Faculty of Law and Faculty of Economics
Matej Bel University in Banská Bystrica

UNIVERZITA MATEJA BELA V BANSKEJ BYSTRICI

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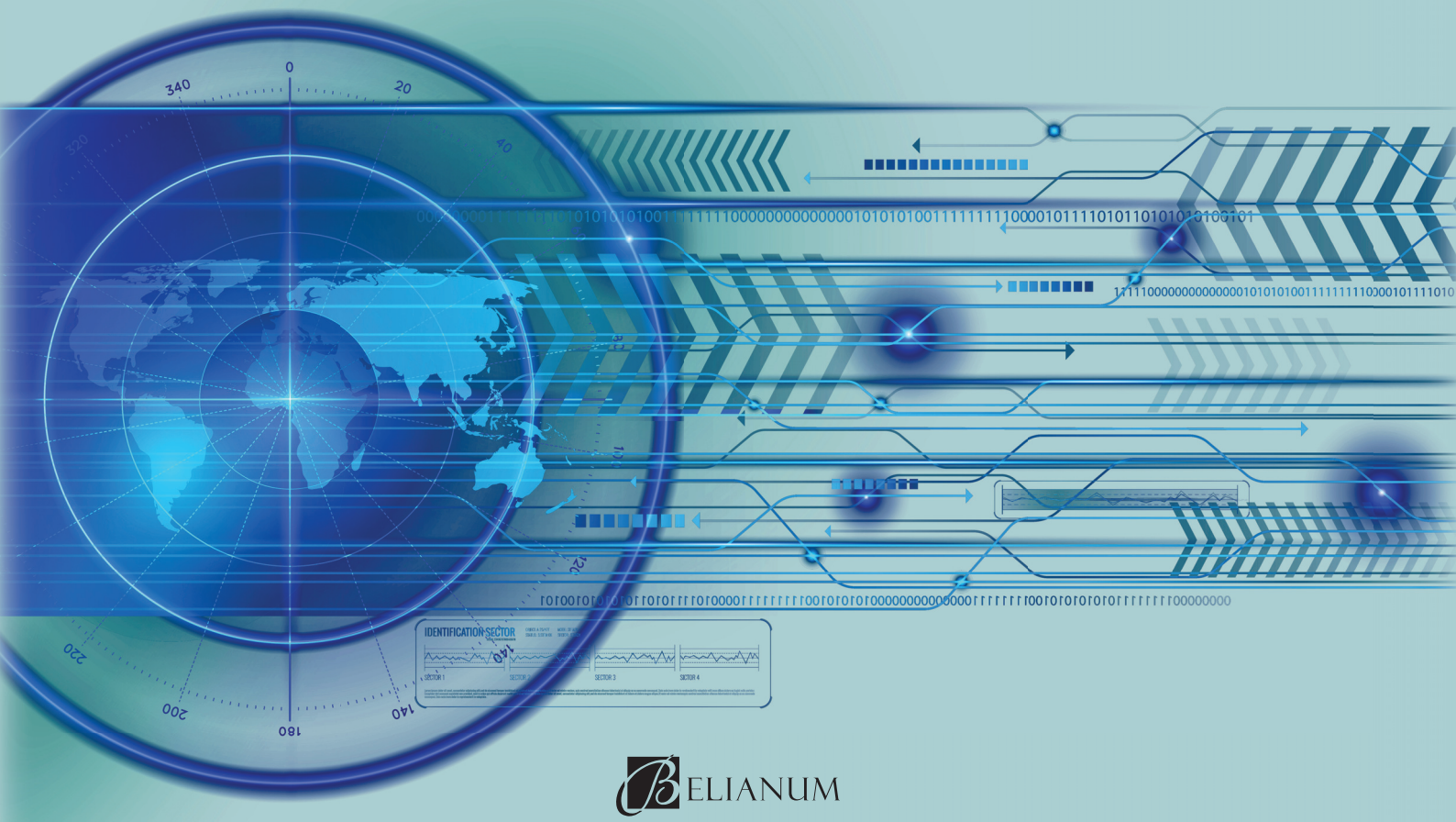
APVV

ELECTRONIC MONITORING IN SLOVAKIA: RESULTS OF A SLOVAK NATIONAL SURVEY AND RECOMMENDATIONS FOR POLICYMAKERS AND LEGAL PRACTITIONERS



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2020

Scientific monograph published within the project APVV-15-0437
„Interdisciplinary approach to electronic monitoring of accused and convicted persons in the Slovak environment“

Banská Bystrica 2020

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Content

Abbreviations

APVV – Slovak Research and Development Agency
EM – electronic monitoring
ESMO – electronic system for monitoring of accused and convicted individuals
IPI – Institute of preliminary investigation
N.O. – urgent measures
PP – parole from execution of an imprisonment
SR – Slovak Republic
TDV – house arrest punishment
TS – prosecution
TZP – prohibition on residence
VTOS – execution of a custodial sentence
Z.z. – Collection

Foreword

The scientific monograph deals with the current topic of electronic monitoring of accused and convicted persons with emphasis on its implementation in the conditions of the Slovak Republic. Theoretical knowledge and experience indicate a little researched and mapped area which the monograph reflects. Most of the knowledge in this area based on legal perspectives. There is no broader view of the issue, as well as an empirical survey. Although many countries apply electronic monitoring, there are only some research projects that address this issue. One of them is the Slovak national basic research project APVV-15-0437 *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*.

This project focused on defining and exploring new theoretical and practical approaches to the electronic monitoring of persons and its evaluation through a wide range of scientific methods. The main scientific goal of the project was to examine the process of electronic monitoring of accused and convicted persons, to analyse and evaluate this process in terms of elimination and prevention of crime, economic efficiency and effectiveness of the integration of monitored persons into society in comparison with standard detention. An integral part was the collection, analysis and evaluation of primary and secondary data associated with the process of electronic monitoring of persons through the implementation of interdisciplinary empirical research. One of the goals was to formulate recommendations for policymakers and persons in the field of monitoring individuals in the conditions of the Slovak Republic.

The project innovation lies primarily in the application of an interdisciplinary approach in the study of the issue, the fulfilment of project objectives and project activities through the connection of law, economics and sociology, thus acquiring a societal dimension.

The scientific monograph presents the partial results with a focus on its presentation and the formulation of recommendations for policymakers and legal practitioners. That is the first monograph concentrated on the issue of electronic monitoring in Slovakia.

Introduction

Probably everyone has ever met a person who has been convicted before. However, it is questionable whether or not he was aware of it. In principle, the punishment is to protect society from undesirable crime, to prevent the perpetrator from committing further crimes, to ensure the correction and resocialization of the offender, to discourage potential perpetrators and to express moral condemnation of the perpetrator in community. Here we talk about the perpetrator´s resocialization as a result that no one even realizes he is moving between persons serving a sentence or after it. The restorative justice supports the primary use of non-custodial sentences and ensures the protection of family ties and contacts within the community. Electronic monitoring of persons has been introduced in the Slovak Republic to promote the principles of restorative justice. Monitoring of persons by electronic means is an area that has not been appropriately examined in society.

The main goal of the scientific monograph is to study the implementation and functioning of electronic monitoring of accused and convicted persons in Slovakia, to present the results of the national survey on electronic monitoring and to formulate recommendations for policymakers and legal practitioners.

The first chapter concentrates on the general theoretical background of this issue. In the introductory part, it presents the theoretical and practical outcomes for the study of electronic monitoring based on knowledge and experience from abroad. The second part of the first chapter deals with electronic monitoring in Slovakia, the process of its introduction, implementation and functioning. Theoretical knowledge and practical experience indicate that this is not a mapped area. Most of the information is based only on legal perspectives because there is no extensive understanding of the issue as well as further empirical research.

This problem reflects the second chapter which presents the results of the national survey on electronic monitoring conducted in Slovakia within the project APVV-15-0437 *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*. The first subchapter 2.1 deals with the development of the use of electronic monitoring in the years 2016 – 2019 in Slovakia based on data obtained in the primary survey. The second subchapter 2.2 concentrates on the implementation and evaluation of the results of the first national survey of opinions of judges and probation and mediation officers on the issue of electronic monitoring in Slovakia.

The results of the survey obtained during the project APVV-15-0437 *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment* form the source for making recommendations for policymakers and legal practices mentioned in the third chapter.

The last part of the scientific monograph deals with the conclusions of our research and the perspectives of further research in the area of electronic monitoring.

1. Electronic monitoring in theory and practice

The first chapter of this scientific monograph is a brief overview of theoretical knowledge and practical experience related to the introduction, implementation and various ways of using electronic monitoring of persons. The first part presents an overview of the use of monitoring abroad. The second part deals with the implementation of electronic monitoring in Slovakia.

1.1 Electronic monitoring abroad – theoretical knowledge a practical experiences

Electronic monitoring (EM) is a relatively new tool in the area of criminal justice. Although the concept of electronically monitored offenders originated in the 1960s, its implementation did not become a reality until 20 years later (Nellis, 1991). Electronic monitoring was first used in Europe, in the United Kingdom in the late 1980s. Since then, countries around the world use electronic monitoring, including the jurisdictions of several European countries, and others that have not yet implemented EM are currently considering it or preparing to launch it (Borseková et al. 2019).

Electronic monitoring is a relatively flexible tool. It can be used at all stages or phases of criminal justice, such as pre-trial measures, punishment, early release or a universal mechanism used to reduce the prison population (Borseková, Krištofík 2016; Hucklesby and Holdsworth 2016). European countries use EM in various ways. Some of them use EM as an independent sentence (e.g. Belgium, Slovakia, Great Britain). It is also an alternative to imprisonment in the case of short-term sentences (France, Norway) or as an alternative to prison in the case of short- and medium-term sentences (Belgium, max 3.5 years). Italy, Lithuania, Poland, Slovakia use EM as a house arrest which is an alternative to prison. The monitoring system has gradually proved its worth in the USA and has become a suitable alternative to short-term imprisonment in Scandinavian states (Ivor et al. 2006).

Germany uses EM as a decision of the European Court of Human Rights no. 19359/04 which authorizes 24-hour police surveillance of the most dangerous perpetrators after returning from prison. The Netherlands perceives rehabilitation as a main role of EM. It combines “meaningful activities” such as work or education with an intensive support program (Borseková et al. 2019). Electronic monitoring represents a widely workable instrument. The advantage is flexibility and the possibility of various changes, such as changing the monitored period according to specific requirements (Borseková, Krištofík 2016; Hucklesby and Holdsworth 2016).

Generally, electronic monitoring can be used in active or passive form. The passive electronic monitoring system represents the control of a person at certain time intervals.

In practice, the accused or convicted person must report at the exact time, for example, by telephone from the particular places where he could be located. The advantage is that the person does not have to wear a monitoring bracelet. An active electronic monitoring system represents a constant control of the monitored person. The purpose of an active form is imprisonment, but it can be used to achieve restraint or surveillance (Burda, E., Čentéš, J., Kolesár, J., Záhora, J. et al., 2010).

Although, the initial motive of EM was only a humane and cheaper alternative to detention. The intentions and the use of electronic monitoring, have changed and expanded considerably. Many other programs implemented EM, and it has additional functions as well (Black, Smith 2003; Martinovic 2002; Payne, Gainey 2004; Renzema, Mayo-Wilson 2005). Electronic monitoring is, primarily, used to detain, restrict and monitor the movement of persons. They do not enter a restricted area or approach certain persons, and their motion can be continuously monitored (Black, Smith 2003). At the same time, these procedures show the potential of electronic monitoring to achieve a complicated balance between punishment and satisfying the public's desire for fair retribution, while enabling behavioural change by promoting more socially responsible behaviour of monitored persons and ensuring their rehabilitation (Borseková et al. 2019, Gainey, Payne 2000; Gainey et al. 2000; White 2001).

Martinovic (2002) mentions other goals of electronic monitoring programs such as reducing the tax burden on the public by eliminating the costs associated with classical enforcement and protecting the perpetrator in terms of corrupt or stigmatizing influences of prison, but also the need to preserve family or community ties. Finally, all electronic monitoring programs aim to suppress crime through increased responsibility and monitoring, raise public safety through more traditional or community-based approaches to supervision, based on probation, parole, and the hope that this approach will reduce long-term recidivists (Renzema, Mayo-Wilson 2005). Due to technological progress, new forms of electronic monitoring are emerging. They enable better fulfilment of the abovementioned goals (Bottos 2008).

The usage and setting up of electronic monitoring in the criminal justice system is relatively controversial and raises several ethical and practical issues. The involvement of the private sector, to a greater or lesser extent, is one of the most debated aspects of electronic monitoring. Other worries concern the nature and background of supervision of electronically monitored persons and their implications on privacy, the problem of extending electronic monitoring in the criminal justice system and the question of whether the EM should be a complementary tool or in selected cases an alternative to a custodial sentence. Moreover, to what extent monitoring stigmatizes the individual, whether an effective tool is provided to monitor the monitored individual's behaviour, the impact of EM on family, children, co-workers and others (Hucklesby et al. 2016).

Despite the growing importance and usage of the EM system, there are only a few scientific studies on this problem. Most contributions are not based on empirical research, but describe the application of EM, or focus on EM in terms of their effectiveness as a method of punishment (for more information, see DeMichele, 2014; Lilly, 2006; Mair, 2006; Nellis 2013; 2009; 2006). Matters related to supervision or control of EM persons are also important, such as the ethics of this approach (see, for example, Nellis, 2013). Most of the

articles are based on specific jurisdiction. However, several papers have been published that provide comparisons across multiple jurisdictions allowing a description and analysis of how EM works in different countries while revealing the opportunities for common topics and research (Nellis, 2014; Nellis et al., 2013). Mainly, the Confederation of European Probation (CEP) (Beumer & Kylstad Øster, 2016; Nellis et al., 2013; Pinto & Nellis, 2011) and the Council of Europe (Nellis, 2015) provide the multi-jurisdictional research. The Council of Europe Annual Penal Statistics (SPACE) collects statistics in this area at European level. However, these statistics often lack accuracy (Council of Europe, 2015a; 2015b). Graham and McIvor (2015) developed an international review of electronic monitoring literature and knowledge. The in-depth empirical survey has only been conducted in a small number of European countries. It is very country-specific (e.g. Vanhaelemeesch et al. 2013, Beyens et al. 2007 in Belgium and Hucklesby 2011, 2009, 2008 in England and Wales). The USA (e.g. Finn & Muirhead-Steves 2002, Gainey & Payne 2000, Renzema 2013, Renzema & Mayo-Wilson 2005), New Zealand (Gibbs 2004, Gibbs & King 2003), Israel (Sosham et al. 2014, 2013) and Argentina (Di Tella & Schargrodsky 2013) conduct a similar survey. It addresses various aspects of EM. These studies offer only a basis for this issue. Knowledge of the effectiveness of EM in terms of its impact on compliance and crime is limited. Research managed in the United States provides some evidence of a reduction in crime during the period when individuals have been electronically monitored (Bales et al. 2010, Padgett et al. 2006). The United States is the first country to start implementing electronic monitoring on a large scale.

At present, over 5 million people have participated, or still participating, in electronic monitoring. In addition to the classic examples of electronic controlling of accused and convicted persons, such as alternative sentences of imprisonment, monitoring of accused persons, authorized surveillance, new forms of the use of electronic monitoring are added. Some states in the US are beginning to use electronic monitoring for sex offenders after their sentences (US. Department of Justice, 2011). These examples from abroad indicate the possibility of using electronic monitoring of accused and convicted persons. Despite limited evidence of an additional effect of EM on offenders, some studies also suggest a long-term positive impact on those monitored electronically. Although, these data vary across population groups (Renzema 2013, Burrell & Gable 2008; Finn & Muirhead-Steves 2002, Bonta et al., 2000).

The following subchapter presents the implementation of electronic monitoring in Slovakia.

1.2 Electronic monitoring and its implementation in Slovakia

The Recommendation CM / Rec (2014) of the Committee of Ministers of the EU Member States on electronic monitoring issued by the Council of Europe and adopted by the Committee of Ministers on 19 February 2014 precede the issue of electronic monitoring. Statute of the Council of Europe declared the effort for unity among European member states to develop international collaboration in the enforcement of criminal sanctions. The cooperation in this area should contribute to ensuring justice and the effective enforcement of criminal sanctions while respecting the human rights of offenders. It would effectively lead to a

reduction in crime. Deprivation of liberty in the understanding of criminal responsibility for the conduct of offenders should be the last resort for re-education. The increase in the prison population becomes a risk to the penitentiary condition, which is not following Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms as emphasized by the European Court of Human Rights. Attention has come to less disturbed offenders to involve them effectively and economically efficient work for the community. The electronic monitoring used in criminal proceedings intended to be a tool to eliminate overcrowding in prisons and to prevent crime. Used properly, it should help mitigate the negative impacts on the private and professional life of the electronically monitored person, as well as his immediate surroundings. Electronic monitoring as a whole is an opportunity for the offender not to be imprisoned or sentenced to unconditional custody in cases where the law allows the use of this alternative. It is the opportunity to continue to work with his responsibility and not criminogenic behaviour, to economically provide his family, to maintain social ties, etc. It was essential to lay down several rules for the implementation of electronic monitoring in practice to apply it to the legislation, policy and legal practice of the individual European Union member states. It was necessary to establish ethical and professional standards for the effective use of electronic monitoring, to adopt guidelines for judges, prosecutors, prisons, the police, and probation and mediation officers.

A pilot project of the Electronic Monitoring System of Convicted and Accused Persons (hereinafter referred to as "ESMO") executed by the Ministry of Justice of the Slovak Republic (hereinafter also "MS SR") in 2013 preceded the introduction of the electronic monitoring into the Slovak legal system. The aim was to implement the intentions of criminal recodifications. They have implemented the institute of control by technical means into the legal system of the Slovak Republic from 1 January 2016 regarding the sentence of house arrest, which was used minimally without such a form of control. The ESMO project aimed to create new legislation in connection with its practical application, to establish an operational centre for electronic monitoring of persons, and monitoring technology. It was necessary to form an integrated information system to make the work of probation and mediation officers efficient in practice.[1] The project introduced the electronic monitoring not only in the criminal but also in the non-criminal, civil area (currently ineffective Civil Judicial Code, but the Civil Procedure Code in § 325 paragraph 3). In the criminal area, electronic monitoring primarily focused on the control in the case of house arrest, a ban on the residence, a ban on approaching (to the building, to a protected person), a ban on the consumption of alcoholic beverages, a ban on participation in public events. There were two types of monitoring (the part of the ESMO project) that were not used for practical purposes (e.g. due to the unavailability of GSM or GPS signal coverage) – voice monitoring and discreet control. In civil proceedings, the monitoring aims at protecting victims of domestic violence in the case of an ordered preliminary measure (currently an urgent measure under Civil Procedure Code), which banned the perpetrator from entering the residence or approaching a designated person.

[1] KLÁTIK, Jaroslav. Využitie elektronického monitoringu na Slovensku od jeho zavedenia až po súčasnosť. In: *Právne a ekonomické súvislosti elektronického monitoringu obvinených a odsúdených osôb: zborník príspevkov z medzinárodnej vedeckej konferencie*, Banská Bystrica, 21. – 22. 10. 2019, 1. vyd, Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2019. s. 136. ISBN 978-80-557-1658-9.

The European Union co-financed the pilot program of the Electronic Monitoring System of Convicted and Accused Persons (ESMO) under the European Regional Development Fund with the Operational Program Computerisation of Society and launched it on 1 January 2016. The main reason for implementation was the commitment of the Ministry of Justice stated in The Program Statement of the Government of the Slovak Republic 2012 – 2016, in which the Ministry drew attention to the prevention of crime and the possibility of imposing alternatives to imprisonment. Subsequent discussions of the Minister of Justice, especially within the European Commission, extended the initial intention to use monitoring in the civil procedures. The setting up of the project resulted mainly from the long-term practise of other countries. The purpose was to use one of the most modern technologies that assumed project set criteria. For the successful implementation of the project, it was necessary to achieve the following objectives: to create new legislation that will apply the practical application of electronic monitoring of persons, to establish a control body, headquarters and electronic monitoring operational centres also with a central repository of data on persons monitored with appropriate HW equipment, network infrastructure and back-up centre, to create an integrated information system that will make the activities of mediation and probation officers more efficient, to introduce electronic monitoring in the criminal and civil areas.

The ESMO project was an example of the effective use of EU funds, through which the Government of the Slovak Republic contributed to solving problems in the area of infrastructure, employment of the young generation or in the area of prisons and security of citizens. It was a very important project in the history of the Slovak prison situation during the last 45 years. The implementation of the ESMO project began in February 2014, introduced a modern, efficient and comprehensive information system that provides services in the electronic sphere related to electronic monitoring for local governments, businesses, and citizens. The schedule consisted of a test phase launched at the end of May 2015, and the implementation of the pilot operation began on 1 July 2015. The project was completed and put into operation on 30 September 2015. Act no. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts, but also amendments to related regulations, namely the Criminal Code, the Criminal Procedure Code, the Civil Procedure Code, the Judicial Officers Act, the Probation and Mediation Officers Act, the Imprisonment Act and of the Act on the Execution of Detention, Decree on Material and Technical Conditions for the Use of Technical Instruments. This Decree establishes the costs recompense of inspection by technical means.

