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ELECTRONIC MONITORING OF OFFENDERS IN SLOVAKIA: INFLUENCED BY THE EU?

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Abstract

This paper summarizes the context and aims of electronic monitoring (EM) of offenders in Slovakia and explores related influences, particularly support from the EU. Building on the results of a significant investigation of Slovak language, sources, the paper briefly reviews both the optimistic and more skeptical expectations of Slovak academic authors on achieving the objective of increasing the number of house arrests sentences. The reported results of the authors' own research from Eurostat and the World Prison Brief databases, suggest that the political decision to introduce EM of offenders in Slovakia can be justified. The paper concludes by summarizing the role of EU structural funds in financing the introduction and implementation of this program. The paper builds on and briefly reviews the published output from the research project 'Interdisciplinary approach to EM of accused and convicted persons in the Slovak environment' (IAEMPS).

Keywords: electronic monitoring (EM), Slovakia, European Union, influence, cost effectiveness, IAEMPS project.

JEL Classification: J18, K14, K33.

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1. Introduction

Slovakia launched its first permanent national program of electronic monitoring (EM) of offenders in January 2016. Even though this important topic was covered in several academic papers in 2016 – 2017 (see Section 2), they were all published in Slovak, and we are unaware of any paper published in English. Moreover, none of the papers cover the role of the European Union (EU) in supporting the preparation and launch of this first Slovak national EM program. This paper fills that gap by reporting our research in this area.

Our research project entitled ‘Interdisciplinary approach to EM of accused and convicted persons in the Slovak environment’ (IAEMPS) aims to explore and evaluate new theoretical and practical approaches to EM of accused and convicted persons across a broad spectrum of scientific methods. Its key objectives are to analyse and evaluate the process of resocialization of EM convicted persons, to explore and explain the impact of EM on crime prevention, and to assess the efficiency and cost effectiveness of the Slovak national EM program. Although primarily concerned with Slovakia, the Slovak national IAEMPS research project, which runs from July 2016 to June 2020, also covers the European and wider international context of EM.

2. Literature review

This section reviews relevant literature on electronic monitoring of offenders across the world generally as well as specifics of this problem in the Slovak republic

2.1. The genesis of EM of offenders in the World and in Europe

She also mentions that “Graham and McIvor’s (2015) international literature review usefully brings together the available international evidence on EM” (Ibid., p. 4).

In his latest paper about the state-of-the-art in this field, the most quoted author in academic papers about EM, Nellis (2014) stated that EM has been practiced in Europe for a quarter century, with at least twenty-seven countries making use it during that time, and many more seeming likely to adopt it in the future. However, as Nellis (2014) also stated, few European countries have used it on a very large scale, compared to prisons and other community sanctions, and therefore nowhere has EM had a transformative effect on penal practice. Germany has been the most reluctant user of EM in Western Europe, while the Scandinavian countries have arguably made the most creative use of EM, with the aim of supporting rehabilitation services for offenders under conditional prison sentences.

In one of the most recent texts dedicated to providing an overview of the state-of-the-art in EM in Europe, Beyens (2017, p. 4 & 8) mentions ‘Mike Nellis’s assertion about the rehabilitative use of EM in Europe’. In this regards, Beyens wrote that “based on the evidence we have on only four European jurisdictions and with the knowledge that England and Wales mainly use EM as a stand-alone order (Hucklesby and Holdsworth, 2016) the picture is mixed. It can also be concluded that EM entails a specific form of ‘supervision’, which is mainly focused on short term goals of respecting time schedules, primarily leading to instrumental compliance based on the deterrent effect of EM and

being incapable of effecting longer term changes in attitudes and behaviour (Nellis, 2016)” (Ibid., p. 8).

Apart from the statistical data, some other relevant information accompanying it can be found in the SPACE I survey’s results published by the Council of Europe Annual Penal Statistics (Aebi et al., 2018). We discuss the relevant information from this official source regarding Slovakia in the following section.

2.2. EM of convicted and accused persons in Slovakia

Introduction of EM of offenders in Slovakia was initiated by the Manifesto of the Government of the Slovak Republic for the 2012-2016 election period. This committed the Ministry of Justice to commit a significant part of its capacity to alternative forms of punishment and to increase its emphasis on crime prevention (Burda, 2013; Borseková & Krištofik, 2016). House arrests: the main alternative form of punishment to imprisonment, were introduced into the Slovak Penal Code in 2005 (Act no. 300/2005 coll.), and into the Code of Criminal Procedure in 2006 by Act no. 300/2005 coll., (Škrovánková, 2016). But house arrests were little used, mostly due to insufficient opportunities to control processes of resocialisation of offenders. Eventually this led to pressure to introduce EM to close this loophole (Vrobelová, 2014). In 2013 The Ministry of Justice therefore launched a pilot project of EM for convicted and accused persons (Strémy, Kurilovská & Vráblová, 2015).

