argued that all the resolutions relating to the modality of third degree under electronic monitoring have been taken mainly because of the pandemic. This fact may be reprehensible from a treatment point of view.

Certainly, if the State of Alert had not been decreed, the majority of the people placed under electronic monitoring during March and April 2020 would have remained in a prison facility (mainly in a social insertion center), so it can be claimed that all these administrative

resolutions have been “instrumental” and not justified on the behavioral evolution and the treatment progress of these convicts. This fact can pose some questions about the public safety, and some research should be implemented during the next months to follow and monitor the recidivism rates. When a convict is released too late and is not included in a transitional program (dealing with criminogenic needs and improving the convict’s social bonds) the risk of recidivism is higher (Dünkel et al., 2010; Petersilia, 2003). Early release followed by constructive supervision is one of the factors that can reduce reoffending (Capdevila, 2015; Luque et al., 2004). But applying early release when the person is not yet ready, the treatment program is not completed or the social conditions are still not adequate, can have arguably a detrimental effect on recidivism. Because more than 3,000 cases placed under electronic monitoring were assessed with great haste and based on health-related criteria, it would be recommended that they are revised once the pandemic over.

In addition, even if today there is no doubt about how cost- and socially effective the use of electronic monitoring is (Bagaric et al., 2018; Padgett et al., 2006; Whitfield, 1997; Yeh, 2015), and that new electronic monitoring technologies open up new monitoring and surveillance possibilities (Graham & McIvor, 2017), authors have warned of the risk that excessive focus on control might omit the treatment perspective (Nellis, 2015).<sup>18</sup> As suggested in the recommendations of the Council of Europe (2014, p. 4), electronic monitoring “should be combined with other professional interventions and supportive measures aimed at the social reintegration of offenders.” Certainly, electronic monitoring is not rehabilitative itself, and needs to be accompanied by a treatment program (Nellis, 2015, p. 16). There is an international evidence-based consensus on the need to use electronic monitoring in tandem with supervision and support, in order to maximize the opportunities of rehabilitation and desistance for the offender (Belur et al., 2017; Graham & McIvor, 2015; Nellis et al., 2013). “Without complementary supervision and support, the impact of Electronic Monitoring may be limited to its duration, with only modest short-term benefits when monitoring ends” (Graham & McIvor, 2017, p. 10). The manner in which the classifications in third-degree with telematic control has been produced during the pandemic (with urgency and conditional on health requirements), might give the impression that the rehabilitative perspective is presumably missing in these decisions, or is at least partially absent. Thus, when possible, a reassessment of the cases under telematic control from a rehabilitative perspective could be recommended, in order to properly develop treatment interventions.

In line with this rehabilitative perspective, the question of using remote surveillance to replace human contact has recently been reported by other authors (McNeill, 2017; Nellis, 2015, 2014; see also Pattavina & Corbett, 2019), but in the present case, the expansion in the use of electronic monitoring has been promoted precisely to avoid human contact during the pandemic period, in order to prevent the spread of Covid-19. Thus, no criticisms can be made in this respect regarding confinement time. It can only be hoped that once the pandemic has finished, the use of electronic monitoring focused on control and supervision—unrelated to the human contact—is not here to stay. As explained by Nellis (2015), “the potential of Electronic Monitoring to make a positive difference to penal practice in Europe is clear, but equally its misuse could impose dangers for traditional, but still desirable, forms of probation supervision” (p. 54).

In this respect, and precisely contrary to the first question posed at the beginning of this section, the segment could be concluded wondering if all those convicts placed under telematic control really needed to wear an electronic device. Certainly, one of the risks highlighted by authors is the excessive use of this new technologies just because they are accessible and available. Electronic monitoring can be very intrusive, and to track a person continuously may be unnecessary, invasive, and disproportionate in many cases, even potentially infringing human rights (Black & Smith, 2003; Fitzalan Howard, 2020, p. 18; Nellis, 2019, 1991). Electronic monitoring is not proportionate (or disproportionate) in itself, but rather depends on the circumstances of the convict. In practice, the type of technology used and the duration of the supervision should be proportionate to the seriousness of the offense and the level of risk presented by the offender (Nellis, 2015; 18 et seq; Graham & McIvor, 2015, p. 96). Thus, some questions about compliance with the proportionality principle can be raised in the context of the expansion in the use of the electronic monitoring during the Covid-19 pandemic. It may be that if all those convicts placed under electronic monitoring semi-freedom were to have been granted an extrapenitentiary modality of third-degree following the “standard procedure” (without acceleration and without the influence of priorities other than rehabilitation goals), they may have been placed in a modality of remote control without the obligation to wear an electronic device (e.g., just subject to regular monitoring visits or regular phone calls).

Thus, in line with the previous recommendations, this perspective should also be considered when a revision of the cases placed under telematic control during—and because of—the Covid-19 confinement takes place.

## Conclusions

In conclusion, the strategy of Spanish Penitentiary Administration against the spread of Covid-19 was based on the reduction of the number of prisoners which are effectively serving time behind bars. Although they are still included in the total number of prisoners, more than 3,000 of them were serving their prison sentence outside penitentiary establishments—on telematic control. The decrease of the number of prisoners was also supported by the reduction of new admissions, due to the limited activity of judiciary during the State of Alert.