Electronic monitoring within the Slovak Republic was a new innovative service and originally intended to allow the more flexible imposition of alternative sentences such as house arrest, monitoring compliance with the ban on approaching another person and a defined territory, as well as monitoring the consumption of beverages, narcotics. E-services cover the area of domestic violence and small thefts, harassment and an unadaptable neighbourhood behaviour. The real potential of this institute should be fully exploited by publishing services in electronic form. It allows citizens to report violations, by introducing active services that alert against the perpetrator, such as crime and property crime prevention and by electronic monitoring of convicted persons using alternative forms of punishment. From the factual

point of view, three basic problems result in the implementation of the ESMO project: 1. the absence of electronic services in the area of security of the population; 2. a very low level of alternative penalties imposition; 3. limited accommodation in Slovak prisons. The primary objective consisted of the electronic services linked to electronic monitoring and also in the creation of an integrated information system for greater efficiency in the work of mediation and probation officers. Besides, four specific goals were defined: 1. to introduce electronic services of the Ministry of Justice, which will fully serve the purpose of security of citizens, 2. to build an integrated information system for mediation and probation service that will allow its employees to work effectively with agendas, statutory monitoring of citizens, work with information and their exchange with other bodies that cooperate, namely with bodies in criminal proceedings, courts, the Judiciary Guards and Prison Wardens Corps, 3. to publish electronic services that increase citizens security 4. to introduce electronic monitoring for purposes when imposing alternatives to imprisonment or appropriate restrictions and obligations or urgent measures for the initial target group of two thousand persons per year, with the possibility of exceeding this number.[2]

The implementation of the pilot project took place within the Operational Program Computerisation of Society of the priority axis Electronic Public Administration and Development of Electronic Services, and its main document was the contract on the provision of non-repayable financial grant concluded on 29 November 2013. The only suitable candidate was the Ministry of Justice. As a result of the public procurement procedure performed in April 2014, The Ministry of Justice and ICZ Slovakia, Ltd. concluded a contract for the provision of comprehensive services to the ESMO. The company became the supplier of the technical solution for the project. The European Regional Development Fund co-financed a technical solution for the introduction of electronic monitoring. The state budget pays the costs for five years in connection with the sustainability of the project. The expenditures consist of the system operation and its funding for service interventions. The maximum costs based on the feasibility study amounted to EUR 26,945,900.00, which meant a calculation for 2000 monitoring facilities per year. The eligible costs of the project amounted to EUR 26,896,257.00. Besides, expenses were drawn from the budget of the Ministry of Justice of the Slovak Republic for software licenses and hardware amounted to EUR 358,800.00. The total amount of expenditure represented an increase to EUR 27,255,057.00. The contract for the provision of service services ensured the sustainability of the project for at least five years in the form of a flat-rate monthly payment with a maximum annual price of EUR 3,860,000.00. The Ministry of Justice of the Slovak Republic also paid a fixed fee for operational support and maintenance services within the monthly flat rate for the number of service trips agreed at 300 per year. The price decreased by EUR 210,306.00 in 2016 and the following seasons by almost EUR 750,000.00 per year because of the low number of technical means uses. This was expected in the first years of this project.

[2] KLÁTIK, Jaroslav. Využitie elektronického monitoringu na Slovensku od jeho zavedenia až po súčasnosť. In: *Právne a ekonomické súvislosti elektronického monitoringu obvinených a odsúdených osôb: zborník príspevkov z medzinárodnej vedeckej konferencie*, Banská Bystrica, 21. – 22. 10. 2019, 1. vyd, Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2019. s. 136. ISBN 978-80-557-1658-9.

The legal system of the Slovak Republic has applied the electronic monitoring since 1 January 2016 with the adoption of Act no. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts. Its adoption was exhaustively determined within the framework of criminal and civil law, and in which cases and under what conditions it is possible to order electronic monitoring, especially for inspected persons and separately for protected persons. In its legal provisions, it enshrines the possibility of use by technical means at the place of execution of an unconditional sentence of imprisonment for convicts control. The Judiciary Guards and Prison Wardens Corps carried it out directly. The state shall bear the costs of the monitoring by technical means, and each inspected person is obliged to participate in the reimbursement of the expenses for each day of the inspection by technical instruments in the amount established by the Ministry in a generally binding legal regulation no. 225/2015 Coll., which sets the amount of compensation for the costs of inspection by technical means, adopted from 1 January 2016 at EUR 1.50. In the first years, there was almost no imposition of house arrest (in 2016 just 7 cases). In particular, the institutions serving imprisonment carried out controlling the movement of convicts. In the case of control of convicts serving a custodial sentence, it was not the execution of a court decision, but one of the forms of carrying out the tasks of the judiciary guards and prison warden corps to control convicts serving a custodial sentence. The reason for the insufficient use of alternative punishments can be considered the relatively strict criminal policy in connection with high crime rates compared to some other Member States of the European Union. That is also why the Ministry of Justice of the Slovak Republic established the Working Committee of the Ministry of Justice of the Slovak Republic for “ESMO”, which discuss and subsequently prepare appropriate legislation for more frequent use of control by technical means.

Restorative justice as a new concept of criminal justice came to the front position of legal interest in the 1980s, first in Canada and the United States, and later in European codification. It is based on a new understanding of the concept of crime perceived as a social conflict between individuals or parties of the proceeding. The active participation of both parties can solve the problem. The response to a crime may or may not take the form of punishment. It is a qualitatively new understanding of the responsibility for resolving the infringement, regarding the efforts to restore the disturbed values and relationships. It enables society to understand the roots, the causes of crime, to prevent it and to transfer responsibility for its commission to perpetrators. We can mention the context of the Resolution no. 16 of 7th United Nations Congress in Milan in 1985 On the reduction of the prison population, alternatives to imprisonment and social integration of offenders. The resolution contained the main idea of a new trend of imposing criminal sanctions, namely: “Imprisonment should be imposed as a sanction of last resort”. The draft Guidelines on Alternative Imprisonment prepared within the groundwork for the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1991 emphasizes that the alternative must not involve any deprivation of liberty. Furthermore, the offender must be able to comply with the conditions laid down and the length of the alternative sanction must be directly proportional to the offence and the length of the custodial sentence that would otherwise have been imposed.

The system of alternative punishments assumes that a significant proportion of offenders are less disturbed and, by imposing alternative penalties, will be given a chance to reconsider their attitude, behaviour and the consequences of their actions. As a result of unconditional imprisonment, the offender is forcibly torn from his natural way of life, from his family or work environment, which may make it more difficult for him to return from prison to his environment and restore original social ties. The imposition of non-custodial sentences is an expression of trust and an effort to help the offender. It is usually the case of first-time offenders that are less serious crimes, where the court should consider the appropriateness of imposing a custodial sentence and, depending on the circumstances of the case, choose to impose an alternative.

1.3 Slovak model of electronic monitoring in criminal proceedings

The idea of restorative justice prefers the imposition of the alternative punishments, including house arrest. The entering to the legal system of the Slovak Republic was presented as a useful tool for relieving overcrowded prisons, a means of better social inclusion of convicts and reducing of recidivism. House arrest was introduced into legal practice as one of the alternative sentences in 2006. However, the application proved that the imposition of this alternative punishment is not expedient from the point of view of its feasibility. The small number of sentences did not have the expected effect, and the imposition has not resulted in reducing the number of people serving a custodial sentence. One of the reasons was the increasing agenda of probation and mediation officers in the form of imposing other alternative sentences (e.g. compulsory labour sentences), reducing the number of probation and mediation officers in courts but, especially, the insufficient control of this sentence. The probation and mediation officers provided the checks randomly, even during non-working hours, with several security risks, and without cooperation with the police.

Under the Criminal Codes, a court may impose a house arrest of up to four years on the offender if:

a) considering the offence nature referred to in paragraph 2, the person and circumstances of the offender shall be sufficient for the imposition of that sentence;

b) the offender has given a written promise to stay in the dwelling at the specified address for a specified period and to provide the necessary cooperation in carrying out the inspection;

c) the conditions for carrying out the monitoring by technical means are met.

The court may impose a sentence of house arrest in the adjustment under § 53(1) of the Criminal Code for a criminal offence with an upper limit of the penalty provided by this Act not exceeding ten years, but at least at the lower limit of the penalty rate of imprisonment established by this Act. A convicted person while serving a sentence of house arrest is obliged to stay in his home, including the outdoor areas belonging to it, at the time determined by the court, to lead a good life and to submit to control by technical means.

The control of the execution of a sentence of house arrest is regulated by the Criminal Procedure Code in the provision of § 435 Criminal Procedure Code on amending the Criminal Procedure Code of Act no. 214/2019 Coll., amending and supplementing Act No. 300/2005 Coll. Code of Criminal Procedure, as amended and on Amendments and Supplements to Certain Acts applicable from 1 August 2019. Whereas the court in whose district the sentence of house arrest is served is competent to enforce a decision imposing a house arrest sentence, including the decisions and measures under Section 406 of the Code of Criminal Procedure. As soon as the decision imposing the house arrest becomes enforceable, the President of the Chamber shall immediately send his copy to the court following the preceding sentence. The execution of a house arrest sentence shall be ordered by the court without delay after the judgment by which it has been imposed has become enforceable. At the same time, the court will warn the convict of the restrictions and obligations arising from the sentence imposed, as well as of the threat of turning this sentence into a custodial sentence. If the convicted person does not comply with the restrictions or obligations arising from the house arrest or misses the exercise of control by technical means, the court in a public session by resolution converts this sentence or the rest into unconditional imprisonment. The court must hear the convicted person before the decision. If, after serving half of the house arrest, the convict requests a conditional withdrawal of the execution of this sentence, the court shall decide by a resolution within 60 days at the latest. Concerning the interruption of a house arrest sentence (Section 435a of Criminal Procedure Code), a house arrest punishment is interrupted by taking a convicted person into custody or by committing a person sentenced to imprisonment in another criminal case. The President of the Chamber may, for important reasons which prevent the proper execution of a sentence, suspend a house arrest for the necessary time. If these reasons cease, the President of the Chamber shall order it again. The period during which the house arrest was interrupted is not included in the period of serving the sentence. Concerning the withdrawal of the execution of a house arrest sentence (§ 435b of Criminal Procedure Code), the court may withdraw a house arrest sentence or the rest of it if it finds that the convict has suffered from a life-threatening illness or a mental illness.

Although the period of the criminal justice new concept brought the possibility of imposing alternative punishments into criminal law, due to the diversity of legal systems in the countries of the European Union is their use different. It refers to the imposition and use of house arrest. The application of that particular punishment preceded a pilot electronic monitoring aimed at verification of the operation in practice. It included finding out whether the costs of such monitoring of convicts would be relevant to the savings made by staying away from institutions serving a custodial sentence. Home imprisonment has become a tool in reducing recidivism and limiting the prison population combined with social re-education, not only in isolating a socially dangerous person. It undoubtedly has a place in the system of alternative punishments. The Czech Republic provided cooperation in professional assistance in the implementation of probation and mediation institutes in the Slovak Republic. The pilot programs were implemented for a much longer. The house arrest was legally enshrined in the legal system by Act no. 40/2009 Coll. amended on 1 January 2010. In the Czech Republic, electronic monitoring of persons was launched in cooperation with the Probation and

Mediation Service of the Czech Republic together with the Ministry of Justice of the Czech Republic on 1 August 2012. The pilot program included 47 persons and its successful testing confirmed financial return compared to the stay of 1 convicted person serving a sentence of imprisonment. In the long term, this type of punishment should bring significant savings, solve the problems of prison overcrowding and the lack of financial resources in the judiciary. The probation officer of the Probation and Mediation Service of the Czech Republic is authorized to control the execution of the sentence, which, unlike the Slovak Republic, has an independent institutionalized position and the probation officer is separated from the mediation officer. The probation and mediation officer carries out random checks at the residence of the convicted person who is obliged to stay at the place determined by the court and to allow the probation officer to enter the convict's habitation. The consultations with the convicts at the Probation and Mediation Service Centre complete random checks. The probation officer assists the convict in solving his problems through professional assistance and counselling to lead the convict to a proper way of life in cooperation with the convict's family.

Since the introduction of house arrest, the Czech Republic has used it very little, because, similarly to the Slovak Republic, its problem is an ineffective method of control. Judges refrained from imposing them due to issues in its performance. Probation officers did not have sufficient time to carry out such check, and their role was limited to monitoring the presence of a person in the dwelling and not to assist the perpetrator, thus losing the importance of probation. It leads to a consensus that the only truly effective and efficient way is to introduce electronic monitoring. In the Criminal Code of the Republic of Poland, the house arrest has been regulated since 1 September 2009, and its legal conditions are almost identical to the law systems of Slovakia and the Czech Republic. Initially, it was applied only in Warsaw, from 2012 it is implemented throughout the country. The peculiarity of the law is that after its amendment in 2010 this could be imposed on a recidivist and its length could be more than 6 months. The unifying element of the future with the use of house arrest in Europe is the linked introduction of electronic monitoring.[3] Some European countries are in various stages of preparation or fierce operation of this modern technology of sentencing. They mainly use radio frequency technology, GPS tracking, voice verification and remote verification of alcohol consumption.

The legal regulation of the alteration of the rest of the imprisonment into a house arrest presupposes the fulfilment of the general conditions for the imposition of a house arrest under Section 53 of the Criminal Code, especially after the amendment to the Criminal Code no. 214/2019 Coll. with effect from 1 August 2019. For the offence, the court may convert the rest of the sentence of imprisonment into a home arrest if the conditions under § 53(1) of the Criminal Code are fulfilled and at the same time:

a) the convict has shown the behaviour improvement during the execution of his sentence by performing his duties;

[3] KLÁTIK, Jaroslav. Využitie elektronického monitoringu na Slovensku od jeho zavedenia až po súčasnosť. In: *Právne a ekonomické súvislosti elektronického monitoringu obvinených a odsúdených osôb: zborník príspevkov z medzinárodnej vedeckej konferencie*, Banská Bystrica, 21. – 22. 10. 2019, 1. vyd. Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2019, s. 145 – 149. ISBN 978-80-557-1658-9

b) the convict has served one-third of the sentence imposed or commuted by a decision of the President of the Slovak Republic,

c) the rest of the unexecuted sentence of imprisonment does not exceed three years,

d) (d) it is not the execution of a sentence ordered after a decision of not proving oneself during a probationary period determined by a conditional suspension of a custodial sentence, a conditional suspension of a custodial sentence with probation supervision, the execution of the rest of a sentence ordered after not proving during the probationary period in the case of conditional release from imprisonment,

e) the convict punishment has not been converted from a house arrest to imprisonment,

f) (f) the convict has not been punished to a custodial sentence before the committing of the crime.

The court shall convert the rest of the custodial sentence into a house arrest so that the unserved day of the rest of the custodial sentence is equal to one day of the house arrest.

The court may release a convicted person on parole if he has shown the behaviour improvement during the execution of his sentence by performing his duties and can be expected to lead a good life in the future, and:

a) in the case of a person convicted of an offence after serving half of an unconditional sentence of imprisonment or reduced by the decision of the President of the Slovak Republic,

b) in the case of a person convicted of a crime after serving two-thirds of an unconditional sentence of imprisonment or reduced by the decision of the President of the Slovak Republic,

c) in the case of a person convicted of a crime, who was not serving a custodial sentence before committing a crime after serving half of the unconditional sentence of imprisonment or reduced by the decision of the President of the Slovak Republic, the court shall together order an inspection by technical means.

When deciding on parole, the court shall take into account the nature of the committed offence and the institution in which the imposed sentence is served.

If the convicted person serves more than one sentence of imprisonment, he may be conditionally released at the earliest after the execution of the total sum of proportional parts of the sentences imposed under paragraph 1(a) to (c), § 67(1) and (2) and the rest of the sentence under § 68(2). In the case of conditional release under paragraph 1(c), the monitoring by technical means may be terminated at the earliest after the expiration of the period corresponding to two-thirds of the imposed unconditional sentence of imprisonment or by a decision of the President of the Slovak Republic of the reduced unconditional sentence of imprisonment.

As regards the conditional non-execution of the rest of the sentence of house arrest, after serving half of the house arrest, the court could conditionally release of the rest; if the convicted person has proved at the time of serving his sentence that further execution is no longer necessary. In the case of conditional non-execution of the rest of the house arrest,

the court shall determine a probationary period of up to two years, but not shorter than the rest of the sentence, the probationary period begins on the day following the day of validity of the decision on conditional non-execution of the rest of the house arrest. A court may be subject the appropriate restrictions or obligations specified in the provisions of § 51 (3) and (4) of the Criminal Code, aimed at leading a good life. If the convict, who was conditionally non-executed the rest of his house arrest, led a proper life during the probationary period (without an entry in the Criminal Register of the General Prosecutor's Office of the Slovak Republic, in the Register of Offenses of the Ministry of the Interior of the Slovak Republic and others), the court will pronounce that he proved himself. Otherwise, it must decide, possibly during the probationary period, to convert the rest of the sentence into an unconditional sentence of imprisonment so that the day of custody at house arrest is equal to one day of the unconditional imprisonment, and at the same time decide how to serve it. If the court has pronounced that the convicted person has proved himself, this means that the sentence was served on the day when the decision to non-execute the execution of the rest of the house arrest came into force. The sentence of house arrest was executed on the day when the decision on conditional non-execution of the rest of house arrest came into force, if the court, without the convicted person's fault, did not decide to change the sentence within one year of the probation period, or the convicted person is prosecuted for another criminal offence committed during the probationary period, within two years from the expiry of the probationary period. If a convicted person who has been non-executed from the rest of the house arrest has lived a good life during the probationary period and has complied with the restrictions or obligations imposed, the court shall declare that he has proved; otherwise, the court decides, possibly during the probationary period, to convert the rest of the sentence to an unconditional sentence of imprisonment so that the unexecuted day of imprisonment is equal to one day of the unconditional sentence of imprisonment, and at the same time decides on the means of serving this execution. If the court has pronounced that the convicted person has proved himself, this means that the sentence was served on the day when the decision to non-execute the execution of the rest of the house arrest came into force. The house arrest was executed on the day when the decision on conditional non-execution of the rest of the house arrest came into force; if the court, without the convicted person's fault, did not decide to change the sentence within one year of the probation period, or the convicted person is prosecuted for another criminal offence committed during the probationary period, within two years from the expiry of the probationary period.

The use of technical means regime is determined by the probation and mediation officer based on the decision of a judge or prosecutor to ensure the proper performance of control by technical instruments.

The technical means in the control regimes are:

- personal identification device;
- the presence control device at the place of enforcement of the decision (hereinafter referred to as "presence control device");
- device for determining the position of the inspected person;

- proximity warning device;
- alcohol consumption control device;
- voice verification device of the presence of the inspected person;
- probation and mediation officer device.

The control of the presence of the monitored person at a specified time at a specified place ensures the monitoring of house arrest and a ban on leaving from the place of residence, which is usually imposed by a decision of a court or prosecutor's office (detention cases). These devices allow monitoring of movement or residence of the inspected person. The personal identification device has the shape of a bracelet fastened above the ankle of the inspected person. It is used to identify the inspected person, who in the central monitoring system is compatible with the data about the inspected person and the relevant regime.

The bracelet still communicates with the presence control device via a radio frequency signal, they are paired (each is non-functional separately) and is a collector and sender of the collected data to a central monitoring system located in the Bratislava operation centre. The seat of the operation centre is the Ministry of Justice of the Slovak Republic, which directly communicates through the judicial network with the controllers of individual regimes of electronic monitoring of persons, i.e. probation and mediation officials of district courts through the register of probation and mediation service.

The presence control device resembles a classic landline. It is placed in the dwelling of the inspected person during the entire duration of the electronic monitoring with the consent of the persons living together with the inspected person. A small screen located in the middle after activating the device displays the date and time. The device has a handset on the side used for telephone connection of the inspected person to the operation centre and vice versa. Special identification device, the bracelet has a separate built-in battery, and the presence control device is connected to the main supply. The regime of checking the presence of a controlled person at a specified time at a specified place (in the case of house arrest) is the most commonly used type of control, and therefore, in addition to the description of the regime, we will focus in detail on the activation and installation of technical means.

The technical devices necessary for this type of mode are:

- the presence control device;
- the personal identification device;
- the black activation key (difference from the black and white activation key, which activates the personal identification device only in the mode of control of the prohibition of approaching the protected person).

Before the installation, it is necessary to calibrate the personal identification device using the activation key by holding the metal tabs of the bracelet pressed on the activation key and briefly pressing the OFF button. After the red light flashes (for about 2 seconds), the activation key is disconnected. The tabs are attached to the activation key, and the ON button is pressed, the red light flashes again. The bracelet is set aside and allowed to lie still on a non-metallic surface about 30 cm from the device.

