

2. Clearly make people aware of costs, often in monetary terms, because then their psychological impact is the most powerful
3. Adjust instruments to target groups (e.g., by age, environmental attitude, affluence, stage of life [breakthrough moments]) with particular attention paid to sensitive groups
4. 'Experiment' with transport and implement 'transport nudges' to show how environmentally-friendly arrangements work and work towards permanent changes in habits
5. Follow an integrated approach to consider different sectoral policies
6. Pursue an open policy founded on participatory culture and striving for reaching consensus assisted by frequent and continuous promotion and information campaigns.

CHAPTER 10.

Electronic monitoring of offenders in the Visegrad countries: overview, European and economic aspects

Peter MIHÓK

Introduction

Electronic monitoring (EM) of offenders is a general term the most often referring to forms of surveillance used to monitor location, resp. often also movement and/or specific behaviour of persons accused or convicted of conducting a criminal deed (see for ex.: Council in Europe, 2014; Nellis and Lehner, 2012). 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, and/or the remote forms of alcohol consumption measurement. EM has been practiced in Europe for about thirty years, with at least twenty seven countries making use of it, "at a range of points in the penal process. More seem

likely to adopt it in the future. Few countries use it on a very large scale, compared to prisons and other community sanctions" (Nellis, 2014).

In an indirect response to the political decision to launch a permanent EM program in Slovakia since January 2016, 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 European context of EM.

In this Chapter, we summarise the relevant research results of the IAEMPS project that concern the so called Visegrad four countries (Czech Republic, Hungary, Poland and Slovakia) and may be the most relevant for dissemination in Ukraine. Preparation of this paper resulted from the outcomes of the stay of the author at the Territorial National Economic University on 31 May – 4 June 2018, supported by the Visegrad fund within the V4EaP Visegrad University Studies Grant No. 61450002 'Innovative Strategies of Territorial Development of V4: Experience for Ukraine'.

The aim of this Chapter is threefold: (1) to summarize the results of desk research concerning the introductions of national EM programs in the Visegrad four countries (Czech Republic, Hungary, Poland and Slovakia), (2) to summarise the results of the IAEMPS

project research concerning the economic aspects of the relevant national EM programs, and (3) to outline the European context of EM and potential implications for Ukraine.

The material used in our research was composed of:

- the reports of the Confederation of European Probation (CEP), in particular (1) the results of questionnaire surveys carried out prior to the CEP EM conferences (Beumer and Kylvstad Øster, 2016); Nellis, 2013; Pinto and Nellis, 2012 and 2011, and Albrecht, 2005), further referred as 'CEP EM questionnaires' reports, and (2) the national reports prepared within the project(s) titled 'Probation in Europe';
- the national factsheets prepared within the EU co-funded project titled 'Probation Measures and Alternative Sanctions in the EU' (further referred as 'the EU probation project');
- the report by 'European Institute for Crime Prevention and Control, affiliated with the United Nations (Heiskanen (eds.), 2014)';
- individual academic journal papers (quoted accordingly).

We have also used articles from the press as a source of data (quoted accordingly).

The key methods used in a preparation of this paper were the desk research, analysis and synthesis. Several scientific papers which are the outcomes of the IAEMPS project were used in a preparation of this paper, a preparation of which involved other scientific methods such as economic analysis, statistical regression etc. (referred accordingly in the quoted scientific papers).

10.1. Electronic monitoring of offenders in the Visegrad countries

In this section, we summarise the relevant results of our desk research activities within the the IAEMPS project that concern the Visegrad countries.

In the *Czech Republic*, the legal system provided the possibility to use EM to monitor house arrests already in 2010 (Heiskanen et al.

(eds.), 2014). According to the reports of surveys conducted by/for the CEP, the Czech nationwide pilot scheme was implemented from 1 August 2012 to 30 November 2012 (Nellis, 2013), for both the so called front door and back door schemes, but not the pre-trial (Beumer and Kylstad Øster, 2016). On 20 March 2017, the division of Israel-based provider M2M was selected by the Czech Republic's Ministry of Justice to deploy its PureSecurity Electronic Monitoring Suite, a solution aimed at increasing public safety, reducing prison overcrowding and lowering recidivism by tracking and monitoring public offenders. ... The comprehensive nationwide program, set to encompass electronic monitoring of offender programs within the country, is planned to monitor up to 2500 enrollees simultaneously. SuperCom will deploy its PureSecurity electronic monitoring solution which will include home detention, GPS tracking, domestic violence and alcohol monitoring of offenders" (SuperCom, 2017). The Office for the Protection of Competition ended the appeal procedure concerning this tender in August 2017. After some delay in the testing phase, the Ministry of justice announced that the first Czech nationwide permanent program of EM of house arrests would start in July 2018 (ČTK, 2018).