The permanent EM program was set up by the Act no. 78/2015 on the control of the execution of selected [legal] decisions by means of technical instruments (Hyžová, 2016; Šimunová, 2016; Siváčková, 2017). This Act was adopted on 17 April 2015 and became fully applicable on 1 January 2016. Both the first pilot and the first permanent Slovak national EM programs have been covered in several conference papers and journal articles published in the Slovak language within the IAEMPS project. See for example Klátik 2016a, 2016b, 2017b, 2017c; Borseková & Krištofik 2016; Vitálišová & Vaňová 2016; Klátik, Hruška & Žuffa 2017; Orviský & Valentovič 2018; Elias 2018. Additional conference papers and journal articles prepared within the IAEMPS project are noted in section 4 of this paper.

Together with the paper by Šimunová (2016), the most recent edition of the SPACE I survey results report by the Council of Europe (Aebi et al., 2018) are the only English language sources that we are aware of on this issue. The SPACE I survey report states that “The prison service has been currently testing the use of [an] “electronic monitoring system” to control the stay and movement of imprisoned persons during selected activities (e.g. during work of convicts working outside of the prison, during permitted prison leave performed by convicts). However, from 1st January 2016, it is possible to control the sentence of home confinement or other restrictions and obligations imposed as alternative punishments by technical means (“electronic monitoring”). Electronic monitoring as a sentence does not exist in the Slovak Republic” (Aebi et al., 2018, p. 44). The journal article by Šimunová (2016) dealt with the alternative sanctions eligible in Slovakia on a more general level, summarising relevant statistical data and outlining the reasons why alternative sanctions pose “the challenge to get over the stereotypes connected with judge’s conveniences”.

Hyžová (2016, p. 105) stated that “on the basis of expertise and information from abroad about the EM, we anticipate advantages ... primarily in financial savings in sentencing, reduced relapse rates, increased chance for resocialization, protection of the family, restraint of breach of the peace at sports events, cultural and other social events, and others”. The authorities anticipated that the introduction of EM would lead to an increase in sentences of house arrest (Vitálišová & Vaňová, 2016). Siváčková (2017) believed there would also be fewer custodial sentences. However, the Supreme Audit Office (2017) reported and criticised the fact that in 2016 only 25 cases resulted in EM monitored sentences. This was only 1,25 % of the envisaged 2000 monitored offenders per year (Dianiška & Strémy, 2017). Moreover, only eight of these sentences concerned electronically monitored house arrests (Klátik, 2017a). It was much less than for the other relevant instruments of restorative justice: for example, the roughly 3000 sentences of compulsory labour, or the 1300 fines (Dianiška & Strémy, 2016).

3. Research Methodology

The aim of this paper is threefold: (1) to explain the context of the Slovak national program of EM of offenders, (2) to summarize the scientific knowledge about the aims of this program, and (3) to explore related influences, especially support from the EU. The results concerning the first partial aim, already presented in section 2.2 above, were obtained by analysing the literature. The results were accompanied by reference to the nine papers which are all deliverables of the IAEMPS project noted in the Introduction.

In order to present the summary of the aims of the Slovak national EM program set out in section 4.1 below, we used the analysis and synthesis of the earlier results of the IAEMPS project research that have been presented in the five scientific papers (Klátik 2017a, 2018; Mencerová 2017, 2018 and Slivka Bedlovičová 2018). We also refer to Škrovánková (2016) whose paper was unrelated to the IAEMPS project. We have also reviewed and quoted the document of the Slovak Ministry of Justice accompanying the relevant draft Law proposal within this part of our analytical work.

We have used our own analytical research activities in order to explore the European context of the Slovak national EM program. We have analysed the data from the Eurostat's 'Crime and criminal justice' online database (Eurostat 2017) and the data from the World Prison Brief database published by the Institute for Criminal Policy Research (2018). As a final step, we reviewed the content of the documents of the Slovak Ministry of Justice (2015) and Supreme Audit Office (2017) and extracted and analysed all the information relating to potential influence or support from the EU on the aims, content and financial background of the Slovak national EM program.