After successful calibration, the probation and mediation officer phones the operation centre and asks to activate the device, the operation centre sends an activation SMS message to the probation officer and after about 3 minutes the device emits a tone, which means that the device is activated, and the control mode has been successfully sent to the device. The current date and time appear on the device display. The probation and mediation officer then establishes a personal identification device (bracelet) for the inspected person:

1. checks that the strip (for attaching the end of the strap) is on the side of the strap with metal spikes;
2. then, attaches to this part of the strap the female part of the clip (with openings) from below so that at the end of the strap there is a part of the clip with the full side;
3. request the inspected person to sit down and attach him/her strap around the ankle at its narrowest point so that the telephone number placed on the personal identification device faces upwards. The strap is fastened to the strip;
4. checks that there is a sufficient gap between the ankle of the inspected person and the bracelet to prevent the strap from pulling too much around the ankle;
5. ask the inspected person to get up and walk around a few steps to ensure that it is comfortable when wearing the bracelet. At the same time, the probation and mediation officer checks the condition of the body presence value using the probation officer's device.
6. The probation and mediation officer attaches the male part of the clip to the female so that the slot fits into the protrusion.
7. then, using the pliers, the officer snaps both parts of the clip together.
8. If the two parts of the clip fit together, the device locks. After deployment, the probation and mediation officer using the probation officer's device checks the condition of the bracelet.

After the personal identification device installation, the presence control device shall be placed in the dwelling of the inspected person:

- preferably, in the middle of the house near an electrical plug;
- on a flat, dry, stable and safe surface (e.g. table);
- approximately 1 meter above the floor and at a minimum distance of 30 cm from the wall;
- as far as possible from a television, microwave oven, computer, laptop or other electrical appliance;
- away from heat or cold sources (radiator, air conditioner, direct sunlight);
- the device adapter is plugged into an electrical socket;
- if the device beeps, the initialization process has started – searching for a mobile operator (it may take 10 – 30 seconds after connection).

A personal identification device and a presence control device provide the control of the house arrest execution. The personal identification device is in the form of a bracelet, which is usually attached to the ankle of the inspected person. The condition for its use is a confirmation from a doctor about the medical fitness for its installation. Its task is to ensure unambiguous

identification of the inspected person – in the central monitoring system, it is paired with the data and regime of a specific person. The bracelet still communicates with the presence control device via a radio frequency signal, which in turn sends data to the central monitoring system, and enabling the monitoring of movement, presence of the inspected person. While the bracelet has its built-in battery, the presence control device requires a connection to the main supply and the availability of a telephone connection or a mobile network signal. This device is placed in the residence of the inspected person with the consent of the persons living in the same habitation for the entire duration of the electronic monitoring.

The control of the movement and residence of the inspected person based on the destination of his/her current geographical location monitors the imposed penalty of the ban on presence in restricted places, e.g. sporting events (usually at football stadiums), in restricted cultural events or in the prohibition of entering locations where a crime has been committed. The device sends to the central monitoring system data on any movement or stays of a person, i.e. the controlled person may move freely in his / her residence, place of residence, city, region or within the territory of the republic. His/Her movement or residence is monitored to the extent of the territory determined by the decision of the court or prosecutor's office. A personal identification device, bracelet and positioning device carry out the inspection.

It is a portable device similar to a mobile phone (black), which must be carried by the inspected person, e.g. in a bag, pocket during the whole electronic monitoring. It is necessary to charge regularly the battery of this device, similar to a mobile phone, usually for two hours every day. The condition for using this control mode is the same as when checking the presence of a person at a specified time at a specified location, with the difference that the availability of a mobile network signal as well as a GPS signal is necessary for this device.

If the court orders the accused or convicted person a ban to stay, e.g. in football stadiums at the time of the sporting match, a bracelet and a positioning device carried out the control of the enforcement of this decision. This device allows you to control movement and presence based on determining your current geographical location. It is a portable device similar to a mobile phone, which the inspected person is obliged to carry with him for the duration of the electronic monitoring. The principle of its operation is similar to the device for checking the presence of the inspected person at a specified time at a specified location. The availability of the signal of the mobile network and also GPS is a necessity in this case. The device battery must be charged regularly.

The control regime of the approach of the inspected person to the protected person and immediate warning of the protected person monitors the prohibition of approach to the protected person. The protected person may be a victim of domestic violence and must agree with the monitoring. For example, the controlled person cannot be in the vicinity of a protected person's home. The approach ban is limited by the distance of the inspected person from the protected person. The technical parameters determine the extent (e.g. 5 m, 100 m, etc.). This type of control can be parallel to the monitoring of the movement and residence of the inspected person, where the convicted person as the inspected person wears a personal identification device (bracelet) and the injured party (victim) as a protected person has a proximity warning device. It is a mobile device similar to a mobile phone (black and white),

which the protected person has with him. In case of the approaching at a pre-set distance, it warns him by loud signal or through the operation centre that the inspected person is in its vicinity or in the zone established before entering the restricted area, that is the zone where the protected person is. The monitored person is also alerted by his/her technical device (positioning device) that he/she is in the vicinity of the protected person and must leave the zone immediately. During the entire period of the inspection, the monitored person is notified of the violation of the prohibition, and this notification ends only when the inspected person leaves the restricted zone. It is also necessary for the protected person to regularly charge the technical equipment and check the functionality of the available mobile and GPS signal.

To improve the protection of a domestic violence victim, the court may, with her consent, impose a ban on the accused or convicted person from approaching him/her for a distance controlled by using the electronic monitoring. A combination of the same devices is applied as in the case of the ban on a residence, i.e. the accused or convicted person as a controlled person will wear a bracelet and a positioning device. The victim or the injured party acquires the status of the protected person and must carry a proximity warning device throughout the inspection by technical means. This portable device, the dimensions of a regular mobile phone, allows an immediate warning of the protected person in the event of an approached person vicinity. It needs battery charging and an available mobile and GPS signal for proper operation.

The control regime of the ban on the consumption of alcoholic beverages enables the monitoring of the ban on the consumption of alcoholic drinks imposed together with the house arrest. An alcohol control device carries out the control of this prohibition. This technical device makes it possible to monitor the level of alcohol in the breath of the inspected person. The initial scanning of the biometric dimensions of the face of the person conditions its functionality, and are automatically entered into the central monitoring system. This system stores them and prevents this inspection from being performed by a person other than the inspected person. The device is fitted with a removable plastic tube, which serves to perform the breath test. The device is in the shape of a large black box with a small screen, which captures the face of the person. It is located in his/her home and is randomly called through the operation centre to carry out such an inspection. Using the buttons on the right, the person starts the beginning of the check with the start button, or sets the breathing frequency (start blowing into the tube, blow stronger, blow weaker) or resets the previous action, which is automatically recorded in the device memory.

An alcohol control device monitors the compliance of the ban on the consumption of alcoholic beverages. It works on the monitoring of the level of alcohol in the breath while recognizing the face of the inspected person. At the request of the central monitoring system, the inspected person performs a breath test on the device (similar to a police check), while scanning his face. The data are automatically sent and evaluated in the central monitoring system. The device is used separately, but in the case of simultaneous imposition of house arrest, it is in combination with an electronic bracelet. The inspected person has this fax-sized device located in his home and connected to the main supply for the entire duration of the monitoring. It also needs a telephone connection or a mobile network signal for its operation.

The telephone verification of the inspected person presence at a specified place at a specified time makes it possible to monitor the accused or convicted person by telephone, but only as a fixed-line, not a mobile phone. This type of monitoring is used, e.g. when the accused is prohibited from attending gatherings, sports or cultural events etc. It is possible to verify by the voice that the accused is not at the place of the imposed ban at that time, but at the place where the telephone call is being made. Monitoring is based on the recognition of the inspected person voice, which is carried out by telephone from the operation centre. This type of monitoring does not use an electronic bracelet the condition for its use is only the availability of a fixed-line. Based on the practice of probation and mediation officers, they use this method the least due to not imposing such obligations and restrictions that would require this type of monitoring. In terms of its usefulness, replacement of this type of regime by probation supervision appears to be more effective.

The accused or convicted person with a court order, e.g. ban on visits to sports or other mass events, can also be checked over the phone, only a fixed-line, not a mobile phone. Monitoring takes place remotely by telephone from the operation centre and is based on the recognition of the voice of the inspected person. Therefore, its presence at a designated place is verified by telephone. An electronic bracelet is not for this type of monitoring. Only the availability of a fixed line or the possibility of its introduction is required.

Checking the detection of the inspected person presence at a defined place without the knowledge of the inspected person makes it possible to monitor the accused or convicted person without the awareness of such inspection. The presence of the accused at a certain place without his/her knowledge is checked by the equipment of a probation and mediation officer. It is a mobile device similar to a mobile phone (black and white), the same equipment used by the protected person to check the inspected person vicinity. The difference is set only in the technical parameters on the back of the mobile phone. The probation and mediation officer has a label – Mobile unit for officials. A protected person, who has a label – Mobile unit for the protected person.

Amendment to the Criminal Code and the Criminal Procedure Code – Act No. 321/2018 Coll., amending and supplementing Act No. 550/2003 Coll. on Probation and Mediation Officers and on Amending and Supplementing Other Relevant Acts, published on 20 November 2018, in effect from 1 January 2019 amended the Act on the Execution of the Punishment of Imprisonment and Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts as amended by Act No. 125/2016 Coll. This amendment responded to the introduction of an electronic system for monitoring persons in the Slovak Republic. This method was one of the ways to support the probation and the fulfilment of its objectives. However, the introduction of this new instrument made obvious the shortcomings of it and the collision of the various tasks of the justice system. Some processes regulated by current legislation complicate the use of alternative punishment; hinder their effective preparation and subsequent execution; and do not carry out the synergy between the involved persons (judge, prosecutor, probation and mediation officer, and Judiciary Guards and Prison Wardens Corps). Because of the above reasons, the practice in the use of alternative punishment and the associated performance of

probation and mediation was inconsistent in individual regions. The changes were required in forcing restrictions and obligations in general; imposing a conditional suspension of a custodial sentence; converting a custodial sentence into a house arrest; ensuring the appropriate performance of protective surveillance, preparation and execution of the community service, preparation and execution of a replaced custody, house arrest. The changes in the relevant legislation were mainly responding to the requirements of application practice, an adaptation of legislation to current requirements for flexibility of the entities concerned in criminal proceedings, which condition the application of restorative justice principles. The main goal of the amendment was to remove difficulties in the procedures of application practice and to accelerate them in some alternative punishment cases, to make more efficient the work of probation and mediation officers and to optimize the preparation and implementation of control of decisions by technical means. The amendment addressed selected limitations in the legislation on criminal law, which was identified based on knowledge gained from the application practice or arising from the case-law of the courts. The changes have adjusted the relationship of the head of probation and mediation officer to the probation/mediation activity itself, i.e. its inclusion in the work schedule - handling the agenda. The position of Head of Probation and Mediation Officer is to perform other tasks. The condition for the possibility of handling the agenda has been adjusted. The aim was to ensure that the role of the probation and mediation officer did not replace other employees. The absence of the probation and mediation officer in several districts was solved by filling the post, or by creating a new post. This does not apply to activities performed by the head of the office in a case assigned to a probation and mediation officer on behalf. In practice, instructions are issued, which also include the methodological area that should be implemented by the Ministry of Justice SR and the head of the probation and mediation department. They are confused with activities that are currently provided by some probation and mediation officers (e.g. that probation and mediation officer provide action in matters where probation is not performed etc.). These are delegated instructions, their content and focus of go beyond probation. This law helps to limit the range of issued instructions, so there are no different interpretations and different practices. Response to the change introduced – the director of an institution serving a custodial sentence is authorised to submit a request to a probation and mediation officer to conduct a preliminary investigation. Some part of the preliminary investigation (basic information and consent of the convicted person) ensures the relevant custodial institution. There is no need for the visit of a probation and mediation officer at the institution. The administrative process is shortened to determine whether the material and technical conditions for control by technical means are met, and thus the execution of the sentence itself.

In the countries of the European Union, the profession of probation and mediation officer is exactly defined in terms of educational qualification standards. The performance of probation and mediation work lais down precisely the requirements. In the Slovak Republic, such establishment of this profession is absent. The § 5 under 1(b) of Act No. 550/2003 Coll. on Probation and Mediation Officers defines the qualification requirements for candidates. However, they are very diverse and do not reflect the specificity and needs for specialization

for the practice of this profession. If probation and mediation work like to have the desired effect on criminals, as well as victims of crime and society as a whole, probation and mediation officers must be required to have special knowledge, skills and abilities. They should acquire and develop them in the training for this profession, during university studies. Surveys suggest that probation and mediation officers' knowledge should include knowledge of social work, psychology, criminal law, criminology, crime prevention, victimology, and sociology. The higher the professionalism and competence of probation and mediation officers are, the higher the professionalism of their work and the saturation of restorativity is. It seems appropriate for the probation and mediation officer to take part in the training at the beginning of probation and mediation post (e.g. during the adaptation period). It will create a precondition for proper tasks performance, especially if he/she is not a graduate of the master's study in the probation and mediation program. The amendment, therefore, created a space for the flexible background of the necessary training for the profession. It set a space for continuous education, which would be implemented by the Ministry of Justice of the Slovak Republic if necessary.

The law seeks to eliminate the conflict between the time limit for parole for a convicted offender and the time limit for the possibility of converting a custodial sentence into a house arrest. At present, it is possible to convert (apart from other conditions) the imprisonment after serving one-third, if at the same time the rest of the sentence is no longer than two years and only with the consent of the convict. In the case of an imposed 12-month sentence of imprisonment, such a sentence may be converted after serving four months, while on parole he/she may be released after six months. In this situation, the convicted person is in exceptional cases motivated to agree to the conversion of the sentence to house arrest, if, after six months of serving the sentence, he can be released without interference in his life. On the other hand, after releasing from the detention, he would be the sentenced "at liberty" under control for the remaining eight months. The largest time difference (approximately six months) between the possibility to leave the institution when converting the imprisonment to a house arrest or conditional release is with a 36-month sentence. With a higher penalty rate the difference decreases, and with a 49-month sentence, the convict can even be released sooner than allow him to convert the imprisonment to a house arrest. This situation is mainly due to the restrictive condition of the maximum 2-year rest of the sentence, which can be served as a house arrest. In the case of the possibility of serving the rest of the sentence in the form of house arrest for 3 years, there is a space for the conversion of the imprisonment to a house arrest – preference over parole for offenders convicted of a crime at 37 to about 60 months. The law (amendment) tries to create the possibility of applying electronic monitoring in the imposition of penalties to increase the success of the reintegration of the offender into the community. In the Slovak Republic, the behaviour of a convicted person after conditional release from the performance of the imprisonment, i.e. during the probationary period, has not been controlled by technical means or any other similar effective tool. According to the legislation effective from 1 January 2016, it is also possible to order control by technical instruments in the situation of a decision on conditional release from imprisonment. The prison system records several cases of perpetrators serving a custodial sentence for the first time, often with a lower risk of further failure than offenders. The length of imprisonment

affects the execution of a custodial sentence and further success of their reintegration into the community. Shorter or the necessarily longer stay of the convict in the performance of the imprisonment helps the successful resocialization of the perpetrator, and, at the same time, the first-time perpetrators have a higher presumption of their successful integration into society compared to multiple offenders of less serious offences. In general, the long-term imprisonment, due to the process of custody, reduces or even prevents the probability of successful reintegration after release (e.g. in the field of social relations). It has a negative impact on the formation of socially desirable behavioural patterns, reduces the effectiveness of resocialization intentions and also affects the prosocial type of convicts. However, great care must be taken in generalising the process of imprisonment, as emphasized in some writings in the field of penitentiary sociology. The probability of failure in several essential spheres of social life – In the professional, partner and civic life – will increase with the length of imprisonment.

The purpose of the amendment is to shorten and make more effective the entire process (the focus is mainly on the part of the institute of preliminary investigation), the conversion of the rest of the unconditional sentence of imprisonment into a house arrest, as well as the replacement of detention by probation supervision. In these cases, there is a cooperation between the court (probation and mediation officer) and the Judiciary Guards and Prison Wardens Corps (an authorized member of this institution). Such cooperation should be administratively simple and carried out without unnecessary action, which will create room for shortening the entire administrative procedure and preparing the documents for the court's decision. [4] Therefore, in cases where a custodial sentence should be converted into a house arrest, it was accepted that the director of the relevant custodial institution was entitled to instruct the probation and mediation officer to conduct a preliminary investigation. The first part of the preliminary investigation (first information and consent with the conversion) will be provided directly by the relevant institution for the execution of a custodial sentence. It eliminates the need for a probation and mediation officer to visit the institution and shortens the administrative process for determining whether the material and technical conditions for control by technical means are met and the execution of the punishment itself. In the case of preparing a decision to replace the detention with a technical means control order, the assistance requires that a member of the Judiciary Guards and Prison Wardens Corps forward the designated forms, instructions to the person in custody. He/she requests for such cooperation the probation and mediation officer who will ensure the implementation of the preliminary investigation. This regulation is capable of shortening the introduction of the preliminary investigation, depending on the type of the regime by technical means, from one month to one to five days. It relieves the judge, who will have the proposal of the conversion of imprisonment to a house arrest collected by the Director of the Institute for imprisonment with the preliminary investigation and with any other relevant documents necessary for decision without the need to ensure other related operations, i.e. without further delays, such

[4] KLÁTIK, Jaroslav. Využitie elektronického monitoringu na Slovensku od jeho zavedenia až po súčasnosť. In: *Právne a ekonomické súvislosti elektronického monitoringu obvinených a odsúdených osôb: zborník príspevkov z medzinárodnej vedeckej konferencie*, Banská Bystrica, 21. – 22. 10. 2019. 1. vyd., Banská Bystrica : Vydavateľstvo Univerzity Mateja Bela – Belianum, 2019, s. 155 – 160. ISBN 978-80-557-1658-9.

as the Director will submit a proposal only if the result of the preliminary investigation is the recommendation, or all material and technical conditions for the conversion of the sentence are met. In cases of replacement of detention, the benefit will be the prompt gathering of documents of the result of the preliminary investigation and the possibility of a more flexible procedure for the judge in deciding on detention.

The amendment to the Criminal Code and the Criminal Procedure Code – Act No. 214/2019 Coll., amending and supplementing Act No. 300/2005 Coll. Code of Criminal Procedure, as amended, and which amends certain laws, valid from 17 July 2019, effective from 1 August 2019, defines the possibility of imposing a house arrest to offences in addition to a particular category of crimes. The available data show that in the Slovak Republic, punitiveness and the potential of restorative justice still prevail in application practice. The Constitutional Court of the Czech Republic, with its finding No. II. CC 2027/171 brought a new perspective on the imposition of penalties and especially on the use of alternative punishments in terms of the application of the "ultima ratio" principle. The case from the Czech Republic demonstrates the possibilities of using alternative sentences (in this case, the house arrest) for crimes characterized by their higher severity. That applies to other types of criminal sanctions other than imprisonment, e.g. fines, where the fines imposed in the Slovak Republic is 4.8% of the total number, the fines imposed in the Czech Republic in total is almost 15% to increase to 20%. This example supports the idea of a better application of alternative punishments in the Slovak Republic. The reasons are not only saving money from the state budget, but also because of the impact of elements of restorative justice on society. This amendment to the Criminal Code and the Criminal Procedure Code is a result of data obtained from application practice. It is clear that according to the total number of imposed sentences, unconditional sentences of imprisonment predominate, then conditional sentences, and followed by compulsory labour, fines and disqualifications. This fact is also confirmed by data on the prison population, according to which the Slovak Republic place in custody and imprisonment 2 to 2.5 times higher the number of persons per 100,000 inhabitants compared to Western European countries (prison index). After removing foreigners (i.e. using the criterion of nationality in the calculation), it is clear that in the Slovak Republic there are approximately 3 to 4 times more people per 100,000 inhabitants in custody and prison than in Germany, Austria, Sweden, Finland, and Norway. The reason for this situation could be the insufficient use of alternative punishments, as well as the strict setting of criminal policy in connection with high crime rates compared to some other Member States of the European Union. This situation persists even though a substantial part of the imposed sentences are conditional postponements of imprisonment. Those do not result in deprivation of liberty (if a probationary certificate is issued at the same time) but does not always lead to meaningful and intensive supervision of the offender's behaviour to correct his behaviour in the future and avoid recidivism.

