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ELECTRONIC MONITORING OF OFFENDERS AND ACCUSED PERSONS IN SLOVAKIA IN THE INTERNATIONAL AND EUROPEAN CONTEXT

Abstract:

The first program of Electronic monitoring of offenders and accused persons in Slovakia was launched by Law adopted in 2015 and shaped by the results of the pilot project co financed by the European Union. The aim of this presentation/paper is threefold: (1) to briefly summarize the key facts and data concerning this program, (2) to introduce the project titled 'Interdisciplinary approach to electronic monitoring of accused and convicted persons in the Slovak environment' (acronymed IAEMPS), and (3) to present the results of the research concerning the international and European context of the above mentioned Slovak national program, carried out within the IAEMPS project.

Keywords:

Slovakia, electronic monitoring (EM), the national EM program, Acquis communautaire, the IAEMPS project

JEL Classification: J18, K14, K33

1 Introduction

The term electronic monitoring (EM) is a generic umbrella term used in different spheres, for example in healthcare and pharmaceutical research. In the framework of the criminal justice process, the Nellis and Lehner (2012) proposed to define EM as “a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons”. This proposal was adopted by the Council in Europe (CoE) in the Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on EM (CoE 2014). Currently, the EM of offenders or accused persons is the most often implemented using radio frequency (RF) or global positioning system (GPS) based technologies, sometimes accompanied by biometric and/or voice recognition technologies. In parallel to these technologies, the remote forms of alcohol consumption measurement are sometimes implemented in order to support the probation and/or recidivism elimination related aims of EM in this field.

As it is in more details presented in the section 4 of this paper, the first EM permanent program was launched in Slovakia in January 2016, based on i.) the results of the pilot project that started in 2013 and ii.) the Law that have been adopted in 2015. Independently from this official program, but indirectly in response to it, the research team at the Matej Bel University in Banská Bystrica prepared the research project titled ‘Interdisciplinary approach to electronic monitoring of accused and convicted persons in the Slovak environment’ (acronymed IAEMPS), whose implementation started in July 2016 and is planned to be concluded in June 2020. The IAEMPS project aims to explore and evaluate new theoretical and practical approaches to EM of accused and convicted persons across the broad spectrum of scientific methods. The project’s key objectives are to analyse and evaluate the process of resocialization of EM convicted persons, research and explain the impact of EM crime prevention, and to use the results and available data to assess efficiency and cost effectiveness of the Slovak national EM program. Despite that the IAEMPS project primarily concerns Slovakia, some of its capacities have been decided to be devoted to the research of the international and European context of EM.

This presentation/paper briefly summarizes the results of the part of research conducted and reported within the IAEMPS project in late 2016 and 2017 that concerned the international and European context of the above mentioned Slovak national program. It expands the IAEMPS project results which were published in 2017 in the conference proceedings by Borseková et. al. (2017, p. 95 - 96).

2 The international historical context of EM in the criminal justice

The initial desk research held within the IAEMPS project concerned the international historical context of the development of EM as of a concept in the criminal justice sphere. The literature review revealed that the first scientific publication concerning use of EM in the field of criminal justice was published in 1964, and the first technical concept was

patented in 1969, both by the research team from the Harvard University (Gable, 2015, p. 4). The first permission by the court to allow use of EM to monitor curfews was issued in the state of New Mexico (USA) in 1983 (Ibid., p. 5). In the same year, Florida was the first state of the USA to legislate and implement the program of house arrests that allowed implementation of RF based EM as an additional surveillance technique, first applied in 1987 (Padgett, Bales and Blomberg, 2006, p. 67). In 1988, “the use of EM was expanded to include GPS monitoring for those offenders judged to be of higher risk to public safety and in need of an even higher level of surveillance while in the community” (Ibid.). Since 1993, EM has been applied in the field of criminal justice in every state of the USA (Clear and Dammer, 2000 and Renzema, 1992 in: McKenzie, 2009, p. 319). The first EM program outside of USA started as a pilot in 1987 in Canada in the province British Columbia (Bonta, Wallace-Capretta and Rooney, 1999, p. 19).