4. Empirical results and Discussion

4.1. The aims of EM introduction in Slovakia

As we have already explained in section 2.2, the key Law introducing the EM of offenders in Slovakia was Act no. 78/2015 on the control of the execution of selected [legal] decisions by means of technical instruments. In the document accompanying this draft Law proposal submission to the Government, the author of this draft Law proposal, i.e. the Ministry of Justice (2014, *Dôvodová správa, všeobecná časť* [The reasoning statement, general part], pp. 2 – 3) stated that it aimed to achieve the objectives of the:

- 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.

Opportunities to achieve the first and the last of the above-mentioned aims have been analyzed within the IAEMPS project by Klátik (2017a). In a conference paper entitled ‘Strengthening the protection of victims of domestic violence electronic individual monitoring’, he explains that the main obstacles to achieving these two aims of EM are the shortage of judicial time and of the competence of the judiciary to impose the alternative sanctions using EM.

Opportunities to achieve the second of the above presented aims of EM introduction in Slovakia, i.e. a decrease of recidivism, has been dealt with in the IAEMPS project by three researchers. Mencerová (2018) focused on examining the impact of EM monitoring of persons on the reduction of recidivism. Based on an analysis of the causes of non-fulfilment of the expected results of the Slovak EM program in its first two years of application, she formulated some recommendations on the prevention of re-offending. The research by Klátik (2018) focused on inspecting executions of judgments imposing bans on participation in public events, explains the rationale of spectator violence and outlines the purpose of the sentences prohibiting convicted persons from attending sport, cultural or other public events during the period of execution of the electronically monitored sentences. Mihók (2018) summarized the results of the foreign researches aimed at assessing effectiveness of selected EM programs in the U.S. and Europe in terms of reducing recidivism. He reviewed and summarized the results of foreign research activities focused on the efficiency of work performed by probation and mediation officers and on the decreased costs of punishment enforcement, i.e. the third and fourth Slovak EM program’s aims. The issue of cost effectiveness of EM programs vis-à-vis imprisonment in the EU has also been dealt with in the IAEMPS project by Krištofik et al. (2017).

The opportunities to achieve the last two of the above presented aims of the Slovak EM program have also been analysed within the IAEMPS project. Mencerová (2017) questioned the purpose of the conversion of the remainder of imprisonment into electronically monitored house arrest, i.e. whether it is possible to perceive this new

institution as an alternative to conditional release from prison (as stated in the explanatory memorandum to the Act on Control of Execution of Certain Decisions by Technical Devices), taking into account the fulfilment of all the legal conditions stipulated for such conversion in practice. She explains that the judges and the other authorities may be influenced by some practical implications of the relevant Laws which decide whether an electronically monitored house arrest could be applied earlier or later than its alternative, i.e. conditional release from prison, based on the length of the relevant sentence at stake. She argues that the different aims of both these alternative institutions should be known and taken into account when making a more appropriate choice between them, i.e. instead of choosing the institution which can be applied earlier in consequence of the length of the sentence. Bedlovičová (2018) focused her research on the possibilities and conditions of using EM in connection with allegations against those offenders for whom criminal prosecution has been conditionally suspended. She explained how the introduction of EM could help to achieve better effectiveness and efficiency by using conditional suspension of criminal proceedings in order to divert criminal proceedings into the direction of restorative justice.

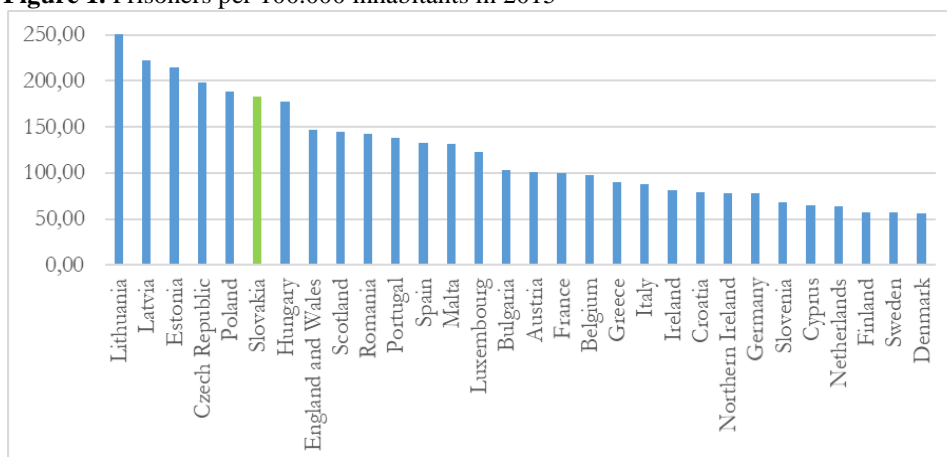
4.2. The European context of EM introduction in Slovakia