As both the number of those infected with Covid-19 and the number of related deaths among prisoners and staff were quite low compared with the general population, one can argue that the Spanish strategy against the spread of Covid-19 was effective. Of course, this impressive outcome had as additional contributory factors all the internal measures that ensured less contact between inmates, between inmates and staff, fewer interactions between inmates and the outside world, and so on.

On the one hand, from a criminological point of view, several more months must pass before any assessment of the potential impact of all these releases -even under telematic control- on the crime rate and public safety. It is still too early to evaluate whether or not the Spanish strategy of dealing with the pandemic as it affected the penitentiary system has had any effect in terms of recidivism (understood as the commission of a new crime). Future criminological research will reveal whether or not there has been collateral damage related to the expansion in the use of semi-liberty modalities of the prison regime, specifically the

expansion of electronic monitoring, during the Covid-19 pandemic. Shall we find an increase in the crime rate the next months? Shall we find a diminution due to the benefits related to the use of alternative to detention measures? It may be that no repercussions will be revealed.

On the other hand, the assessment and revision of electronic monitoring cases applied during the upcoming months will show how many cases actually required, or did not require, being under technological supervision.

In any event, one positive effect of this Covid-19 pandemic can be pointed out: the Spanish prison population has reached an historical low. And this is without counting the “de facto” reduction of the Spanish penitentiary population through the increase of sentenced persons undergoing electronic monitoring. However, this decrease in the prison population should be assessed in dialog with the transformations that take place in the community supervision field. More research should be conducted in studying to what extent this decrease fuels the so-called mass-supervision phenomenon.

Nevertheless, in absolute figures, the reduction of the Spanish prison population may be considered as moderate, and the strategy based on the use of the extramodalities of third degree under electronic monitoring as adequate, pending the results of the future researches and the next swings of the pandemic, as the sanitary alert is still in force according to the World Health Organization.

## Notes

1. The countries that showed a variation between  $-4$  and  $+4\%$  in relation to the prison population during the pandemic have been considered as “stable” prison administration.
2. Mainly one: in case of serious offenses, when the length of the sentence is longer than five years the judge can order that the classification in third degree (i.e., the placement of the convict in open regime) does not take place until half of the sentence has been served inside.
3. State of Alarm accorded by Royal Decree 463/2020, published on the Official State Gazette, Madrid, Spain, on March 14, 2020.
4. The control of some noncustodial sentences, such as the “prohibition to reside in a particular place or come to it” are the responsibility of the State Security Forces, as is the implementation of one of the deprivation of freedom penalties known as “permanent location.” This penalty was introduced into the Spanish Penal Code in 2003 and corresponds to what is usually known as “home detention,” one of the most used alternatives to incarceration.
5. Normally, to evaluate the capacity of the sentenced person to live in the open regime, the conditions taken into account are the length of the sentence, the time served in prison (although there is no specified minimum period of time), the sentenced person’s penitentiary evolution and behavior, their level of participation in activities, their involvement in treatment programs, their use of leave (in cases where the person enjoyed any periods of leave from prison), etc. The assessment is individualized and flexible. As explained, only in cases of serious offenses for which the sentence is longer than five years of prison, will the convict have to complete at least the half of the sentence before being classified as third degree.
6. Spanish penitentiary law also provides mothers with the right to keep their children with them in prison until the children reach the age of three (see Cerezo, 2016).
7. Normally this modality of “restricted open regime” with less time outside of the prison, is applied because of the risk of recidivism or the lack of outside work. These prisoners are allocated in semi-open facilities but cannot go out ordinarily.
8. Also, some alcohol intake analyzers with a face viewer (even personal identification voice detectors) are available, but are residually used; according to the data provided by the General

Secretariat of Penitentiary Institutions in 2019 there are registered approximately 10 cases of the use of alcohol intake analyzers with a face viewer.

9. Which does not include Catalonia. The autonomous region of Catalonia enjoys implementing powers on prison management. Catalonia is the only Spanish autonomous region that has assumed penitentiary competences. Relating to prisons and probation services, the rest of the autonomous regions are under the competence of the State General Administration, whose data and information are explained in this article.
10. Information available on: <https://www.attentigroup.com/intl/>.
11. Which belongs to the General Deputy Direction of Open Regime and Alternative Sanction and Measures, of the General Secretariat of Penitentiary Institutions. Information available on: <https://www.institucionpenitenciaria.es/es/web/home/el-medio-abierto/control-telematico>.
12. Data provided at June 30, 2019.
13. Data provided at June 26, 2020.
14. Data provided at March 6, 2020.
15. Data provided directly by the General Secretariat of Penitentiary Institutions.
16. An inmate can be without classification because the individual is waiting to be classified, that is, to be evaluated by the technical team, or because the individual is in pretrial detention (awaiting trial).
17. As explained previously, the autonomous region of Catalonia enjoys prison management implementation powers. While the basic legislation (the Spanish prison rules) is common for the whole country, implementation powers have been delegated to Catalonia. Therefore this region can deviate from state policy and practice, and has its own penitentiary instructions.
18. I should note that some authors warned that there is a real possibility that without proper controls in place, the expansion of alternative sanctions using electronic monitoring could even increase prison populations because of technical violations that can provoke the return to prison of users under electronic supervision (see Byrne, 2016).

## Disclosure statement

No potential conflict of interest was reported by the author(s).

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