Given the concept that imprisonment is more repressive sanction than a suspension of the execution of the sentence (including a probation supervision order with restrictions or obligations imposed) because it restricts the free movement of a sentenced person within a specified time. The present proposal cannot be considered as a change that brings benevolence to the perpetrators of crimes, which the Criminal Code defines as crimes. Presently, if the

court considers unconditional imprisonment to be inappropriate concerning the perpetrator and other circumstances of the case when imposing a sentence, it will use the option of suspending the execution of the sentence (if the conditions are met as to the amount of imprisonment otherwise imposed), as the legal order does not offer another option. This amendment fills the gap between the possibility of imposing an unconditional sentence of imprisonment and a suspension of the execution of the sentence. This creates the possibility for the court to impose another type of sanction if, in the given case, it is expedient, appropriate and proportionate following the requirements for the individualisation of the sentence for the offender. The Act No. 214/2019 Coll. defines the category of crimes for which the court will be able to impose a sentence of house arrest after fulfilling the general conditions specified in § 53(1) of the Criminal Code namely by binding to the upper limit of the penalty rate, which may not exceed 10 years after its adjustment according to the general part of the Criminal Code ("established by this Act"). If the convicted person commits two or more intentional criminal offences, at least one of which is a crime, the penalty rate for the given crime is e.g. three to ten years of imprisonment, after the application of the asperation principle according to § 41(2) of the Criminal Code occurs to increase the upper limit of the penalty of imprisonment of the crime of the most severe crime by one third. It will result in not imposing house arrest. If the legal conditions are met, the court will impose a house arrest by a maximum sentence up to four years, but at least at the lower limit of the penalty provided by this Act, i.e. as well as after its amendment according to the general part of the Criminal Code. There have also been changes in the duration of the inspection by technical means to cover the time difference between normal conditional release and conditional release with mandatory monitoring. A period was determined for the difference between half and two-thirds of the sentence imposed. Only after two-thirds, it will be possible to proceed according to § 23(3) of Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts – to decide on the termination of control by technical means, if inspected person proved that control by technical means is not necessary during the control of execution of decision by technical means. Analogous to the provisions for other sentences, substantive regulation of conditional non-execution of the rest of the house arrest was created, which was absent so far and in an unsatisfactory form in § 435(4) Criminal Procedure Code. According to the amendment, the court will be able to order conditional non-execution of the rest of the house arrest, provided that the convict has proved that further execution of this sentence is no longer necessary and at the same time at least half of the sentence was served. In such a case, the court will determine a probationary period, which may be up to two years in a house arrest sentence. The determination of the probationary period is a mandatory part of the decision. The lower limit of the probationary period is not fixed, but the probationary period must last longer than the non-executed part of the sentence and may last for a maximum of two years. Besides, the court shall impose probation surveillance on the convict and, if necessary, appropriate restrictions and obligations under § 51 (3) and (4). The imposition of appropriate restrictions and obligations is optional. It is not a condition for the decision to conditionally withdraw the execution of the rest of the sentence. The provision § 68b regulates the possibility for

the court to decide that a convict has proved himself if he has lived a decent life during the probationary period and fulfilled the restrictions and obligations imposed on him. When a convicted person is certified, this means that the sentence has been served. On the other hand, if it is concluded that the convict does not fulfil the conditions of his/her probationary certificate, the court shall order the execution by converting the rest of the sentence into unconditional imprisonment. Whereas one day of unserved house arrest is one day of unconditional imprisonment. The provision regulates the legal fiction that the sentence was served which arises on the day of the validity of the decision to withdraw the execution of the rest of the house arrest. The origin of fiction is important, in particular, for determining the beginning of a period significant for the rehabilitation of a conviction under § 92. The court must issue the decision on "probation failure" within one year of the probationary period (or within two years, in the case when convicted was punished for other offence committed during the probationary period). Otherwise, the fiction applies that the convict has proved himself. The procedural regulation was supplemented in connection with the introduction of a conditional withdrawal of the execution of the rest of the house arrest in the proposed § 68a and § 68b of the Criminal Code. The existing legal regulation of a special rule is taken into account, namely § 23(3) of Act 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts, which regulates the conditions for the termination of control by technical means and the persons who may initiate such a decision. Before any decision of a judge or prosecutor to ensure control by technical means, it is necessary to find out whether it is possible to apply electronic monitoring in a particular case and what regime and technical means are needed. For the imposition of a house arrest is relevant detailed analysis of the offender's circumstances, the statements of the persons living in the same dwelling where the offender will serve the sentence, and the material and technical conditions without which the sentence cannot be imposed. The control by technical means may be performed if the technical instruments are available and if the material and technical conditions for their use are met. The probation and mediation officer of the court shall inspect the conditions at the order of the judge or prosecutor by interviewing the persons concerned and verifying the obtained information as well as by local investigation if necessary. Based on the above legal provisions, the probation and mediation officer has the mandate to perform the necessary actions for the decision on the use of technical means. These actions are carried out by the institute of the preliminary investigation on the instruction of a judge or prosecutor including not only work with the accused or victim of crime, but also verify the possibility of imposing and proper execution of such a decision, securing the defendant's opinion on imposing such sentence, ensuring the persons concerned opinion (protected persons) to imposing this penalty, and examining the conditions and possibilities of controlling the enforcement of the decision by technical means. The information from the preliminary investigation is decisive for the decision of the judge or prosecutor when ordering the control by technical means. The introduction of the institute of preliminary investigation begins with the judge's assignment of a new case (the judge is considering the possibility of imposing this type of sentence), or with the prosecutor's instruction in connection with the possibility of using a plea agreement. The case is electronically assigned to the relevant probation and mediation

officer in the Probation and Mediation Service system. He/She is via court registry linked to the operation centre for technical control purposes. In the case of an instruction from a judge or prosecutor to a preliminary investigation to decide on a house arrest, two control regimes are possible:

- the regime for checking the presence of the inspected person at a specified time and place, using technical means:

– presence control device,

– personal identification device (bracelet).

- the regime of compliance with the prohibition of alcohol beverages - this procedure is usually included in the house arrest, which is usually sentenced ban consumption of alcoholic beverages by using technical means:

– alcohol control device

– personal identification device (bracelet) - in the case where two modes are necessary, only one personal identification device is enough.

If the examination of the fulfilment of the conditions for the control of the enforcement of a decision by technical means is carried out in the district of the court whose judge issued the instruction to execute it, the instruction shall be assigned to the probation and mediation officer of that court without delay. After issuing a written instruction, which also sets the deadline for conducting a preliminary investigation (it is usually within ten days), the probation and mediation officer finds out basic information about the accused person. Whether he is free or in custody or serving a sentence of imprisonment. He/She tries to obtain as much preliminary information as possible about his family, work, social or health situation, which will give him a "picture" of the accused and allow him to prepare additional questions in a personal meeting with him.

If the accused is free, the probation and mediation officer summons the accused to a preliminary discussion of the conditions of serving a house arrest, in writing or by telephone. After verification of identity, the accused is duly informed of the house arrest according to § 53 of the Criminal Code and of the Control of the Enforcement of Certain Decisions by Technical Instruments, provided that:

– the inspection by technical means may be carried out if the material and technical conditions for their use are met,

– the inspection by technical means may be carried out only with the written consent of the adults living in the same household as the inspected person at the time of obtaining such consent, and the consent given cannot be withdrawn.

– the probation and mediation officer investigates the instructions of the judge or prosecutor within the deadline specified therein,

– the inspected person is obliged to provide the probation and mediation officer with the necessary cooperation, including the possibility of entering the residence.

The accused as a controlled person is thoroughly informed about the obligation:

– follow the operating instructions for the use of the technical means,

– protect the technical equipment from damage, loss, theft or destruction,
– report to the probation and mediation officer the damage, loss, theft or destruction of the technical means,
– refrain from interfering with technical instruments,
– report to the probation and mediation officer travelling abroad at least five working days before leaving,
– notify the probation and mediation officer of the changes, if known to him,
– enable the installation, uninstallation and maintenance of technical equipment and, if necessary, entry into the dwelling,
– comply with other obligations stipulated by this Act.

Obligations also apply to persons living in the same household as the controlled individual. In the case of the imposed sentence, the accused is also informed as a controlled person about the technical means and his responsibilities to them.

After completing all the necessary details, the accused shall declare that all the facts stated are real and, in the event of a house arrest sentence, shall confirm in writing that he will stay in the place (dwelling) designated in the preliminary investigation. The facts are important for the accused to know thoroughly the conditions under which this type of punishment can be imposed and to be able to respond in a relevant way to other additional information. Only after the evaluation of the initial interview with the accused, which may have a significant impact on the imposition or non-imposition of this punishment, the probation and mediation officer continues to obtain additional information directly at the accused's home by verifying compliance with material and technical conditions. During the initial interview, the probation and mediation officer agrees on the date of the visit to the residence of the accused and warns him to prepare all other necessary documents, namely:

– an extract from the real estate registry, which confirms the owner of the dwelling, land, flat and co-ownership share to them,
– affidavit from the landlord, lease contract,
– an employment contract, a work performance agreement or, where applicable, a working schedule,
– a contract for the electricity supply necessary to determine whether there is electricity in the dwelling,
– documents on regular electricity payments confirming that energy payments are made regularly and are not disconnected from consumption due to non-payment,
– the documents for regular payments of voice or data services, which for the last three months confirm their functionality and usability for electronic monitoring,
– the documents about the availability of the GSM signal with a presentation of the operator who provides sufficient signal coverage including a photographic map of the covered area by the operator network,
– evidence of GPS signal availability.

When a probation and mediation officer visits home, he finds out directly at the residence the following:

– what type of dwelling is it (e.g. apartment house, family house), what is in its neighbourhood, what is the access to the house, from which side, whether the entrance to the dwelling is lockable, what is the entrance to the apartment, or whether there is an elevator and which common spaces belong to the apartment, whether there is a mailbox at the entry to the house, what name is on it, the existence of a functional doorbell, the existence of a dog, what breed and the like;
– what the apartment consists of – how many rooms, what is in the room, where is it located, where are electrical wiring, electrical appliances and the like;
– where is a suitable place for the monitoring station, i.e. a presence control device to meet all safety conditions during its installation and to prevent improper handling with it (e.g. children), an image of the room where the technical equipment will be located;
– a brief drawing of the dwelling/associated land.

An important part of the preliminary investigation is the number and names of adults in the dwelling where the accused will be sentenced to house arrest. The other helpful information is their relationship with the accused. It is also necessary to obtain written consent from the said persons to impose the type of punishment. If these persons are not in the habitation during the presence of the probation and mediation officer, the probation and mediation officer proceeds in agreement with the accused in another way, such as securing them directly in court or contacting them for another date. After the officer has obtained all the relevant data, the defendant writes a solemn declaration about that all the data are truthful.

Based on the carried out preliminary investigation, the probation and mediation officer prepares a preliminary investigation report which includes all necessary documents. The report also contains a final statement by the probation and mediation officer whether the legal conditions for the imposition of a house arrest are met, whether the material and technical conditions for the use of technical means are met and whether they are available for their installation and subsequent activation.

When the accused in custody, the probation and mediation officer provides relevant data to the accused at the prison. To enter the penitentiary institute, he needs the written authorization of a judge or prosecutor, which must include the exact name of the relevant probation and mediation officer, the date of entry and the time of entry. It is recommended that the probation and mediation officer finds out directly in the institution whether the accused will be in custody within the given deadline, whether he/she is not on the planned check-up, assigned to the workplace of the institute or escorted to another institute.

The current situation is favourable for the more frequent and effective imposition of alternative punishments associated with electronic monitoring, as evidenced by the mentioned amendments to the Criminal Code and the Criminal Procedure Code.

Since 2016, there has been a significant application of electronic monitoring for convicted offenders. The ratio of the use of electronic monitoring is up to 60% as a possibility of replacing detention.

There was also a significant number of technical means applied in the individual stages of electronic monitoring, while on 1 August 2019 the number of technical instruments was up to 168, which is a significant shift compared to 2016 and 2017.

It is possible to mention the ordered control of the execution of a decision imposing a prohibition, restriction or punishment (probation). From 1 January 2016 to 31 December 2018, the number of controlled persons was 209. From 1 January 2016 to 31 October 2019, the number of monitored persons was 411 (224 active, 187 terminated), the number of protected persons was 54 (28 are active, 26 terminated). Monitoring by technical means by the Judiciary Guards and Prison Wardens Corps at the place of a custodial sentence execution for monitoring of convicts (allowed leaving from the prison) from 1 January 2018 to 31 October 2019 (movement control – GPS monitoring) concerned 504 convicts.

The results are better than in 2016 to 2018, but still not following the original expectations. In the case of house arrest, probation and mediation officers found several findings for the use of technical means. They anticipated this kind of development in applying this punishment in a conservative criminal law environment, and also in terms of the short period of the pilot project (from 1 January 2016). These were the problems probation and mediation officers came into contact in their work experience: namely long-term unregulated cooperation with the Slovak Police, and the Judiciary Guards and Prison Wardens Corps, strengthening of their position and protection by the Probation and Mediation Act, a relatively demanding administrative agenda and the fact that they are employees of regional courts while operating in district courts. The probation and mediation officers, in addition to professional experience in connection with the use of technical means, had to assume co-responsibility in solving technological problems while installing and uninstalling the instruments, searching for GPS signal, operating such equipment, determining the condition of electrical wiring in households of inspected persons and the like. In this context, the professional public should seek to strengthen the confidence of courts in imposing alternative sentences, to extend the conditions and possibilities of house arrest, to expand the use of electronic monitoring and to provide material and technical support for probation and mediation officers.

As there was no full use of the system of electronic controlling of persons by courts, we proceeded within the project APVV-15-0437 *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment* to carry out an extensive national survey on electronic monitoring. The following chapter deals with the results of it on electronic monitoring.

2. Results of the national survey on electronic monitoring

The national survey on electronic monitoring has taken place in several phases: pre-research, regular data collection from all regional courts of the Slovak Republic through sending EM reports (years 2016 to 2019) and a national survey of judges and probation and mediation officers. The pre-research has been carried out in the form of secondary data collection and through a series of informal interviews with judges and prosecutors. In the first phase, we have created the electronic monitoring report for regional courts. We have collected data from 2016 to 2019 (inclusive), while we have obtained comprehensive data from all regional courts for the entire period under review. We deal in detail with the evaluation of these data in subchapter 2.1. Afterwards, the theoretical and methodological basis for the analysis of the attitudes and opinions of stakeholders was formed, mainly judges and probation and mediation officers. We developed Variant I and Variant II of primary data collection tool (anonymous questionnaire) tested on a small sample of respondents and subsequently modified into an anonymous questionnaire applied to 144 respondents. We deal in detail with this part of the research and its results in subchapter 2.2.

2.1 Development of the use of electronic monitoring in the years 2016 – 2019

One of the goals of the APVV-15-0437 *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment* project was to comprehensively analyse the state of decision-making with the electronic monitoring (all types of monitoring) and the development of decision-making. We have directly obtained data on the number of imposed decisions with their division according to the regions of the Slovak Republic. Those were from the regional courts through the head of the probation and mediation department. For this purpose, we used the report to determine the imposing of EM (Annex 1).

The control of the execution of decisions through electronic monitoring services was put into practice on the day of the effectiveness of Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts on 1 January 2016. The systematic data collection for individual years retrospectively through the electronic monitoring reports in cooperation with regional courts provided first-hand data. In addition to the records collection of already imposed decisions with EM, we have collected the data related to IPI (Institute for Preliminary Investigation). The secondary role of this institute can be perceived as the court's interest in imposing EM. It results directly from the provisions of Act No. 78/2015 Coll. in connection with the Criminal Code and the Criminal Procedure Code. Those express the obligatory

examination of material and technical conditions before imposing a decision with EM. Based on the increasing/decreasing tendency of IPI, e.g. when imposing a house arrest, it is clear whether the court was interested in imposing that type of sentence, as the judge must instruct the probation officer to carry out the IPI before imposing it. After that, it was possible to find out how many IPIs were transformed into a decision with EM.

Table 1: The development of the use of EM in 2016 – 2019

		Imposing house arrest punishment	Substitution from the rest of custodial sentence to house arrest punishment	Imposition of the prohibition on residence	Imposition of PROTECTIVE SUPERVISION + restrictions and duties	Conditional suspension of the execution of the custodial sentence + restrictions and duties	Conditional discontinue of criminal prosecution + restrictions and duties	Replacement of detention by supervision of probation officer	Conditional suspension of punishment + restrictions and duties	Number of persons with EM based on another adjudication
Bratislava Region	IPI 2016	3	5	0	0	0	0	2	0	1(N.O.)
	2016	**1**	**1**	**0**	**0**	**0**	**0**	**1**	**0**	**1**(N.O.)
	IPI 2017	5	0	0	0	0	0	6	0	1(N.O.)
	2017	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
	IPI 2018	7	3	0	0	0	0	15	0	0
	2018	**1**	**2**	**0**	**0**	**0**	**0**	**6+1**	**0**	**0**
	IPI 2019	9	11	0	0	0	0	20	0	25 (PP)
	2019	**4**	**3**	**0**	**2**	**0**	**0**	**13**	**0**	**10 (PP)**
Banská Bystrica Region	IPI 2016	10	3	0	0	0	0	4	0	0
	2016	**3**	**0**	**0**	**0**	**1**	**0**	**0**	**0**	**0**
	IPI 2017	25	4	0	0	0	0	9	0	1(N.O.)
	2017	**9**	**2**	**0**	**0**	**0**	**0**	**8**	**0**	**0**
	IPI 2018	16	1	0	0	0	0	24	0	1NO+2
	2018	**9**	**1**	**0**	**0**	**0**	**0**	**13**	**0**	**0**
	IPI 2019	47	5	0	0	0	0	32	0	21 (PP z VTOS)
	2019	**28**	**1**	**0**	**0**	**0**	**0**	**19**	**0**	**12 (PP z VTOS)**
Košice Region	IPI 2016	5	5	0	0	3	0	1	0	1(N.O.)
	2016	**2**	**0**	**0**	**0**	**3**	**0**	**0**	**0**	**1**(N.O.)
	IPI 2017	8	5	0	0	0	0	2	0	1(N.O.)
	2017	**5**	**1**	**0**	**0**	**0**	**0**	**2**	**0**	**1**(N.O.)
	IPI 2018	**2**	0	0	X	X	0	6	0	0
	2018	**2**	**0**	**0**	**X**	**X**	**0**	**6**	**0**	**0**
	IPI 2019	32	8	0	0	3	0	34	0	15
	2019	**6**	**1**	**0**	**2**	**3**	**0**	**34**	**0**	**3 PP, 1 NO**
Nitra Region	IPI 2016	3	2	0	0	0	0	0	0	0
	2016	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
	IPI 2017	6	3	0	0	0	0	0	0	0
	2017	**0**	**2**	**0**	**0**	**0**	**0**	**1**	**0**	**0**
	IPI 2018	5	0	0	0	0	0	5	0	1
	2018	**2**	**0**	**0**	**0**	**0**	**0**	**6**	**0**	**0**
	IPI 2019	24	9	0	0	0	0	9	0	16
	2019	**6**	**0**	**0**	**0**	**0**	**0**	**8**	**0**	**9 PP**

Prešov Region	IPI 2016	18	1	0	0	1	0	3	0	3(N.O.)
	2016	**3**	**0**	**0**	**0**	**1**	**0**	**3**	**0**	**0**
	IPI 2017	19	0	0	0	0	0	15	0	0
	2017	**1**	**0**	**0**	**0**	**0**	**0**	**7**	**0**	**0**
	IPI 2018	23	3	0	0	0	0	12	0	6
	2018	**4**	**0**	**0**	**0**	**1**	**0**	**7**	**0**	**0**
	IPI 2019	55	7	0	0	0	0	51	0	13
	2019	**8**	**1**	**0**	**0**	**0**	**0**	**32**	**0**	**4 PP, 1 NO**
Trenčín Region	IPI 2016	17	1	0	0	0	0	14	0	0
	2016	**2**	**1**	**0**	**0**	**0**	**0**	**13**	**0**	**0**
	IPI 2017	2	2	0	0	0	0	11	0	0
	2017	**1**	**1**	**0**	**0**	**0**	**0**	**10**	**0**	**0**
	IPI 2018	1	5	0	0	0	0	20	0	2
	2018	**1**	**4**	**0**	**0**	**0**	**0**	**17**	**0**	**2NO**
	IPI 2019	9	6	0	0	0	0	16	0	4
	2019	**0**	**3**		**0**	**0**	**0**	**14**	**0**	**3NO**
Žilin Region	IPI 2016	4	0	0	0	1	0	0	0	0
	2016	**1**	**0**	**0**	**0**	**1**	**0**	**0**	**0**	**0**
	IPI 2017	1	2	0	0	3	0	1	0	0
	2017	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
	IPI 2018	3	1	0	0	0	0	7	0	0
	2018	**1**	**0**	**0**	**0**	**0**	**0**	**5**	**0**	**0**
	IPI 2019	15	1	0	0	**1**	0	14	0	**12PP, 1NO**
	2019	**3**	**1**	**0**	**0**	**0**	**0**	**13**	**0**	**10 PP**
Trnava Region	IPI 2016									
	2016									
	IPI 2017	3	6	0	0	2	0	5	0	1
	2017	**1**	**0**	**0**	**0**	**1**	**0**	**5**	**0**	**0**
	IPI 2018	7	4	0	0	0	0	9	0	1
	2018	**4**	**2**	**0**	**0**	**1**	**0**	**5**	**0**	**0**
	IPI 2019	30	15	0	0	0	0	19	0	21
	2019	**8**	**2**	**0**	**0**	**0**	**0**	13	0	14

Source: Processing based on the results of the primary survey

Vysvetlivky: IPI – Institute of preliminary investigation; TDV – house arrest punishment; TZP – prohibition on residenc; VTOS – execution of a custodial sentence; N.O. – urgent measures; TS – criminal prosecution; PP – parole from execution of an imprisonment (VTOS)

It should be mentioned that, despite the initially low number of decisions with EM in the first year after its introduction, the overall low frequency of use was firstly conditioned by several factors.