In Europe, the first interest to learn from the USA’s experience emerged in England and Wales. They “had had a head start in that a private individual, journalist Tom Stacey, had been promoting EM since 1981, as something superior to the probation service as a means of reducing the use of custody” (Nellis, 2014, p. 492). The interest of politicians, however, started in England and Wales only in 1987 (Mair and Nee, 1990, p. 4), not much earlier than in Sweden and the Netherlands (Nellis, 2014, p. 492). More information concerning the context of the EM development in the USA and in the United Kingdom, resp. England and Wales, has been summarized and quoted in the the IAEMPS project output published in the publicly available conference proceedings by Borseková et. al. (2017, p. 96 - 97).

3 The European context of EM in the criminal justice

One of the research topics dealt with in the IAEMPS project in 2017 concerned the European context of EM. One of the research questions concerned whether the development of EM in Europe followed similar patterns and might result in tendencies to consider a common approach (in Europe, resp. in the European Union), or whether the development has been characterised by significant differences in the approaches taken by the individual countries. Despite dedicating significant capacities to search all the relevant publicly available academic and official sources, as well as searching the internet with several various relevant keywords, the IAEMPS project team has been unsuccessful in finding a complex overview of the experience with the EM in the EU. The project team therefore worked on an own overview in the first half of 2018, which is planned to be published by the end of the year 2018. In this part of this paper, the partial results of the above described research activity are briefly summarized.

The first EM scheme in Europe, introduced in 1989 in England and Wales as a short-lived EM-bail pilot project, gradually evolved into the first permanent national program on the territory of Europe which started in 1999 (Pinto and Nellis, 2011, p. 2). The program of England and Wales rapidly became and remains the Europe’s largest EM program (Nellis

and Bungerfeldt, 2013, p. 278). In Scotland, EM was first trialled in 1998–2000 (Mair and Nellis, 2013, p. 75) and became permanent from 2002 (Beumer and Kylstad Øster, 2016, p. 2). In the Northern Ireland, the first EM program started in 2009 as a permanent program (Ibid.) (note: there are the three distinct legal jurisdictions in the United Kingdom that implement probation, EM and similar programs in the field of criminal justice independently: England and Wales, Northern Ireland and Scotland).

While Sweden and the Netherlands shared with England and Wales “a rhetorical and substantive commitment to ‘modernising’ criminal justice, moving in greater or lesser degree away from purely rehabilitative approaches towards something more ‘actuarial’ and ‘managerial’, they chose to implement EM in distinctively different ways” (Nellis, 2014, p. 492). “The legal and administrative framework in which EM evolved in Sweden has been remarkably stable, enabling it to use EM to strengthen its pre-existing conditional prison sentence and impact on its use of custody” (Nellis and Bungerfeldt, 2013, p. 292). In contrast to the stability and focus in Sweden, “Scotland was moving away from a punishment based approach predominantly focussed on restriction of liberty to an emphasis on the use of EM conditions and orders to support rehabilitation and desistance as well as risk management. The picture in England and Wales was also more mixed, with multiple objectives being pursued via the use of EM” (Hucklesby et. al., 2016, p. 13). In Netherlands, rehabilitative and reintegrative goals were given priority” (Ibid.).

In contrast with the above outlined development in the countries with the longest experience with EM (and their positive approach to EM), sanction practice in Germany has been very reluctant towards EM “although there are several legal bases for its implementation in [the German] federal law” (Dünkel, Thiele and Treig, 2016, p. 1). The federal EM program in Germany has been limited to monitoring offenders who have committed serious sexual and/or violent offences after their release from prisons (i.e. the so called post release scheme) with an aim to minimise recidivism risk (Ibid., p. 11). The differences between the approaches taken by the countries mentioned in this section, and some other countries, were with some more details dealt with by Borseková et. al. (2017, p. 100 - 101). This IAEMPS project report also mentions that the first Eastern European country to apply EM home arrests as an alternative to imprisonment was Poland in 2007 (Jaskóła and Szewczyk, 2017 in: Borseková et. al., 2017, p. 101).