Hungary did not respond to any of the 'CEP EM questionnaires' in 2011 – 2016, and moreover CEP's webpage did not provide any information about EM in Hungary within the 'Probation in Europe' project. According to the National factsheet published within the 'EU Probation Project' in 2011, Hungary had a Law allowing application of EM as alternative method of two coercive measures: home curfew and house arrest (i.e. not as a penal sanction alternative to imprisonment), but in practice the EM was not used in 2011 "because the technical means of implementing such measure is missing". Nagy (2016) stated that "release from prison can occur [in Hungary] in several ways: ... reintegration custody with electronic monitoring (from 1 April 2015)". We were unable to find any English language source of information of the data sought by means of academic or general internet search engines. According to the Annual

Penal Statistics of Council of Europe (the so called SPACE survey), there were 88 persons held under EM in 2015 (Aebi, Tiago and Burkhardt, 2017). The previous report contains the inputs 'No' and '***' for Hungary in the section 8 of the Table 1.1 titled '(8) Persons under electronic surveillance/EM' (Aebi, Tiago and Burkhardt, 2015). Taking this into account, we assume that the EM implementation in Hungary started in 2015 as a pilot program.

Poland was one of the first central and eastern European countries that have implemented EM of offenders. According to Jaskóla and Szewczyk (2017), "it was decided to pass an Act about the serving a sentence of imprisonment outside prison in the system of EM, which entered into force on 1 September 2009", even though "EM was entirely regulated by the Act of 7 September 2007". Nellis (2014) mentioned that "Poland introduced EM as a full substitute for a six month custodial sentence in 2009, and for the last six months of a 12 month custodial sentence, later making it a substitute for a full 12 month sentence". The Polish pilot EM project lasted until December 2011 (Pinto and Nellis, 2011). Jaskóla and Szewczyk (2017) explained the changes in the Polish EM program implemented after the amendment of the legislation which was in force since 1 July 2015: "until July 2015, the system of EM was an important alternative to the imprisonment. The system of EM as one of the form of the penalty of restriction of liberty was not so interesting. Therefore, the legislator decided not to use EM in relation to the penalty of restriction of liberty, but in relation to imprisonment or penalty measures and detention order, which was reflected in amendment of 15 April 2016. In conclusion, we can ask a question, whether the amendment of 15 April 2016 has given the final shape of electronic monitoring, or should we expect further legislative changes" (Ibid.).

Slovakia is not mentioned in any of the 'CEP EM questionnaires' reports in 2011 - 2016. The report from the Probation in Europe project from 2017 mentions that "EM was tested and is in use" (Lulei and Cehlár, 2017). This report mentions that "in 2015, new legislation in relation to EM came into force" (Ibid.) and this can

be attributed to the "new Act No. 78/2015 Coll. On Controlling of Execution of Selected Decisions by Technical Means (legislative base of electronic monitoring)" (Ibid.). This new legislation was valid as of the beginning of 2016, and "two weeks after the launch of a fully operational electronic bracelet system for monitoring accused and convicted people, a court decided to put the bracelet on the leg of a first convict" (TASR, 2016). According to the press, the Ministry of Justice and the company ICZ Slovakia (winner of the public procurement) signed the contract on 28 April 2014 concerning the EM project worth €22.04 million without VAT and financed through EU structural funds (SITA [newswire], 2014). The above referred project passed the pilot operation that lasted five weeks (TASR [newswire], 2015) in 2015, and the first nationwide permanent EM program started on 1 January 2016. Until the end of June 2018, i.e. within the first 18 months of the operation, there were 113 people monitored within this program, including 23 "protected persons" (i.e. the former victims of sexual or domestic violence under the so-called bilateral EM which also includes monitoring of former offenders sentenced to a ban from approaching former victims). The Ministry of Justice established the new working group in 2018 with the primary aims to evaluate the existing and to elaborate opportunities for a wider use of EM in Slovakia (Ministry of Justice, 2018).