1. Even though similar systems of monitoring persons have been operating abroad for decades, in the Slovak Republic it was a novelty in the field of criminal application practice and in connection with low awareness they evoked the distrust in the law authorities.
2. Judges were poorly informed about the functioning of the ESMO system (It should be added that, although the Criminal Code has had a legal regulation of sanctions in the form of house arrest since the recodification of criminal codes in 2005, with effect from 2006, this was rarely imposed, as it was not possible to ensure proper control of its performance).

3. In some aspects, it was not possible to fully apply the ESMO system, as the legislator anticipated. It was because of these reasons, e.g. the impossibility of replacing detention with the supervision of a probation officer in connection with the restrictions and obligations controlled by EM on non-working days and public holidays due to the absence of continuous technical support from the contracted private company. This problem persists till nowadays.

During the implementation of the survey, legal amendments were continuously adopted, which fundamentally affected the legal limits for the imposition of decisions ensured through an electronic monitoring system. These changes are noticeable on the graphs, especially for the year 2019, when the amendment to the Criminal Code no. 214/2019 Coll.

Amendment to the Criminal Code and the Criminal Procedure Code – Act No. 321/2018 Coll., amending and supplementing Act No. 550/2003 Coll. on Probation and Mediation Officers and on Amending and Supplementing Other Relevant Acts, valid since 20 November 2018, in force from 1 January 2019, also amended the Act on the Execution of Sentences of Imprisonment and Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts as amended by Act No. 125/2016 Coll. This amendment responded to the introduction of an electronic system for monitoring persons in the Slovak Republic. This method was one that could support the area of probation and the fulfilment of its objectives. However, the introduction of this new instrument exposed the shortcomings of this area and the collision of various tasks of the judicial system. Some current processes in this environment regulated by present legislation complicate the use of alternative punishment, hinder their effective preparation and subsequent execution, and do not pursue the need for synergies between the actors involved (judge, prosecutor, probation and mediation officer, Judiciary Guards and Prison Wardens Corps). For the above reasons, the practice in the use of alternative punishment and the associated performance of probation and mediation was inconsistent in individual regions. This required changes in the imposition of restrictions and obligations in general, the imposition of a conditional suspension of a custodial sentence, the transforming of a custodial sentence into a house arrest, ensuring the proper performance of protective supervision, preparation and execution of compulsory labour, execution of control by technical means in the matter of replaced detention and the case of house arrest. The changes in the relevant legislation were mainly a response to the requirements of application practice, a kind of optimization, the adaptation of legislation to current requirements for flexible procedures for the entities concerned in criminal proceedings. Those condition the effective imposition and enforcement of alternative sanctions. The main aim of the amendment was to remove obstacles in the procedures of application practice and speed up procedures in some cases of the use of alternative punishment, streamline the work of probation and mediation officers and optimize the preparation and implementation of control of some decisions by technical means. The amendment addressed selected shortcomings in the legislation on criminal law identified based on knowledge gained from application practice or arising from the judicatory of courts. The relationship of the position of the head of probation and mediation officer to the actual probation/mediation activity has been adjusted, i.e. its inclusion in the schedule/

handling the agenda. The position of Head of Probation and Mediation Officer is to perform other tasks - the condition for the possibility of handling the relevant agenda has been explicitly adjusted. The aim was to ensure that the function or the role of the probation and mediation officer did not interfere, did not replace other employees, but that the absence of the probation and mediation officer in the given district was solved by filling the vacancy, or by creating a new post. That does not apply to the actions performed by the head of the office in the matter assigned to the probation and mediation officer on behalf. In practice, the Ministry of Justice of the Slovak Republic and the head of the probation and mediation department issue the instructions that include the methodological area. Currently, they are swapped with the activities that some probation and mediation officers provide (e.g. probation and mediation officer should ensure the action in matters where probation is not performed, etc.). These are delegated instructions, the content and focus go beyond probation. This law helps to limit the range of issued instructions so that there are no different interpretations and different practices. Response to the introduced change – the director of an institution serving a custodial sentence is authorised to submit a request to a probation and mediation officer to conduct a preliminary investigation, with part of the preliminary investigation (basic information and convicted person's consent to transform the sentence) provided directly by the custodial institution. It eliminates the visits of a probation and mediation officer at the institution, and it shortens the administrative process of determining whether the material and technical conditions for control by technical means are met, and thus the execution of the sentence itself.

Act no. 214/2019 Coll. which, among other things, also reflected the suggestions of the members of the research team, substantially expanded the legal framework for the imposition of house arrest. The most significant changes were made in defining statutory penalties, which limited courts to impose house arrest. In particular, it is the legal regulation of the following provisions.

According to the provisions of § 53(1) of the Criminal Code effective until 31 July 2019 (until the adoption of the amendment by Act No. 214/2019 Coll.), a court could impose a house arrest for up to two years on the perpetrator for the offence: a) if according to the offender's circumstances, the imposition of this sentence is sufficient; b) the offender has given a written promise to stay in the dwelling at the specified address for a specified time and to provide the necessary co-operation in the inspection; c) the conditions for technical control are met (positive evaluation within the IPI).

Act No. 214/2019 Coll. with effect from 1 August 2019 amended the Criminal Code (substantive regulation) when according to the provisions of § 53(1) the court may impose a house arrest on the offender for up to four years, if a) due to the nature of the offence referred to in paragraph 2, the person and circumstances of the offender are sufficient to impose this sentence; b) the offender has given a written promise to stay in the dwelling at the designated address and provide the necessary co-operation during the inspection; c) the conditions for performing the inspection by technical means are met.

That is a fundamental change concerning the previous legislation. The range of offenders who can be sentenced to house arrest has significantly expanded. If in the original legal regulation,

it was possible to impose a house arrest only for an offence (§10(1) of the Criminal Code – The offence is: a) a criminal offence committed due to negligence; or b) an intentional criminal offence for which penalty rate not exceeding five years). After the adoption of Act 214/2019 Coll. this sphere has expanded considerably, namely 1) it is possible to impose a house arrest for up to 4 years; 2) the court is not limited by imposing such a sentence exclusively on offences. This legal regulation can be directly seen in the attached graphs in almost all regions of the Slovak Republic, with the number of IPIs at house arrest increasing in 2019.

The legislator in the provision of § 53(2) of the amended Criminal Code stipulated that a court may impose a house arrest under paragraph 1 for an offence with an upper limit of the sentence provided by this Act not exceeding ten years, but at least at the lower limit of the custodial sentence provided by this Act. This diction in itself excludes the court from imposing a house arrest in particularly serious crimes (a crime with a lower penalty of at least ten years).

Following the adopted changes, it was necessary to adjust the provision of § 34(6) of the Criminal Code, which after the effectiveness of Act No. 214/2019 Coll. reads: the penalties referred to in § 32 may be imposed separately or several of these penalties may be imposed simultaneously. For a crime whose upper limit of the penalty of imprisonment provided for in a special part of the law exceeds five years, the court must impose a sentence of custody, unless this law provides otherwise (originally without an exception – unless this law provides otherwise). In practice, this means that in a situation where a court convicts, for example, a second-time offender of an alarm message distribution offence (albeit conditionally), in which the penalty rate is listed from three to eight years of imprisonment, the court may impose a house arrest and avoid imprisonment (in the sense of the previous legislation). In this case, it is a threatening crime (not reprehensible), in which high costs often occur for rescue operations (when reporting a booby-trap explosion in the courts or other institutions). Operations of rescue troops range in the tens of thousands of euros. Sentencing an offender to house arrest and compensating of damages appears to be an appropriate tool for introducing discipline in the convict's life because his earning potential is incomparably higher than in custodial institutions.

Act No. 214/2019 Coll. also introduced into the Criminal Code a new institute of transform of the remainder of the sentence of imprisonment into a house arrest and, directly following it, transforming of the rest of the house arrest in the case of conditional withdrawal into custody. It is an absent element within the alternative punishments when in the case of a ban on activities, it was possible to withdraw the rest of the sentence, while in the case of a house arrest, this was not legally regulated.

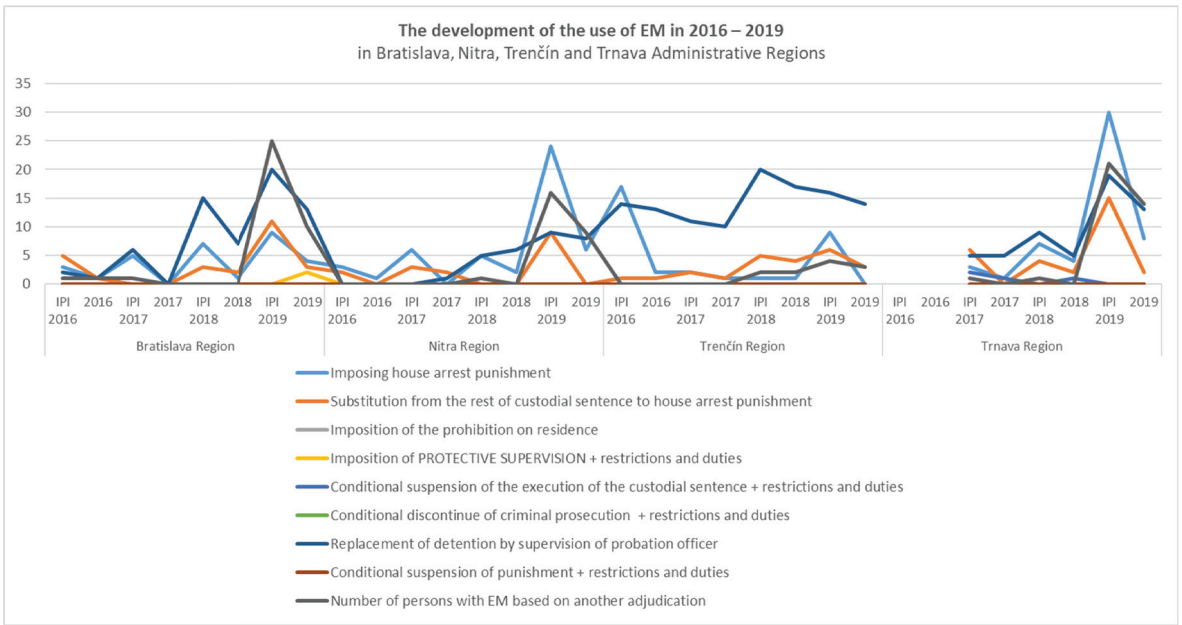
The legal regulation was created in such a way that after serving half of the sentence of house arrest, the court may conditionally waive the execution of the rest of the convict that proved by way of life during serving the sentence that further execution of this sentence is no longer necessary. At the same time, the court must set a probationary period of up to two years, but not shorter than the remainder of the sentence, in the case of conditional withdrawal of the rest of the house arrest. The optional possibility for the court remains to determine during the probationary period any appropriate restrictions and obligations specified in § 51(3) and (4) aimed at leading a good life. It is not excluded that the restrictions and obligations imposed will be controlled through some electronic monitoring. For

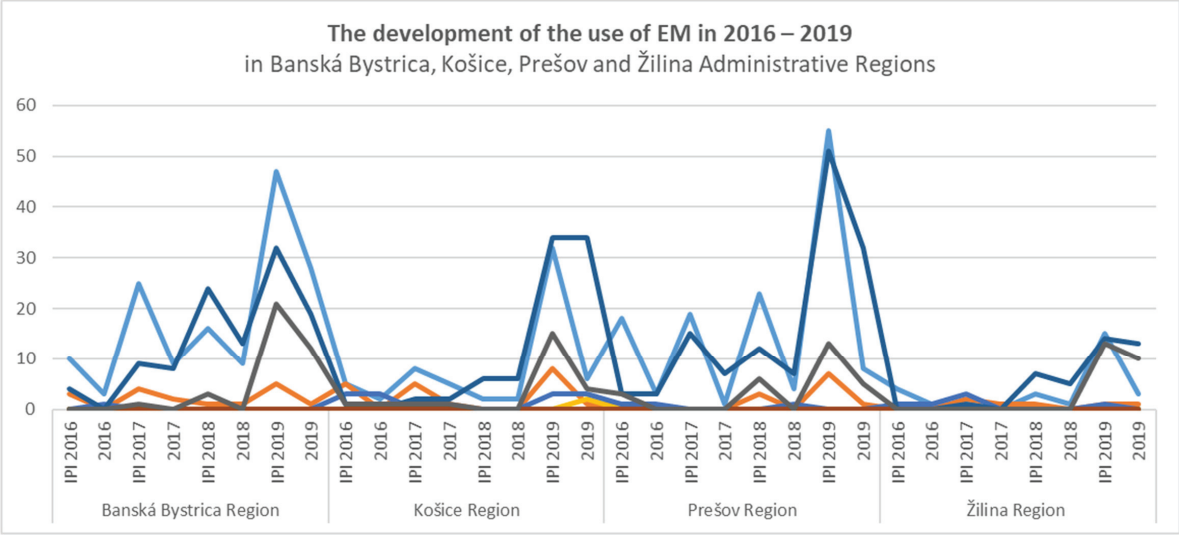
example, there is a convict who has committed an offence under the influence of alcohol (e.g. vandalism). The court has imposed a house arrest sentence. In the half of the sentence serving the court has waived it, and likely determined that during the probationary period he will have a ban on the consumption of alcoholic beverages, which will be checked through the home station to detect the presence of alcohol in the breath of the monitored convict. If the convict does not lead a good life during the probationary period, the court will convert the remainder of the house arrest into a custodial sentence. One day of unexecuted (in this case withdrew) house arrest will be one day of imprisonment.

In the context of repeated legislator interventions into the Criminal Codes, it is worth mentioning the fact that for the period from 1 January 2016 to 1 January 2020 the Criminal Code and the Criminal Procedure Code were amended ten times through twelve single acts. It results in the chaos in legislation and application practice. The Criminal Code from 2005 to 2020 had 37 promulgations or were amended, and the Criminal Procedure Code for the same period even 47 times. That is an enormous number of interventions in criminal codes, and the question arises about the recodification of criminal codes with the professional discussion of the academic community and law enforcement authorities.

The following two charts map the development of the use of electronic monitoring in the years 2016 – 2019 in all regions of the Slovak Republic. The graphs show an increasing tendency of decisions with EM according to the change in legislation. It was just a "big amendment" of Act No. 214/2019 Coll. concerning the area of electronic monitoring in criminal codes in 2019. The number of court decisions imposing house arrest increased, as well as replacing detention with the supervision of a probation officer while imposing restrictions and obligations, and, finally, a decision on probation release from imprisonment (especially the crime after ½ of served crime with EM), and the imposition of restrictions and obligations, mainly the EM ensured the monitoring.

Chart 1 and 2: The development of the use of EM in 2016 – 2019





2.2 Implementation and evaluation of the first national survey of opinions of judges and probation and mediation officers on the issue of electronic monitoring

In this part of the scientific monograph, we gradually present all the obtained results through a questionnaire survey carried out within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*. During our survey, we have received answers from 144 respondents in total. We have processed and evaluated the collected responses from the questionnaires in the platform of the MS Excel program.

2.2.1 Methodology of the national survey of opinions of judges and probation and mediation officers on the issue of electronic monitoring

The main impetus for solving the issue of electronic monitoring was the effort to expand its practical use and contribute to streamlining the use of funds spent on its establishment. The anonymised questionnaire was created in consultation with a group of addressed judges to effectively reach the target respondents to know in more detail the obstacles that limit the broader use of electronic monitoring of accused and convicted persons. The purpose of the questionnaire was, firstly, to answer questions that made it possible to see the problem under investigation through the judges' perspective. On the other hand, to create a platform for alerting and clarifying those aspects of electronic monitoring of persons omitted by the questionnaire. The questionnaire is given in Annex no. 2.

Given that electronic monitoring represents a new element in the work of judges and probation and mediation officers, its real use means an intervention in their original procedure and method of work. We have chosen the concept of change or change management as **a theoretical basis** for solving this issue. In the preparatory stage of the survey, we developed and expanded this concept by other aspects, mainly by the question of change implementation and,

within the formation of a broader problem field, also by selected/often mentioned contexts of change implementation. From the wide range of contexts of implementing change, we focused on assumptions and obstacles. We used verified methodological experience to concretize them. According to which obstacles of implementation arise because its users, for various, often personal reasons, do not want it, do not know everything necessary about it, or cannot accept it for objective obstacles and make full use of it. In the next step, we have refined and divided this view of barriers into five parts - understanding the nature of EM, the level of awareness of EM, indirect concerns, methodological help and support, and direct/obvious obstacles. The extension of the theoretical basis made it possible – following the well-established principles of scientific research – to formulate the problem to be addressed by it and to which parts of it should be particularly focused. We understood the research problem as a deficit of current and deep knowledge of the researched issues or gap in the understanding of its necessary parts. The next step transformed the identified problem and concretized it into the main research question and partial research questions. Those expanded and deepened the research. At the same time, we considered and prepared the expected/hypothetical answers. This step was an assumption for determining the information/data needed to answer the main and partial research questions. At the same time, it was an aid in finding and selecting suitable methods and techniques for obtaining them. With this step, we connected the theoretical elaboration of the problem to the necessary methodological background of its solution.

The methodological basis for solving the problem followed the selected theoretical background and the adopted interpretive framework (implementation of change, context - assumptions and obstacles of change). It practically meant to find the task and apply a procedure that allows more thorough knowledge of assumptions and barriers to change, or their importance. Based on methodological knowledge and positive experience in similar research, we have chosen a procedure based on cooperation with authentic participants in the implementation of electronic monitoring. They were judges, probation and mediation officers working in all types of courts. We gained the opportunity to see the implemented change (its assumptions or barriers) through the eyes of the participants. However, the respecting of the specifics of the judicial environment, as well as the specifics of potential respondents drew attention to the limits of using such techniques to obtain the information that would disproportionately simplify unexplored, multidimensional and complicated issues or its parts, or present them in “black and white”. For the above reasons, we have carried out the obtaining of the set of primary empirical data and electronically distributed to respondents a standardized anonymous questionnaire containing an introductory part, a set of aspects related to the implementation of electronic monitoring (hypothetically assumed assumptions and obstacles) formulated as statements/ideas to express the extent of their agreement for each of them, the evaluation of seven groups of conditions for the use of EM (legislative, methodological-application, personnel-quantity, personnel-quality, financial, material-technical and organizational) and one open question that stimulated the opinion or recommendations for improving the situation.

The questionnaire took the form of an online questionnaire in two rounds, in July and September 2019. The questionnaire was delivered through the presidents of regional courts

to all judges in the territorial district of district courts under the relevant regional court, but also judges of the Specialized Criminal Court and the Supreme Court. In total, it was served by approximately 1,300 – 1,400 judges (estimated number of active judges).

Although we listed below the individual statements in the questionnaire each other without specifying which area they belong to, we arrange them in blocks to cover in turn each area of obstacles that arose from the theoretical background and the broader elaborated problem field. One hundred and forty-four respondents accepted the offer to cooperate and returned the completed questionnaire within the set time. The processing of the obtained primary empirical material consisted in sorting the obtained data according to the type of respondent (judge, probation and mediation officer). Processing took place in a standard way using MS Excel tools, and the results are presented in graphical form and commented on in the next section. Given that the survey represents the first survey of this kind, the processed results can be considered as a significant and usable starting point and the statements as representative.