4 The genesis of EM introduction in Slovakia

Introduction of EM in Slovakia has been dealt with in the first two written outputs of the IAEMPS project: the article by Klátik (2016) and the conference presentation/paper by Borseková and Krištofík (2016), both written in the Slovak language. Both the quoted authors relate the introduction of EM with the part of the Manifesto of the Government of the Slovak Republic (adopted in 2012) that relates to support of alternative forms of punishment. This is clearly mentioned also in the brochure about the project of EM in

Slovakia, published in the Slovak language on the webpage of the Ministry of justice without stating the year of the publication¹, which contains the sentence “The main reason to implement the electronic system of monitoring of [accused and convicted persons] is the commitment of the Ministry of Justice defined in the Manifesto of the Government of the Slovak Republic 2012 – 2014, according to which the Ministry has to place specific focus on the issue of alternative forms of punishment and to increase the emphasis on crime prevention” (Elektronický systém monitorovania osôb, p. 2). According to the same source, “from the content point of view, the reason to implement the [EM] project relates to these three problems: almost complete absence of electronic services in the sphere of citizens security, very low volume of sentencing alternative forms of punishment, and the long term insufficiency of prison capacities (Ibid.). The Government’s Manifesto from 2012, however, mentions EM only indirectly in the sentence “With regards to analysing the opportunities to improve the situation in the sphere of imprisonment, the Ministry of justice will place specific focus on the issue of alternative forms of punishment”² (Government of the Slovak Republic, 2012, p. 36).

The results of the desk research, carried out by the author of this presentation/paper in 2017, revealed that the first impetus to introduce EM in Slovakia came already in 2010 in the context of attempts aimed at increasing the efficiency of public sector functioning and improving the state of public finance. From its own initiative, the Ministry of finance prepared and submitted to the Government in 2010 the document containing the proposal of measures to be taken by the individual Ministries in order to achieve the above outlined aims. The Ministry reasoned their proposal of measures in the sphere of justice with the fact that the numbers of the accused and convicted persons in Slovakia increased significantly in 2010 in comparison to 2009. The Ministry also stated that “the increased number of prisoners significantly raises the costs of prison system - not only with regards to operation of prisons, but also with regards to a need to cover the capital costs necessary to construct new prison capacities. Despite that the security of citizens is the priority of the Government, it is possible to seek the ways to deal with this issue in the most efficient way” (Ministry of Finance, 2010, the main document [“vlastný materiál”], p. 5). The Resolution of the Government 805 from 17 November 2010, by which this initiative proposal by the Ministry of Finance was adopted, contains also the task imposed on the Ministry of Justice to prepare the Concept of the prison service for the period 2011 – 2010, and submit it to the Government by 31 March 2011. The new concept was necessary also because the concept valid in early 2011 was more than sixteen years old at that time (The Ministry of Justice, 2011, the Reasoning statement [Dôvodová správa]). The Ministry of Justice managed to prepare it in such a quick time, and submit it to the Government in April 2011, which approved it already in the same month. The new

¹ [The brochure titled] Elektronický systém monitorovania osôb (ESMO). Available at: <https://www.justice.gov.sk/Dokumenty/ESMO/ESMO%20-%20brozura.pdf> (accessed 8 March 2018).

² Note: we have not been able to find the quoted document in English, and therefore have translated the quoted text from the quoted original document in the Slovak language.

concept contained also the task to “prepare for the implementation in practice the moderation of punishment execution by means of the EM of house arrests (The Ministry of Justice, 2011, the main document [“vlastný materiál”], p. 14). The Concept contained also the first cost assessment for the EM launching and implementation, based mostly on the model project implemented in Austria in 2009 (Ibid., Annex 7).

In 2012, the Ministry of Justice procured the feasibility study for the national project to launch and implement EM in Slovakia, with condition of a very quick delivery deadline (Supreme Audit Office, 2017, p. 7). The revised and updated feasibility study of this first national EM project has been a part of the project pipeline of the Operational Programme titled Informatisation of Society, implemented in Slovakia in relation to the EU Structural funds programming period 2007 – 2013 (Ministry of finance, 2013, see p. 2). The preparation works on the project documentation and legal/financial contracts were successfully concluded on 29 November 2013 by means of signing the contract to co-finance the EM pilot project from the EU structural funds (Supreme Audit Office, 2017, p. 7). The project implementation started on 28 April 2014 and respected the deadline set for the end of December 2015, as required within the above mentioned EU Structural funds grant scheme (Ibid.). The project’s costs totalled 27 255 057 €, out of which 26 896 257 € have been covered from the EU structural funds grant and the remaining 358 800 € have been covered from the state budget funds attributed to the Ministry of Justice (Ibid., p. 8). The day after the project implementation start, the media reported in English that electronic bracelets would “also be used to prevent hooligans from entering sports stadiums, and to warn domestic violence victims that an aggressor is in the vicinity” (SITA, 2014).