10.2. Economic aspects

Economic aspects are often mentioned amongst the reasons of introduction of EM of offenders, the most often in the context of significant rises of prison populations that caused demands to construct new prisons (see for ex.: Clear and Braga, 1995; Morris and Tonry, 1990). Within the research in the IAEMPS project, we have found out that economic reasons were mentioned amongst the reasons, resp. impetuses of EM introduction in the three Visegrad countries: Czech Republic, Poland and Slovakia; while for Hungary we could not find any relevant academic or official source in the Eng-

lish language. In the Czech Republic, economic benefits were considered as a precondition for launching the national EM program (Drexler, 2012; ČTK, 2012), and the economic analyses resulted in the finding that economic benefits can be utilised with ca. 500 offenders sentenced to an EM house arrest (Boledovičová, 2012; ČTK, 2012). In Poland overcrowding of prisons and costs of the EM were, together with the issues concerning legislation, the key issues discussed prior to the national EM program introduction (Jaskóla and Szewczyk, 2017). In Slovakia, the impetus to consider EM of offenders came from the Ministry of Finance in 2010, in the initiative document approved by the Government which, amongst others, 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 key role played by prison overcrowding in introduction of EM of offenders in the Visegrad countries can be illustrated by means of comparing prison occupancy levels between the Visegrad countries and selected relevant Eastern European states, which we present in the Figure 10.1 below.

The research in the IAEMPS project contained also an attempt to gather the available data about the costs of existing European national EM programs and compare them with the available data on the costs of imprisonment. However, this data were available only for one of the Visegrad countries, the Czech Republic, which moreover concerned only its pilot project (Křištofik et al., 2017).

10.3. European aspects

Despite that the IAEMPS project primarily concerned only the Slovak national EM program, its secondary research activities concerned also the European aspects of EM of offenders.

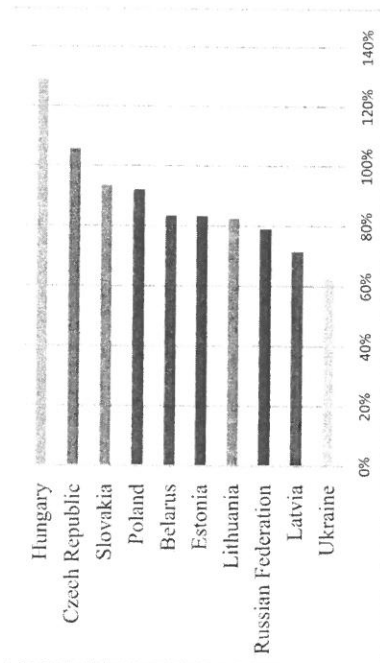


Figure 10.1. Prison occupancy level in the Visegrad and selected European states (2015)

Source: http://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=14

The results of these secondary IAEMPS project research activities suggest that national programmes of EM of offenders in Europe “resemble ‘live organisms’ in a way that they adjust their aims, intentions and methods in time to respond to changing ‘social climate’” (Borseková et al. (2017). In the other words, not only that generalisations cannot be made concerning the content of the EM programs in the European countries, but moreover the content of national EM programs changed in time in several states. “While some countries preferred punishment based approach predominantly focused on restriction of liberty (for ex. 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” (Mihók, 2018).

In the review of foreign academic literature carried out within the IAEMPS project, the key European Law found to relate 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 other European Law found to be relevant was 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. When analysing the documents related to the Slovak EM Act, we have found out that 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. 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. The IAEMPS project research of the European context of EM resulted in the finding that “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 (Mihók, 2018).

10.4. Concluding remarks (and potential implications for Ukraine)

The aim of this paper was threefold: (a) to present the beginnings of EM of offenders in the Visegrad four countries, (b) to briefly summarise the results of research carried out within the IAEMPS project concerning the related European and economic aspects, and (c) to outline potential implications of these research results for Ukraine. We have found out that prison overcrowding and the related public finance issues were amongst the key reason behind introduction of the EM in the Visegrad countries. As we have shown in the Figure 1 above, the 'V4 states' ended up at the four top positions in the ranking of the selected Eastern European member states by prison occupancy levels in 2015. On the contrary, Ukraine was at the bottom of that list, with ca. 60 % prison occupancy level. High prison occupancy rate can therefore hardly be considered amongst the key reasons or impetuses of introduction of EM of offenders in Ukraine.