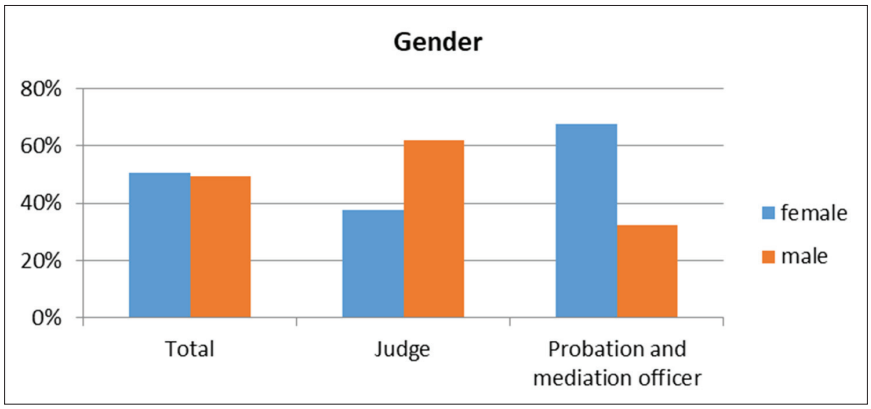
2.2.2 Socio-demographic characteristics of respondents

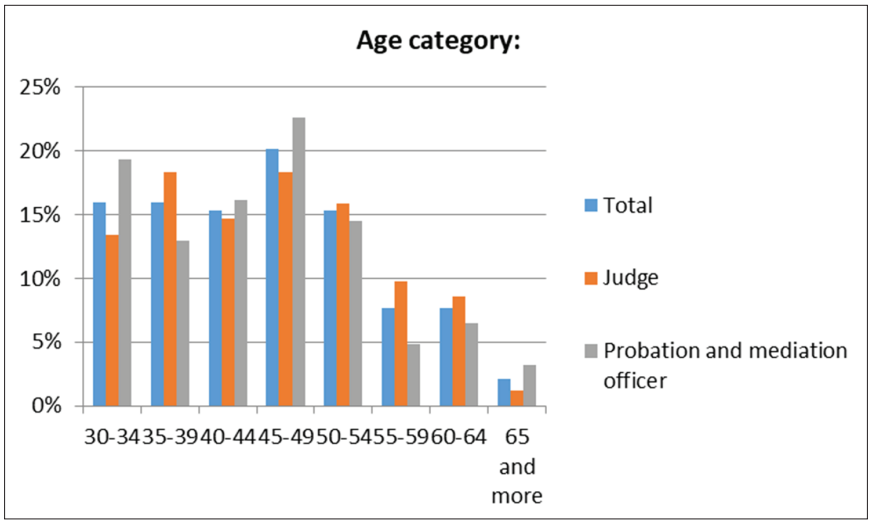
In the questionnaire survey, our main subjects and respondents were judges and probation and mediation officers. In connection with the solution of the issue of electronic monitoring of persons, we, therefore, focused on the following seven selected characteristics when examining the socio-demographic factors of our respondents:

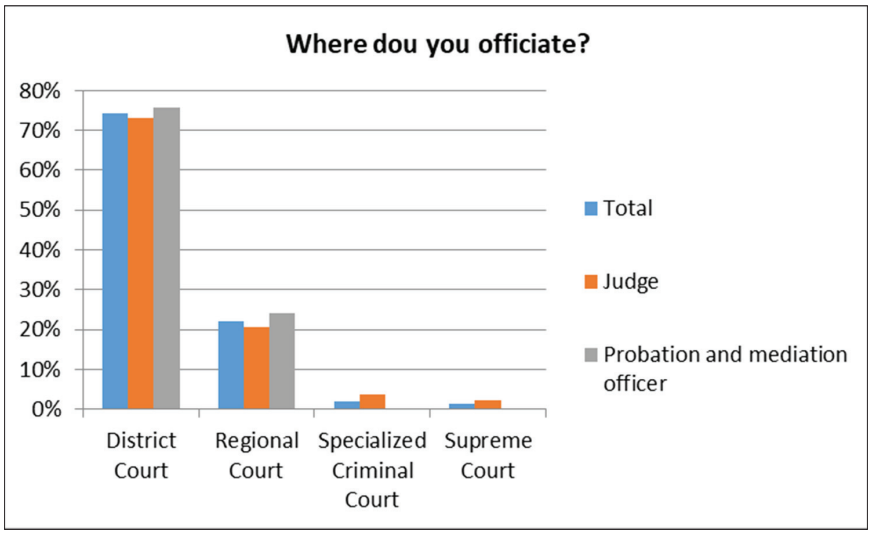
- profession classification of the respondent (judge or probation and mediation officer);
- gender or sex of the respondent (female or male);
- age category of the respondent (30 – 34 years, 35 – 39 years, 40 – 44 years, 45 – 49 years, 50 – 54 years, 55 – 59 years, 60 – 64 years or 65 and more);
- the type of court (district court, regional court, Supreme Court or Specialized Criminal Court);
- regional jurisdiction of the court (Banská Bystrica, Bratislava, Košice, Nitra, Prešov, Trenčín, Trnava or Žilina);
- the length of professional experience of the respondent (up to 4 years, 5 – 9 years;
- 10 – 14 years, 15 – 19 years, 20 – 24 years or 25 or more years of experience),
- imposing or non-imposing of EM by the respondent (only a judge).

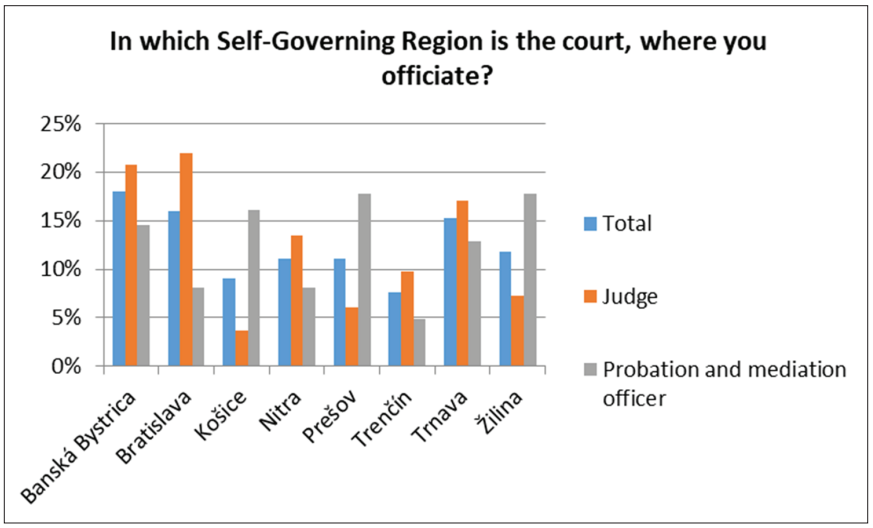
From the total number of respondents (144), there were more judges (82, representing 57% of respondents) than probation and mediation officers (62, representing 43% of respondents). The following charts present the other six monitored socio-demographic characteristics of the respondents.

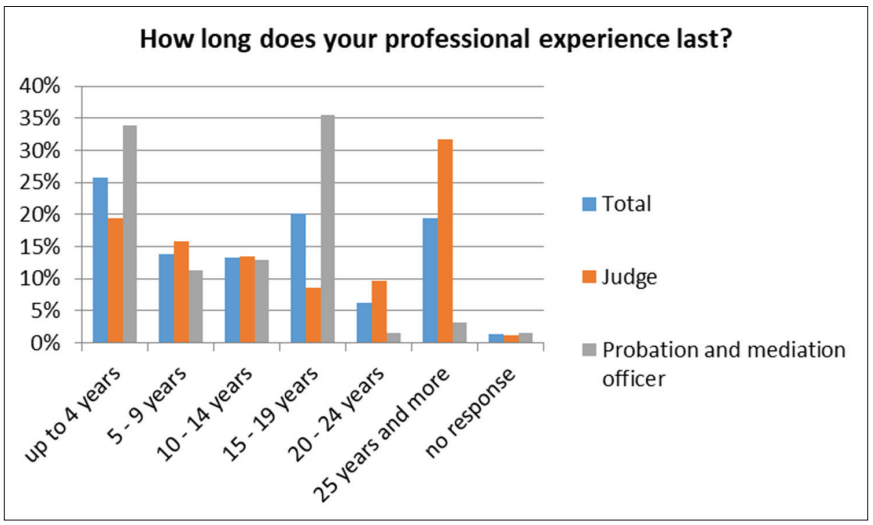
Charts 3 to 8: Socio-demographic characteristics of respondents

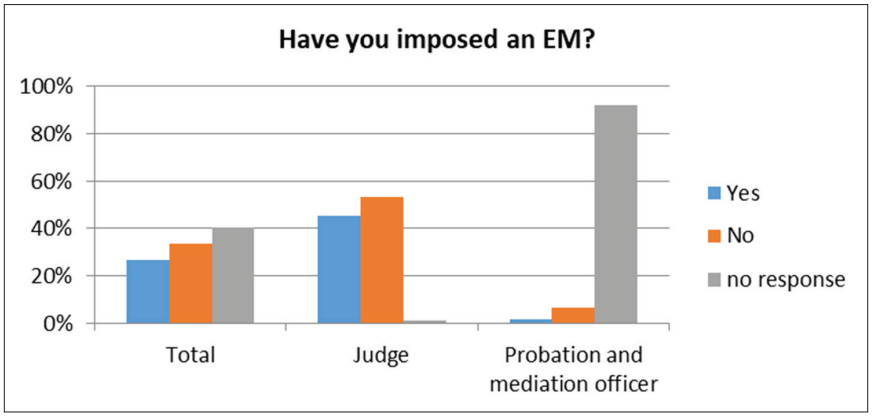












Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

Based on the previous charts, we can state the following:

- According to gender, our respondents were balanced (a total of 51% of women and 47% of men, the rest did not provide an answer). In the case of judges, there were more men (57%) than women (38%), and the rest did not provide an answer (5%). The opposite situation was in the case of probation and mediation officers, where the respondents, were more women (68%) than men (32%).
- In terms of age, up to 80% of judges were between the ages of 30 and 54. Up to 85% of probation and mediation officers were in the same age range. The lowest proportion of respondents was aged 65 and more (a total of 2%), while the largest age group was 45 to 49 (a total of 20%).
- According to the type of court where the respondent works, the district court (a total of 74%) and the regional court (a total of 22%) dominated. In the case of the Specialized Criminal Court and the Supreme Court, there was not a single probation and mediation officer among the respondents.
- From the point of view of regional affiliation, where the respondent works, the Banská Bystrica Region (18% in total) and the Bratislava Region (16% in total) had the largest representation. On the other hand, the Trenčín Region (8% in total) and the Košice Region (9% in total) had the lowest representation. Most judges were from the Bratislava region (22%) and the least from the Košice region (4%). The most probation and mediation officers were from the Prešov and Žilina regions (both 18% each) and the least from the Trenčín region (5%).
- According to the length of professional practice, up to 26% of the total number of respondents were in the category up to 4 years and only 6% in the category 20 to 24 years. In terms of length of professional experience, most judges were in the category of 25 or more years (32%) and the least in the category of 15 to 19 years (6%). In terms of length of professional experience, most probation and mediation officers were in the category of 15 to 19 years (35%) and the least in the category of 20 to 24 years (2%).
- According to the imposing or not-imposing of the decision with EM, the judges were split almost in half, with 54% of judges saying that they had not given an EM, 45% that they had given an EM and 1% did not give an answer. Although this question and characteristics were to concern only judges, one probation and mediation officer stated that he had already imposed EM, so we did not take him into account in the overall calculations.

If we look at the imposition of EM a little closer, e.g. from the point of view of the first socio-demographic factor (gender), 42% of all judges (women) and 49% of judges (men) have already decided in favour of EM. Based on our findings, we would like to mention that the imposition of EM is not formally related to any socio-demographic factor. That is important mainly because it would be questionable or even problematic for the application of EM if the willingness to impose EM will be dependent, e.g. from the age of the judge, his practice, the seat of the court, the type of court or the sex in question.

2.2.3 The rate of respondents' agreement with statements focused on various aspects of EM

Besides basic socio-demographic questions, we also asked respondents in the questionnaire survey about their opinions on various aspects of EM. Respondents thus also responded to a

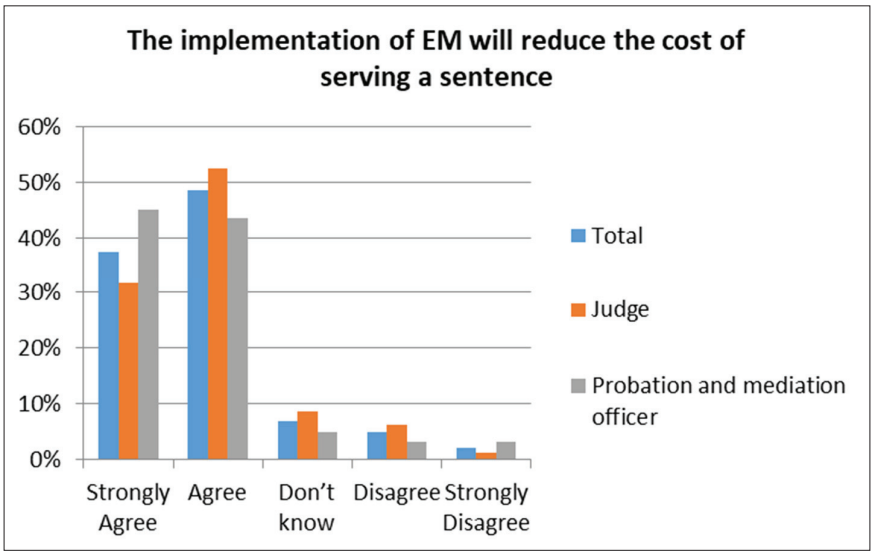
total of 46 statements concerning EM. We were interested in the respondent's views on the relevant statement in the questionnaire. Respondents' answers to these statements were in the form of expressing the degree of agreement with the statements (strongly agree, agree, don't know, disagree, strongly disagree).

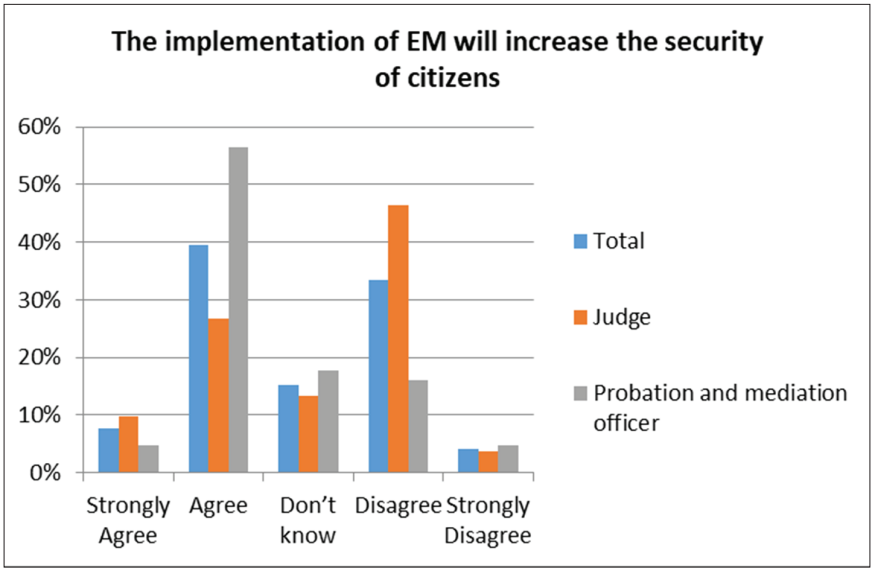
Due to the high number of statements, we decided to sort them into five groups according to the order and purpose of the research as follows:

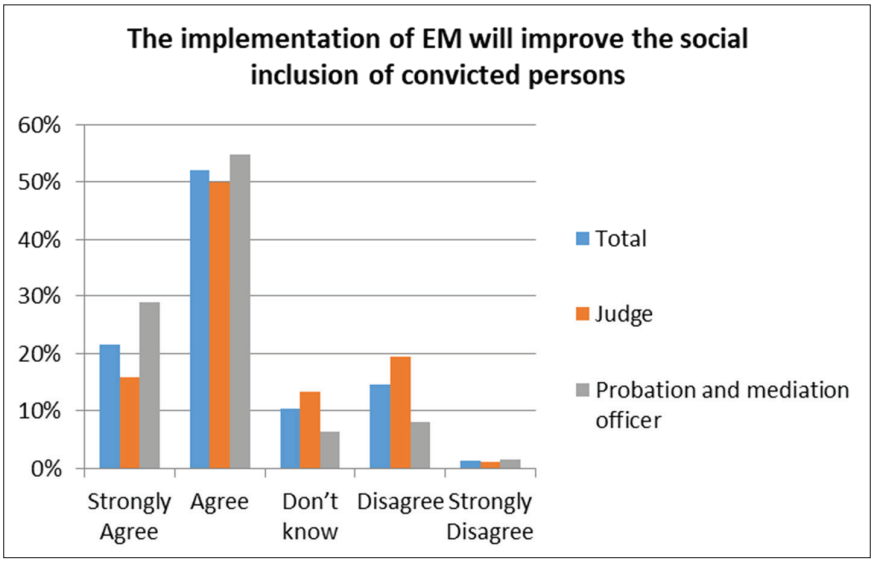
- The first group of statements (statements 1 to 12);
- The second group of statements (statements 13 to 20);
- The third group of statements (statements 21 to 31);
- The fourth group of statements (statements 32 to 39);
- The fifth group of statements (statements 40 to 46).

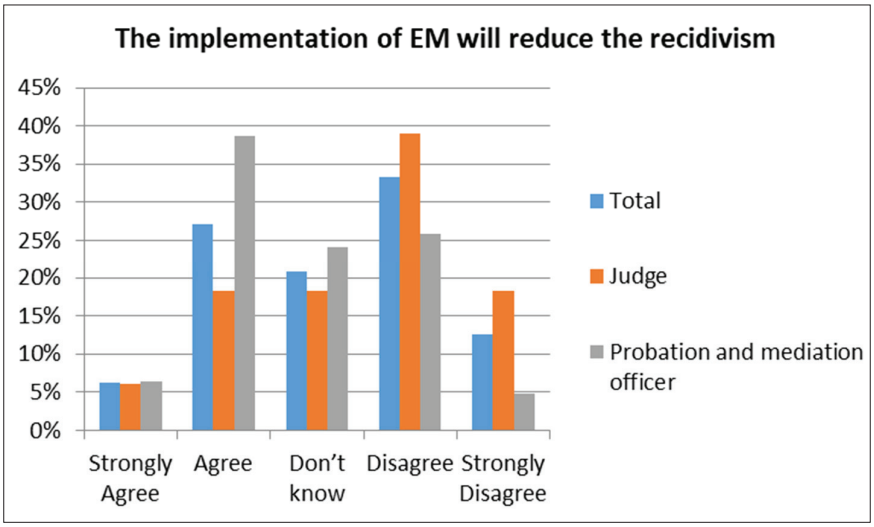
We comment on the results of individual groups of statements gradually and separately.

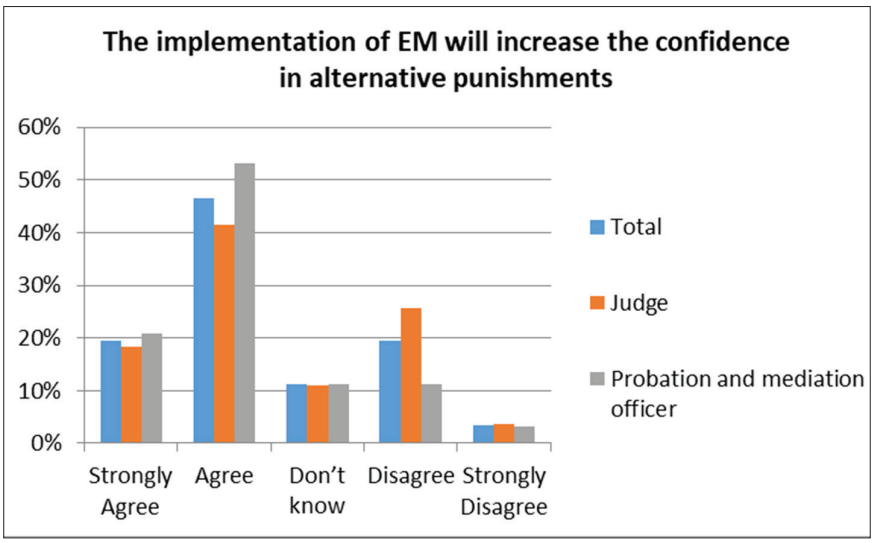
Charts 9 to 20: The rate of respondents' agreement with statements focused on various aspects of EM