In contrast to the reports and press information quoted in the three paragraphs above, Nellis (2014, p. 499) wrote in 2014 that “Neither Slovenia nor Slovakia has plans to introduce EM”. In this regards, we can assume that, most probably, the Slovak authorities have not reported the above summarised activities from 2012 – 2014 aimed at introducing EM in Slovakia within questionnaire survey carried out prior to the EM conferences organised by the Confederation of European Probation (CEP) in 2013 (see: Nellis, 2013).

5 The Slovak EM legislation, aims and practice

The researchers of the IAEMPS project Klátik (2016, p. 13) and Borseková and Krištofík (2016, p. 218) presented that the key Act that allowed the EM permanent program implementation in Slovakia has been the Act no. 78/2015 on the control of the execution of selected [legal] decisions by means of technical instruments. From the researchers outside of the IAEMPS project, the same information has been presented for ex. by Hyžová (2016, p. 103), Šimunová (2016, pp. 249 - 250) and Siváčková (2017, p. 160). This Act was adopted on 17 April 2015, but became fully applicable only since 1 January 2016 – only selected parts were in force right after the Act adoption, and some additional

parts became applicable since 1 July 2015 in order to allow the EM pilot project implementation (The Act 78/2015, Article X).

In the document accompanying the above mentioned Act proposal submission to the Government, the author of the draft Law proposal, the Ministry of Justice (2014, *Dôvodová správa, všeobecná časť* [The reasoning statement, general part], pp. 2 – 3) stated that it aimed to achieve these anticipated contributions, resp. the objectives:

- increased safety of citizens by means of introducing electronic services,
- Improved social inclusion of convicted persons and decrease of recidivism,
- Increased efficiency of work performed by probation and mediation officers,
- decreased costs of punishment enforcement,
- increased trust in alternative forms of punishment,
- protection against domestic violence.

With regards to the anticipated contributions of the Slovak EM project, Hyžová (2016, p. 105) stated that “on the base of expertises and information from abroad about the EM, we anticipate advantages ... primarily in financial savings onto sentenced, decrease of relapse, increase of chance for resocialization, protection of the family, restraint of breach of the peace on sports events, cultural and other social events, and other”.

On 8 September 2015, the media reported that the EM project has successfully passed the pilot operation. The pilot operation lasted five weeks and “no serious technical problem occurred. ... Of 220 tested people 156 were real convicts from five departments across Slovakia. Another 23 were students, while four were journalists” (TASR, 2015). The media also reported that “the new monitoring system will also enable control of people sentenced to a restraining order, compulsory labour, alcohol prohibition, or to spending a certain amount of time at the workplace” (TASR, 2015). The media quoted the Ministry of Justice, according to whom except for solving the problem with overcrowded prisons and saving money, the new system would also have secondary effects related to the ability to monitor restraining orders, and/or encourage women not to be afraid of the police and to report about home violence cases (Ibid.).

In January 2016, the media reported that “The District Court in Martin imposed the [first] punishment of house arrest according to new legal regulations [in force in full since 1 January 2016] on 13 January” on the person convicted guilty “of attempted battery and riotous conduct” (TASR, 2016). The convict was “sentenced to one year under house arrest”, and also prohibited from drinking alcoholic beverages, also electronically monitored. The media also reported that this convict found a job in December 2015 and regretted his behaviour, and that the judge chose the punishment of house arrest under EM “in order to minimise the negative impact of potential mandatory sentence on the convict’s family” (Ibid.).