Part of the desk research activities of the IAEMPS project concerned the European context. In their 'exploratory study based on European evidence', Borseková at al. (2017) reviewed a large number of foreign academic papers with an aim "to analyse and evaluate an approach towards EM in European countries as an alternative form of punishment". This research resulted in an understanding that there were different reasons behind introductions of EM of offenders in Europe, which cannot be generalised. "National programmes of offender EM in Europe resemble 'live organisms' in that they adjust their aims, intentions and methods to respond to a changing 'social climate'" (Borseková at al., 2017). Therefore, another research activity of the IAEMPS project, whose results have been presented by Krištofik et al. (2017), concerned an overview of available data about average daily expenses per inmate in penal institutions vis-à-vis the average daily cost per electronically monitored offender. In parallel to economic benefits, represented in some European countries as the main/sole reason/rationale of the EM introduction, EM has been perceived as an instrument to help offenders complete their rehabilitation programs and thus decrease the risk of recidivism. Nevertheless, from the review of the existing academic and official literature, the researchers of the IAEMPS project came to the hypothesis that for the largest group of the EU member states, introduction of EM of offenders has been a response to these interlinked factors: increased numbers of prisoners, high occupancy rates of prisons reaching or even exceeding 100 %, and the growing costs of national prison systems. It should be noted that we were unable to verify or deny this hypothesis by surveying the literature. To do so by conducting our own field research would take us far beyond the financial and personnel capacities of the IAEMPS project.

For the purpose of this paper, we have decided to find out what was the position of Slovakia in the EU with regards to both the numbers of prisoners and the occupancy rate

of prisons at the time the EM program was introduced into Slovakia. In Figure 1 below, we present the results of our own analysis of the data available in the Eurostat's 'Crime and criminal justice' online database (Eurostat 2017) on the numbers of prisoners per hundred thousand of inhabitants in the EU member states. This figure shows that Slovakia had the sixth highest number of prisoners per capita in 2015, i.e. in the year when the Laws allowing for the EM of house arrests were approved. It also illustrates that the number of 'prisoners per capita' in Slovakia was significantly higher than in the majority of the EU member states: about twice the level of those countries in the middle of the distribution. Moreover, this value in Slovakia was about 25 % higher than in England and Wales (the eighth 'worst' country in this ranking), which is the oldest jurisdiction to introduce and significantly use EM house arrests as an alternative to imprisonment with the aims of decreasing the costs of the prison system and reducing the high occupancy of prisons. This finding can help to understand the political decision to introduce EM of offenders in Slovakia.

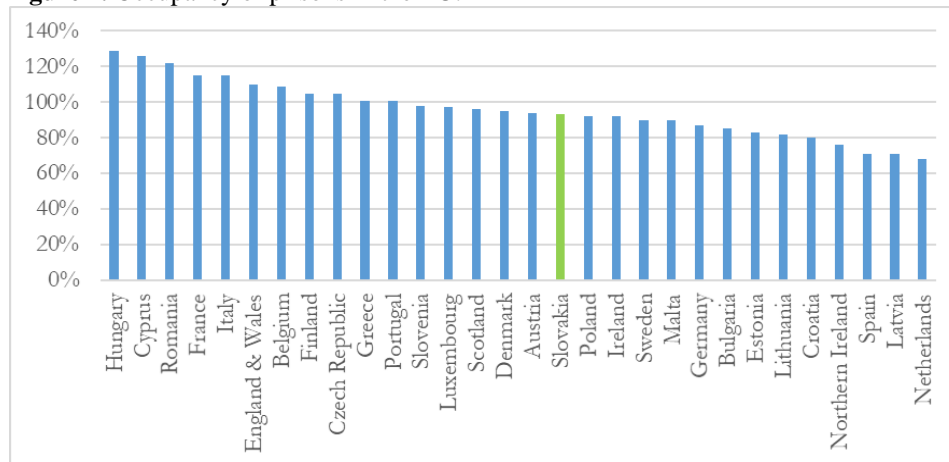
Figure 1. Prisoners per 100.000 inhabitants in 2015



Source: Eurostat 2017 ([*crim_pris_cap*], accessed 17 July 2017).

In Figure 2 below, we present the results of our second own analytical research exercise, aimed at finding out the position of Slovakia in a ranking of the EU member states with regard to the occupancy of prisons. We have used the data from the World Prison Brief database, published by the Institute for Criminal Policy Research (2018), from which we have extracted the data of the EU member states.