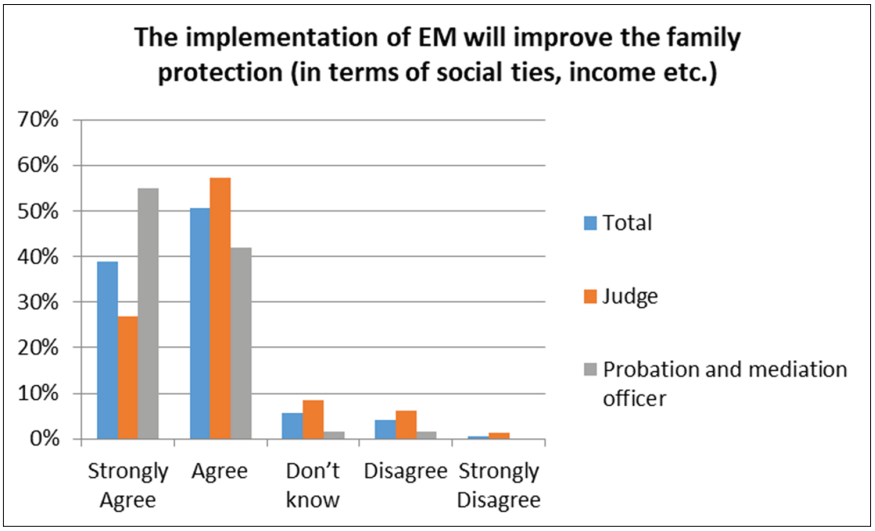


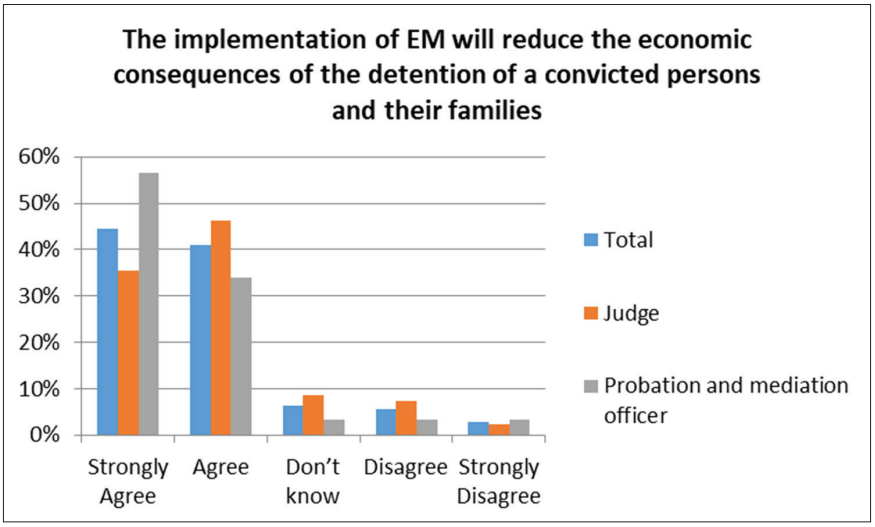


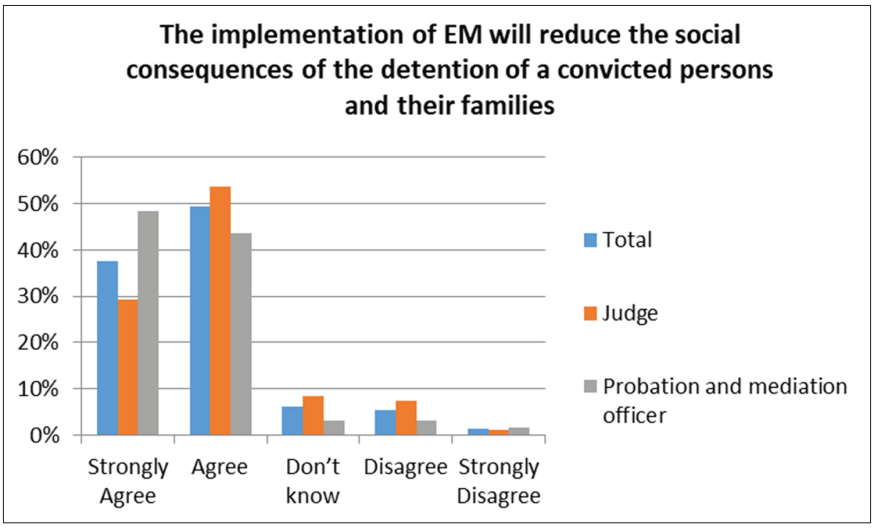

The implementation of EM will improve the social inclusion of convicted persons
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

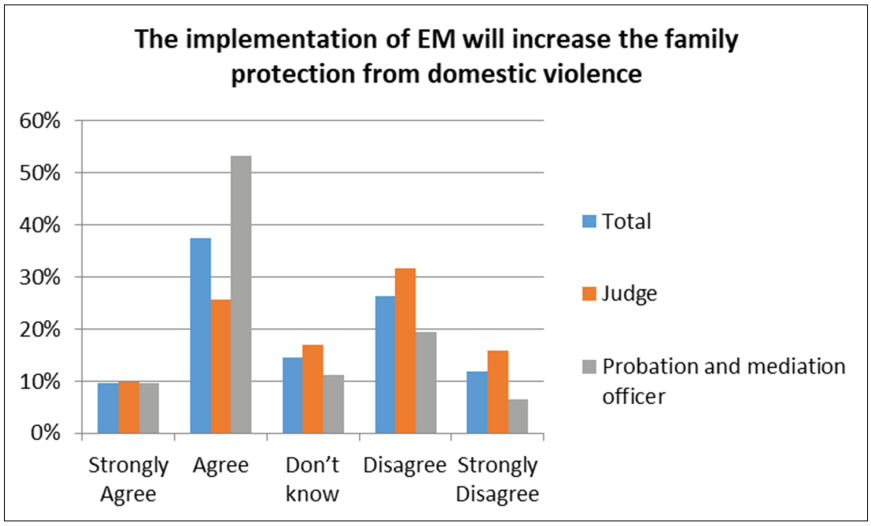

The implementation of EM will reduce the recidivism
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

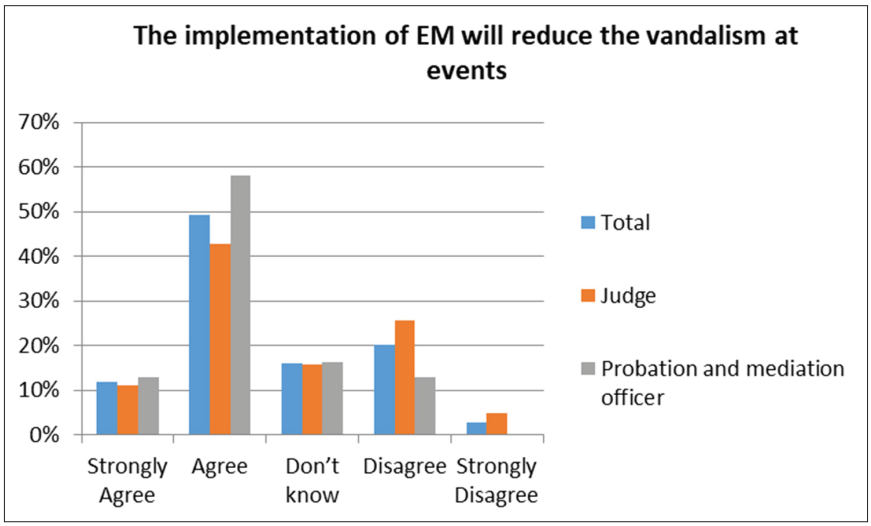

The implementation of EM will increase the confidence in alternative punishments
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

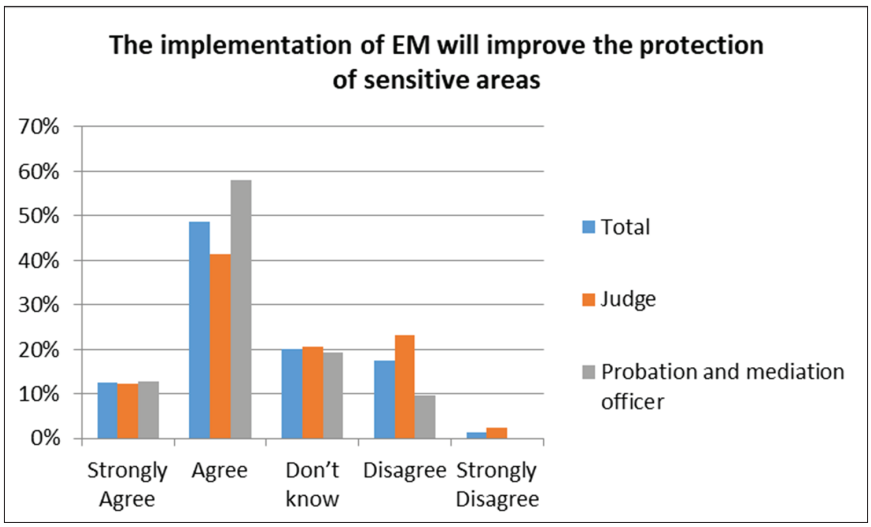

The implementation of EM will improve the family protection (in terms of social ties, income etc.)
70%
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

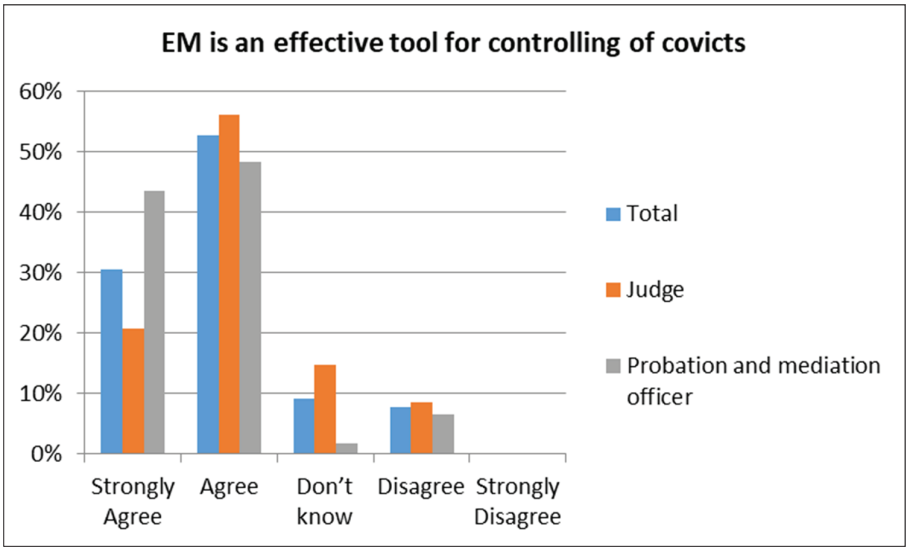

The implementation of EM will reduce the economic consequences of the detention of a convicted persons and their families
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The implementation of EM will reduce the social consequences of the detention of a convicted persons and their families
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The implementation of EM will increase the family protection from domestic violence
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The implementation of EM will reduce the vandalism at events
70%
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The implementation of EM will improve the protection of sensitive areas
70%
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

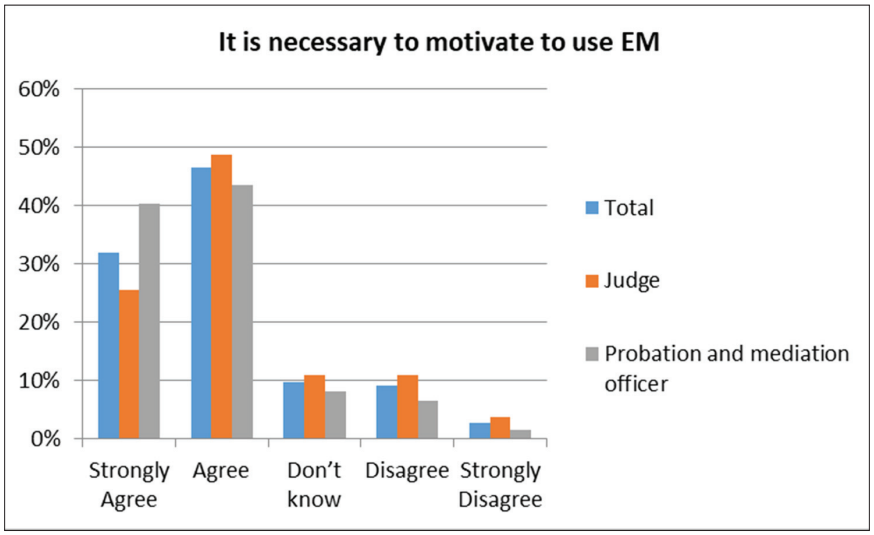


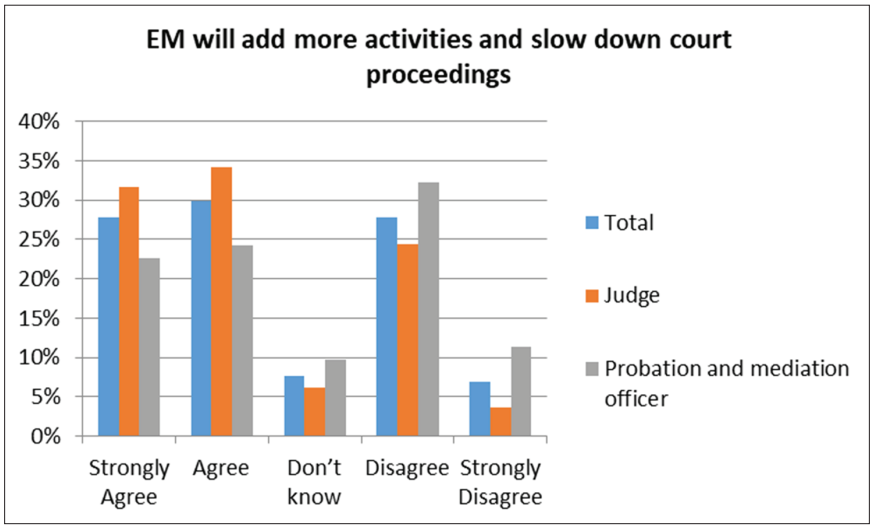
Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

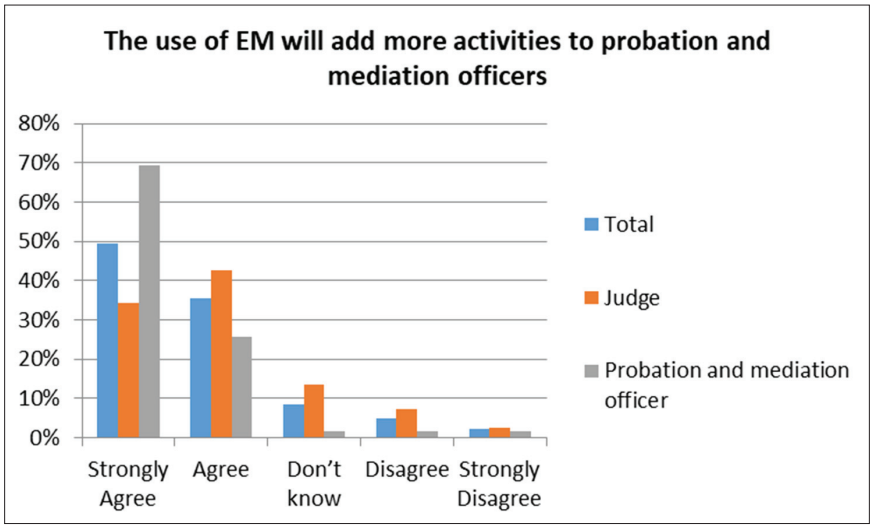
- Based on the previous charts, we can state the following for the first group of statements:
- To the statement that the introduction of EM will reduce the cost of serving a sentence, the answer was "strongly agree" by 38% and "agree" by 49% of all respondents. It is clear from the answers that the implementation of EM is understood by most respondents as positive and economically advantageous.
- In the statement that the implementation of EM will increase the safety of citizens, the results are not as clear as before. Although 40% of all respondents described "agree" in this statement, on the other hand, 33% of all respondents described the option "disagree".
- With the statement that the implementation of EM will improve the social inclusion of convicts, 22% "strongly agreed" and 52% "agreed", which is more than half of all respondents. We can, therefore, say that the respondents were mostly positive about this statement.
- When saying that the implementation of EM will reduce recidivism, there is a discrepancy between respondents. While 27% of all respondents marked the option "agree" in this statement, on the other hand, 33% of respondents marked the option "disagree" and 21% of all respondents could not express themselves. It is also interesting that while 39% of probation and mediation officers marked "agree" in this statement, the same number of judges (39%), on the contrary, marked the option "disagree".
- Respondents were generally in favour of whether the implementation of EM increases confidence in alternative punishments. 19% of all "strongly agree" and 47% "agree".
- Respondents also commented positively on the statement that the implementation of EM will improve family protection (in terms of social ties, income, etc.), as the option "strongly agree" was indicated by 39% and "agree" by 51%, which is more than half of all respondents.

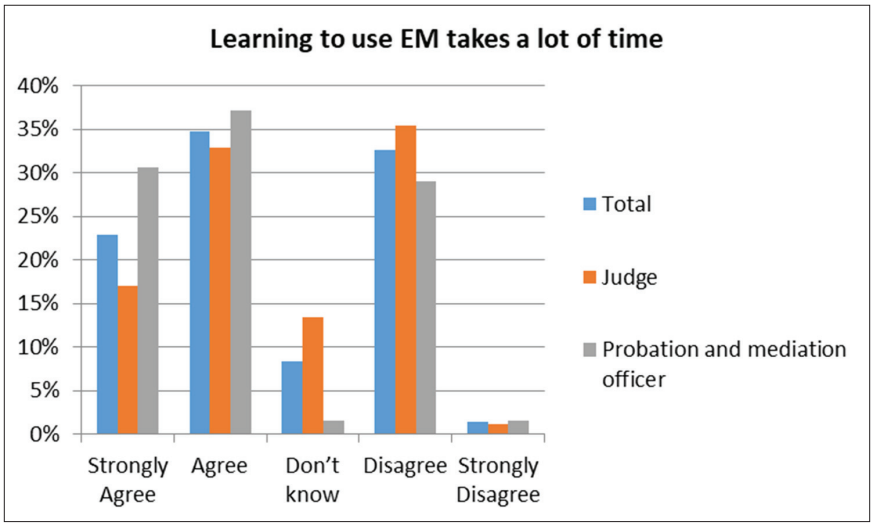
- Similarly, that is most positively, the respondents commented on the statement that the implementation of EM will mitigate the economic consequences of the detention of the convicted person and his family. Namely, 44% chose the option "strongly agree" and 41% "agree".
- Respondents were positive about the further statement that the implementation of EM will mitigate the social consequences of detention of a convict and his or her family. 38% out of all respondents marked the option "strongly agree" and "agree".
- In the statement that the implementation of EM will increase the protection of the family from domestic violence, we did not observe such a consensus as in previous ones. 38% of all respondents indicated the option "agree", but on the other hand 26% of all respondents chose the option "disagree". It can be seen from the chart that while more than half of probation and mediation officers (53%) marked the "agree" option, judges were less positive and in most cases (32%) marked the "disagree" option.
- Our respondents often "agreed" (49%) with the statement that the implementation of EM will reduce vandalism at events. The second most frequently chosen answer was "disagree" (20%) and 16% of all respondents could not express themselves.
- Very similar to the respondents' reaction than in the previous statement was in the case of "The implementation of EM will increase the protection of sensitive locations". Almost half of the respondents frequently referred to option "agree" (49%) and the second most common was "don't know" (20%). 17% of all respondents marked the option "disagree".
- Regarding the statement that the EM is an effective tool for controlling a convict, more than half of all respondents (53%) stated that they "agree" and the second most numerous answer was that they "strongly agree" (31%). Thus, most of the respondents were positive about this statement in their answer.

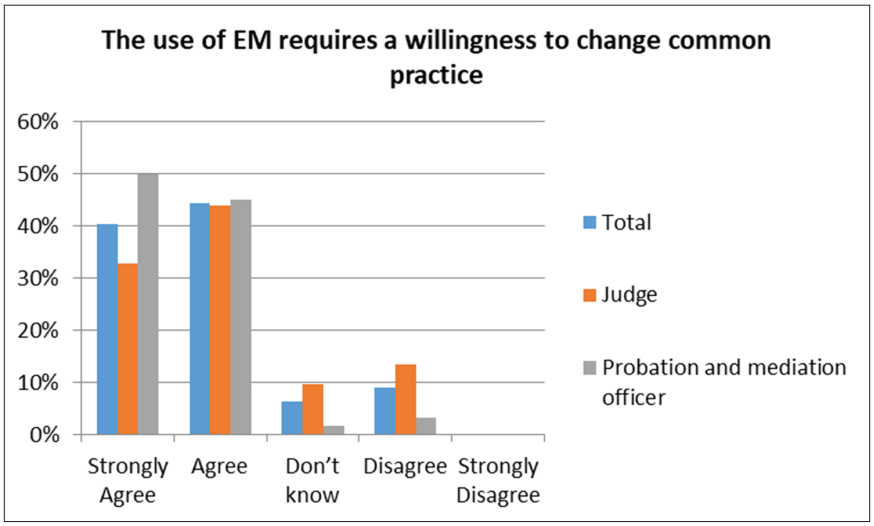
Charts 21 to 28: The rate of respondents' agreement in the second group of statements



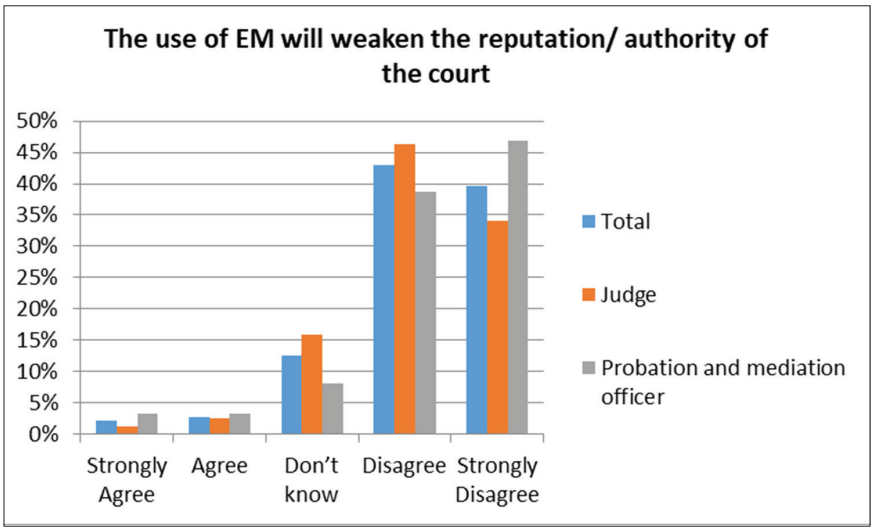

EM will add more activities and slow down court proceedings
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