The legal grounds for the introduction of EM of offenders in Ukraine were introduced by means of amending the Ukrainian Code of Penal Procedure (hereinafter acronymed CPP) in 2013 (The centre for political and legal reforms, 2013; Kiikov, 2014). The one of specific peculiarities of CPP was the introduction of house arrest as preventive measure and the introduction of EM as of a technology to carry out the Court decisions concerning surveillance facilitation over offender abiding of imposed restrictions (Kiikov, 2014). "Although the Courts imposed the home arrest in 5104 cases in 2013", "from available 527 tracking devices [only] 140 were in use in 2014, and since May 2013 the equipment were administered [only] 303 times (Ibid.). This situation with the rather low use of EM devices is similar as in Slovakia, however in Slovakia the low use of EM can be attributed to equally low sentencing of house arrests (which was not the case in Ukraine).

As we have briefly explained in the section dedicated to the European aspects, the EM has been applied in Europe from several different reasons, some of which are not related to house arrests, but instead related to attempts to increase effectiveness of implementation of the probation measures. As a functioning probation system is one of the prerequisites for accession into the EU, the efforts to introduce probation in Ukraine intensified in the recent decade, also under the financial support from the EU within the project titled 'Support to reforms in the sphere of justice in Ukraine'. "In February 2015 the Law of Ukraine on Probation was adopted. The law on probation aims to ensure public safety through a reformed prison system, reduction/prevention in cases of repeat offenders through effective rehabilitation, and monitoring those that are subject to probation. The law makes provisions for social and educational rehabilitation measures and alternate sentencing" (DCAF ISSAT, 2015). "Despite the fact that the Probation Law was passed in 2015, the Probation Service itself was not operational until January 2017, when the legislative amendments to the Criminal and Criminal Procedure Codes came into force and the probation staff was recruited". As of 2018, "it is difficult to talk about the results and effectiveness of the probation service in Ukraine, as natural functions for probation, such as risk assessment and needs, implementation of social programs, the application of electronic monitoring has not yet been put into effect or implemented within the pilot project (Danish Helsinki Committee for human rights, 2018).

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CONTENTS

FOREWORD	5
<i>Kamila Borseková, Jozef Krnáč, Katarína Liptáková, Katarína Vitáľšová</i>	
CHAPTER 1. TRANSFORMATION OF TERRITORIAL SELF- GOVERNMENT IN THE SLOVAKIA	7
<i>Andriy Krysovatty</i>	
CHAPTER 2. FISCAL SPACE OF THE STATE IN THE CONTEXT OF STRUCTURAL IDENTIFICATION IN UKRAINE	39
<i>Viktor Kozluk, Yurii Haida, Oksana Shymanska</i>	
CHAPTER 3. TYPOLOGY OF WELFARE STATE, INSTITUTIONS AND ENVIRONMENTAL BENEFITS OF VISEGRAD COUNTRIES IN THE CONTEXT OF GLOBAL AND REGIONAL PROCESSES	73
<i>Vitalina Kuryliak, Ihor Lishchynskyy, Mariia Lyzun</i>	
CHAPTER 4. BACKGROUNDS FOR LOCAL PRODUCTION SYSTEMS' FORMING IN VISEGRAD GROUP AND UKRAINE	105
<i>Yevhen Savelyev, Yuriy Kozak, Yevheniy Kurylyak</i>	
CHAPTER 5. CLUSTERING IN THE FORMATION OF A CREATIVE ECONOMY: EUROPEAN VECTORS, VISEGRAD FOUR, UKRAINE	121
<i>Ihor Lishchynskyy</i>	
CHAPTER 6. GROWTH POLES AND AXES IN VISEGRAD GROUP COUNTRIES	169
<i>Constantine Flissak</i>	
CHAPTER 7. ECONOMIC DIPLOMACY OF THE VISEGRAD FOUR COUNTRIES – SPECIFIC AND DIRECTION OF DEVELOPMENT	187
<i>Mariia Lyzun</i>	
CHAPTER 8. MONETARY INTEGRATION OF V4 STATES: EXPERIENCE FOR UKRAINE	229

Mariusz E. Sokolowicz, Agnieszka Rzemca

CHAPTER 9. ACHIEVING BETTER AIR QUALITY IN CITIES THROUGH CHANGES IN TRANSPORT BEHAVIOURS: DREAM OR NECESSITY FOR CONTEMPORARY REGIONAL DEVELOPMENT? REVIEW OF TRENDS AND STUDIES	259
--	------------

Peter Mihók

CHAPTER 10. ELECTRONIC MONITORING OF OFFENDERS IN THE VISEGRAD COUNTRIES: OVERVIEW, EUROPEAN AND ECONOMIC ASPECTS	287
--	------------

BIBLIOGRAPHY	299
---------------------------	------------

About authors	326
----------------------------	------------