Figure 2. Occupancy of prisons in the EU.



Source: World Prison Brief 2016 data¹, accessed 14 May 2018)

Although Slovakia ended up in the middle of this ranking, Figure 2 shows that the occupancy level in the EU is very high in the majority of the EU member states. This finding can help us to understand why at least twenty-seven European countries had already made use of EM of offenders by 2014 and many others seemed likely to adopt it in the future (Nellis, 2014).

4.3. The influence of the European Union

In order to achieve the aim of this paper, we have decided to analyse the documents of the Ministry of Justice (2014) accompanying the draft Slovak EM Act submission to the Government in order to find out what was the role of the EU in introducing the EM of offenders in Slovakia by means of this Law. Due to Slovakia's membership of the EU, all its draft laws must be compatible with the entire scope of the EU Acquis communautaire. This compatibility must therefore be dealt with in the documentation accompanying every draft law before its submission to the Government, and in particular to the Parliament. In case of the 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 data. 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 regard 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 in relation to EM was the Council of Europe's (CoE) in Recommendation CM/Rec

¹ Available at: http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=14 (accessed 14 May 2018).

(2014)⁴ of the Committee of Ministers to member States on electronic monitoring. See for example Nellis (2014). 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 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). In 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.

However, already in the first phase of the of the IAEMPS project, we found out from our document survey that the Slovak pilot EM of Offenders project has been part of a larger project supported by the grant of 22 million € from EU funds (Andrejčíková, 2014). We have dedicated our own desk research of the relevant official documents to find out more information about this important aspect of the support from the EU for the national EM program launch in Slovakia. In the official report by the Supreme Audit Office (2017), we found that as early as 2012 the Ministry of Justice procured the feasibility study for the national project to launch and implement EM in Slovakia. The revised and updated feasibility study of the first Slovak national EM project has been a part of the project pipeline of the Operational Programme entitled Informatisation of Society, implemented in Slovakia in relation to the EU Structural funds programming period 2007 – 2013 (Ministry of Finance, 2013, p.2). The project was implemented in April 2014 - December 2015 and its costs totalled 27 255 057 €, out of which 26 896 257 € were covered from the EU structural funds grant and the remaining 358 800 € were covered from the state budget funds attributed to the Ministry of Justice (Supreme Audit Office, 2017).

5. Conclusion

This paper had three objectives: (1) to summarize the context of the Slovak national program of EM of offenders, (2) to summarize scientific knowledge about the aims of this program, and (3) to explore the influence of support from the EU. We have briefly summarized both the official information and academic evidence that underpins the aims of the Slovak EM national program. On increasing the number of house arrests sentences, we noted that prior to the program launch some academic sources were optimistic, but others were pessimistic. The latter pointed to the very low figures of EM punishments in 2016 using the EM Law(s) adopted in 2015. The Supreme Audit Office (2017) also criticised the fact that the number of EM sentences in 2016 was only 25, i.e.

only 1,25 % of the envisaged total number of 2000 monitored offenders per year. Moreover, only eight of these sentences concerned electronically monitored house arrests (Klátik, 2017a).

We have presented the results of our own research in the Figures 1 and 2. These show Slovakia's relative EU position in respect of two key measures used in the academic literature to justify the introduction of EM of offenders. We consider that Slovakia's 2015 position of having the sixth highest value of prisoners per capita in the EU, and recording a 93 % occupancy of prisons in 2016, can both help explain and justify the political decision to launch the pilot phase of the first national EM program in 2015, and its full implementation in 2016.

Our examination of official documents showed that at the time of the Slovak EM Act's 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 on personal data processing was adequately incorporated into the EM legislation. Thus the EU provided no common legislation (Acquis communautaire) defining the common aims, principles or boundaries to the national legislation on EM of offenders. We have noted that even though the EU has already adopted the Acquis aimed at implementing the principle of mutual recognition of judgments and probation decisions, there is evidence in the academic literature of significant challenges and delays to this first EU Law in the field of probation measures and alternative sanctions. We have also shown from the relevant Slovak official documents, that 98.7 % (26 896 257 € out of the 27 255 057 €) of the costs of the Slovak EM project was paid from the EU structural funds.

This is the first summary research paper from the IAEMPS national research project that will run from July 2016 to June 2020. As noted the project explores the influences, particularly support from the EU, on the introduction of EM of offenders in Slovakia. We welcome any feedback that could help us achieve this project's aims, outlined above.

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