6 The Slovak EM Act/project and the European Law

Due to Slovakia's membership in the EU, all its drafts laws must be compatible with the entire scope of the EU *Acqui communautaire*. This compatibility must therefore be dealt with in the documentation accompanying every draft law before its submission to the Government, resp. the Parliament. In case of the of the above mentioned Slovak EM Act, the Ministry of Justice (2014, *Doložka zlučiteľnosti* [Compatibility clause, p. 1) mentions only one European Directive amongst the EU Law that Slovakia was obliged to transpose to the EM Act – the EU Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹. This implicitly means that, at the time of the Slovak EM Act preparation in 2014, the EU gave a *carte blanche* to its members with regards to preparing and implementing national EM programs, as long as the EU Directive concerning personal data processing would be sufficiently transposed into the EM legislation.

In our review of foreign academic literature, the only European Law that we have found out in relation to EM was the Council in Europe's (CoE) in Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring (see for ex.: Nellis, 2014, pp. 502 – 503). The CoE Recommendations are “a type of non-binding ‘soft law’ which may be used by member states to guide and critique their national policies, and by the European Court of Human Rights to inform its legal judgement” (Ibid., p. 502). The fact that this CoE Recommendation has been amongst the basic documents used in drafting of the above mentioned Slovak EM Act is confirmed in the documentation accompanying the submission of its draft to the Government (Ministry of Justice, 2014, *Dôvodová správa, všeobecná časť* [The reasoning statement, general part], p. 3). At the same place, the Ministry also mentions that the Slovak EM Act could support implementation of the Slovak legislation into which the ‘Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions’, as amended by the Council Framework Decision 2009/299/JHA, has been transposed (Ibid.). Lulei et al. (2013, p. 114) mention that the Council Framework Decision 2008/947/JHA was the first EU Law in the field of probation measures and alternative sanctions, and also that its transposition into the EU member states' national legislation faced significant challenges and delays. Within our review of official and academic literature, we have been unable to find any other EU, European or International laws transposed or used in a different way in preparation or implementation of the Slovak EM Act.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

7 Concluding remarks

The key aim of this presentation/paper, prepared within the IAEMPS project (also briefly introduced in this paper), was to introduce the Slovak national EM project in its international and European context. The key results of research have been the following:

- the first impetus to prepare the Slovak national EM program came from the Ministry of finance in 2010, in the context of the measures proposed with an aim to increasing the efficiency of public sector functioning and improving the state of public finance. This impetus came at the time when the number of prison sentences was on a sharp rise, and Slovakia faced challenges related to prison overcrowding;
- the development of EM, both in the World and in Europe, have not followed any similar patterns, but has been characterised by differences in the approaches taken by the individual countries. While some countries preferred punishment based approach predominantly focused on restriction of liberty (for ex. USA or Sweden), other countries preferred to focus on rehabilitative and reintegrative aims (for ex. Netherlands), and development in some other countries has been characterised by a transfer from the former to the latter (for ex. Scotland) or by the mixed focus on both the former and the latter (for ex. England). In contrast to all the above mentioned, Germany decided to limit EM to such offenders of sexual or violent crimes that need to be controlled after their release from prisons, both in order to foster their rehabilitation and to protect their former and/or potential new victims;
- a common approach in introducing/implementing national EM programs has not been considered in the EU. The recent experience with the EM Law adoption in Slovakia suggests that the EU seems to give *a carte blanche* to its member states in this regards, with the exception of personal data collection and processing;

the wide set of aims declared by the Slovak Ministry of Justice in relation to the Slovak EM Act/program clearly suggest that Slovakia intends to follow the so called mixed model, incorporating all i.) punishment based approach focussed on restriction of liberty for offenders of minor crimes, ii.) rehabilitative and reintegrative aims and iii.) protection of former and/or new victims of domestic violence;

The IAEMPS project teams intends to present the findings of their research at the wide variety of international scientific conferences with the twofold aim: i.) to let European/foreign researchers know about the IAEMPS project, in particular about the interest of its researchers in getting feedback to the partial research results, obtaining relevant information from the states that also implement EM and discussing potential joint research efforts; and ii.) to disseminate the research findings concerning the Slovak national EM program. The IAEMPS project team welcomes the discussion on the topics raised in this paper/presentation at any relevant scientific conference planned to be organised in Europe prior to June 2020.

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