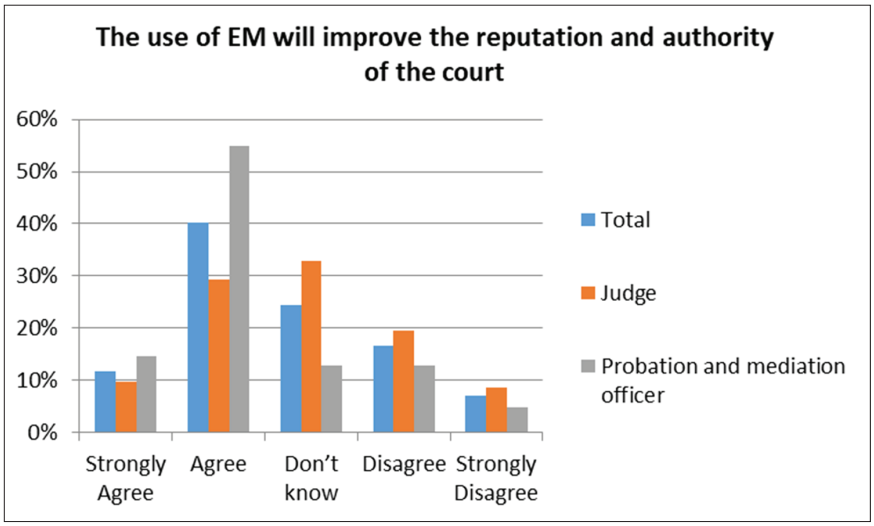

The use of EM will add more activities to probation and mediation officers
80%
70%
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


Learning to use EM takes a lot of time
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The use of EM requires a willingness to change common practice
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


There are concerns/respects before the new EM procedure
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The use of EM will weaken the reputation/ authority of the court
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer



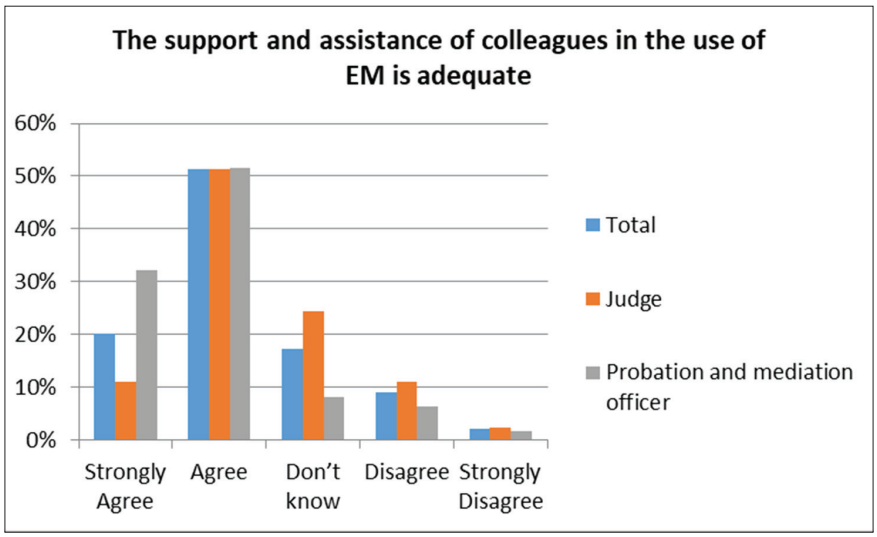
Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

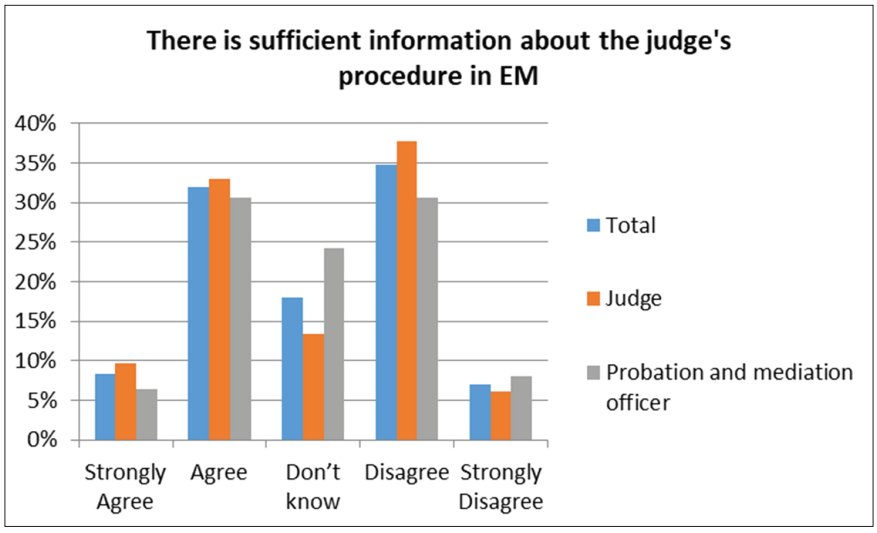
Based on the previous graphs, we can state the following for the second group of statements:

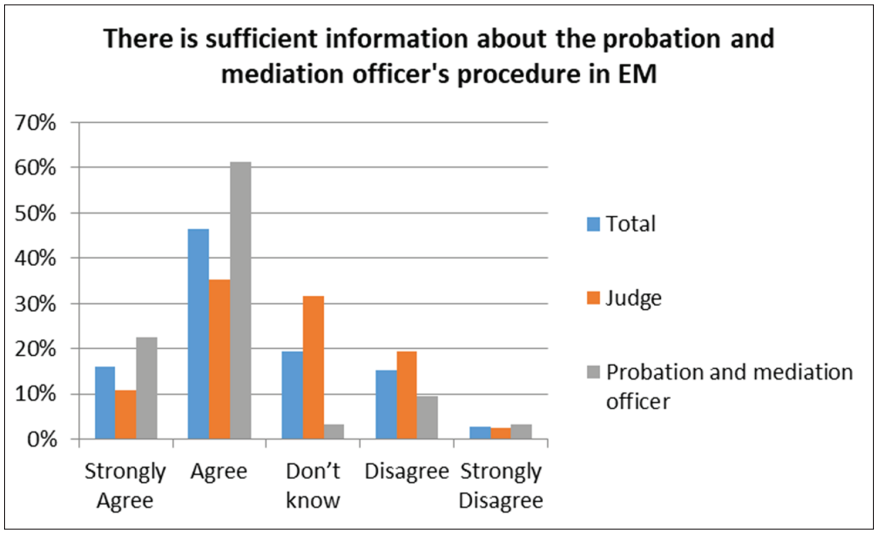
- According to the statement about the necessity to motivate to use EM, the possibility of "strongly agree" was marked by a total of 32% and "agree" by almost half of all respondents (47%). On the contrary, the option "strongly disagree" was marked by only 3% and 9% of all respondents "disagree". A total of 10% of all respondents could not comment on this statement. Most of our respondents perceive this situation as a new tool in criminal law. It is necessary to motivate to use electronic monitoring in terms of presenting its benefits and opportunities to all.
- In the statement that EM adds more activities and slows down court proceedings is a certain disagreement among respondents, as the option "strongly agree" was marked by 28% and "agree" by 30% of all respondents. On the other hand, "disagree" Also indicated approximately the same percentage of respondents (28%).
- A total of 49% "strongly agree" with the statement that the use of EM adds more activities to the probation and mediation officers, and 35% "agree". However, it should be noted in this statement that probation and mediation officers indicated the option "strongly agree" in up to 69% of cases and "agree" in 26% of cases.
- Even with the statement that learning to use EM takes a lot of time is a certain disagreement among the respondents. Namely, 23% of all respondents marked the option "strongly agree" and 35% "agree". On the other hand, the option "disagree" was also chosen by a fairly high percentage of all respondents (33%).
- 40% of all respondents "strongly agreed" with the statement that the willingness to change the current practice needs to be changed to use EM. In the case of probation and mediation officers, 50% of respondents marked "strongly agree" and 45% "agree".

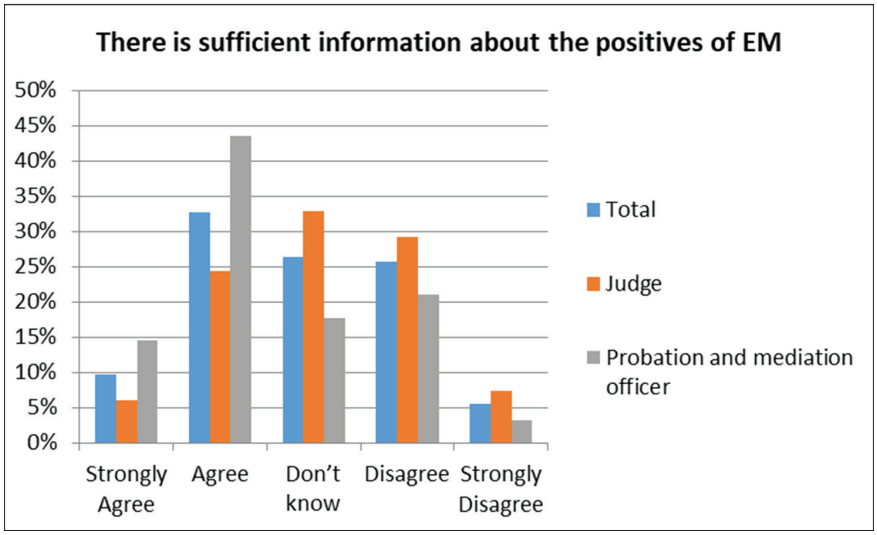
- According to the statement that there were concerns/respects before the new EM procedure, the most frequent answers were the “agree” options (38% of all respondents) and the “disagree” option (27% of all respondents).
- The statement that the use of EM will lower the reputation/authority of the court, 40% of all respondents marked the option “strongly disagree” and “disagree”. On the contrary, only 2% marked the option “strongly agree” and 3% of all respondents “agree”.
- The statement that the use of EM increases the reputation and authority of the court was marked “agree” by the largest number of all respondents (40%). The second most numerous option was “don’t know” marked by 24% of all respondents. More than half (55%) of probation and mediation officers marked the “agree” option in this statement, and a third (33%) of judges indicated the “don’t know” option, which was the most preferred answer among judges.

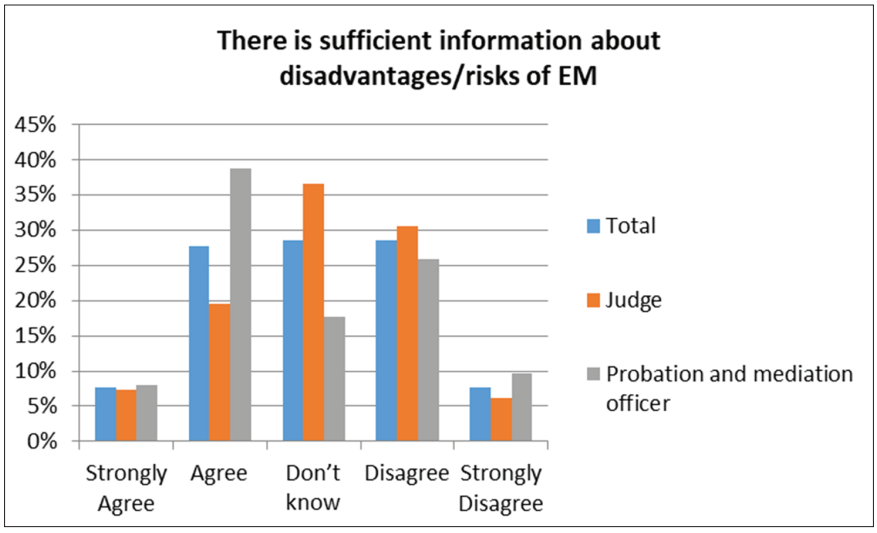
Charts 29 to 39: The rate of respondents’ agreement in the third group of statements

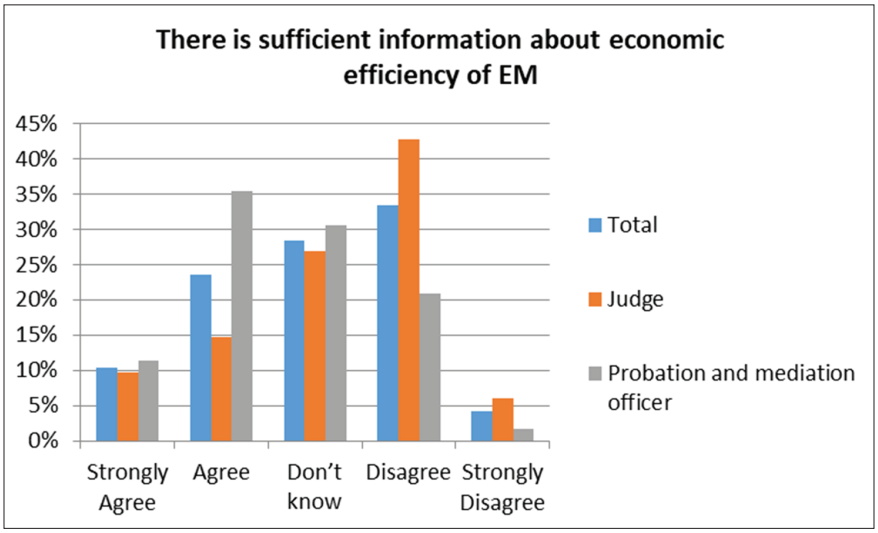


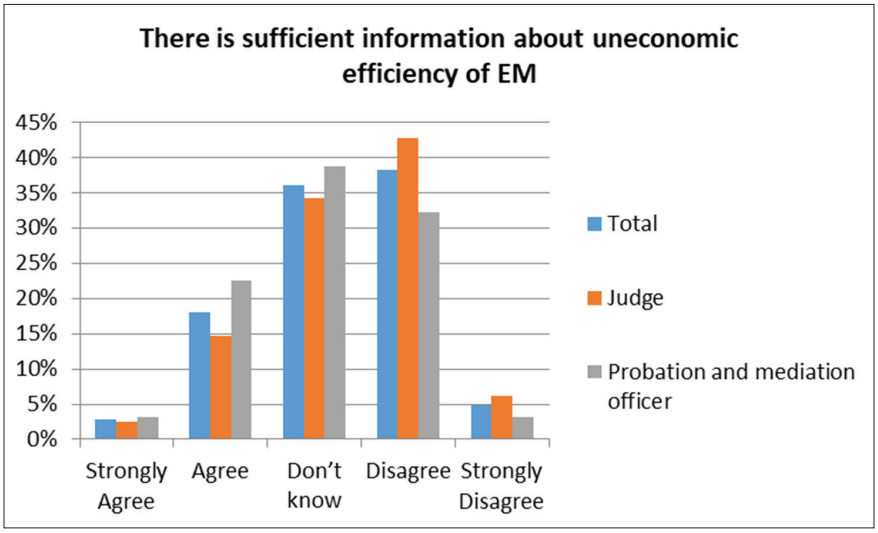


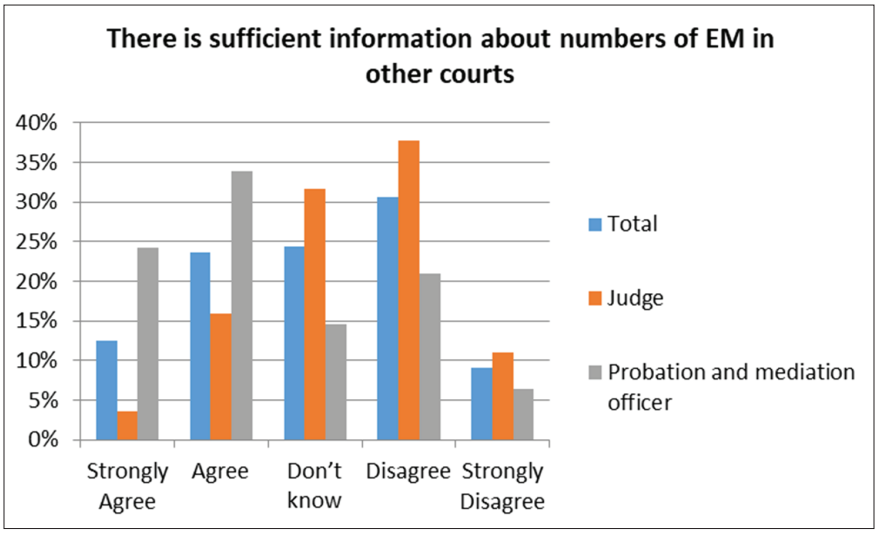

There is sufficient information about the probation and mediation officer's procedure in EM
70%
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

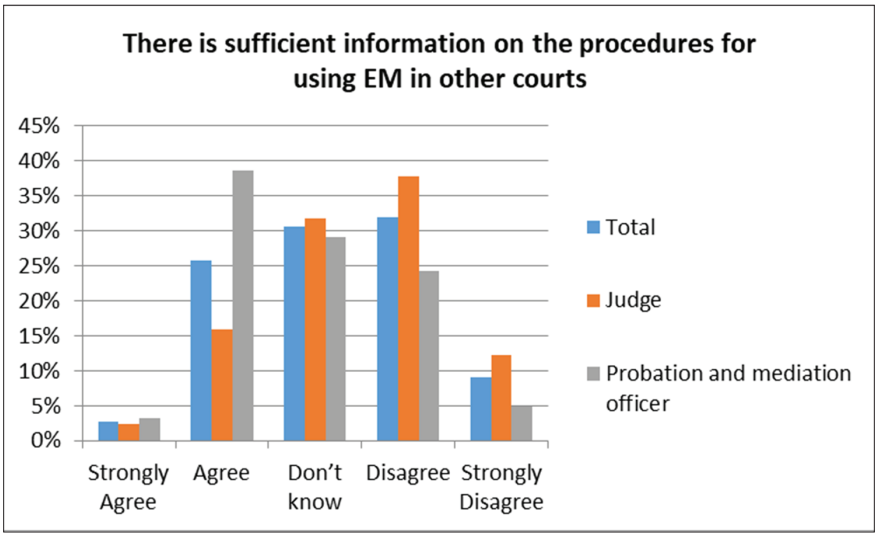

There is sufficient information about the positives of EM
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

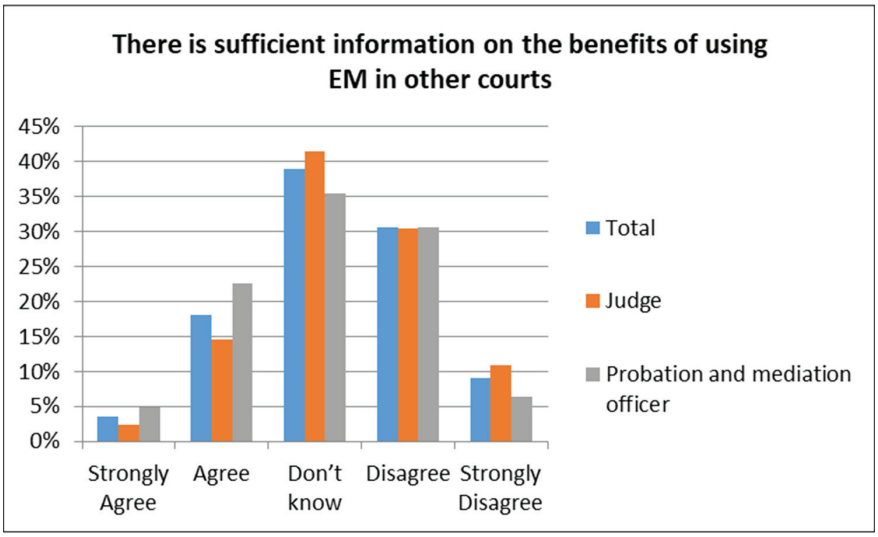

There is sufficient information about disadvantages/risks of EM
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer

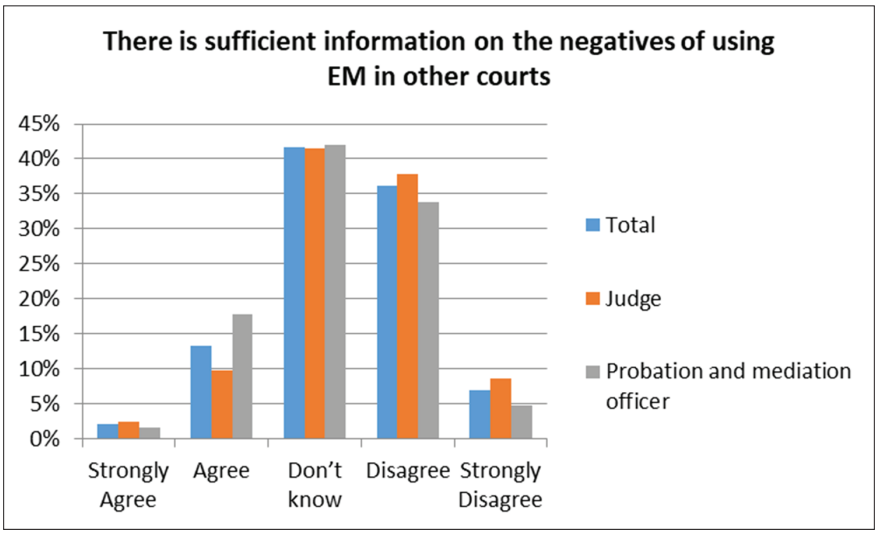

There is sufficient information about economic efficiency of EM
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


There is sufficient information about uneconomic efficiency of EM
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


There is sufficient information about numbers of EM in other courts
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer







Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

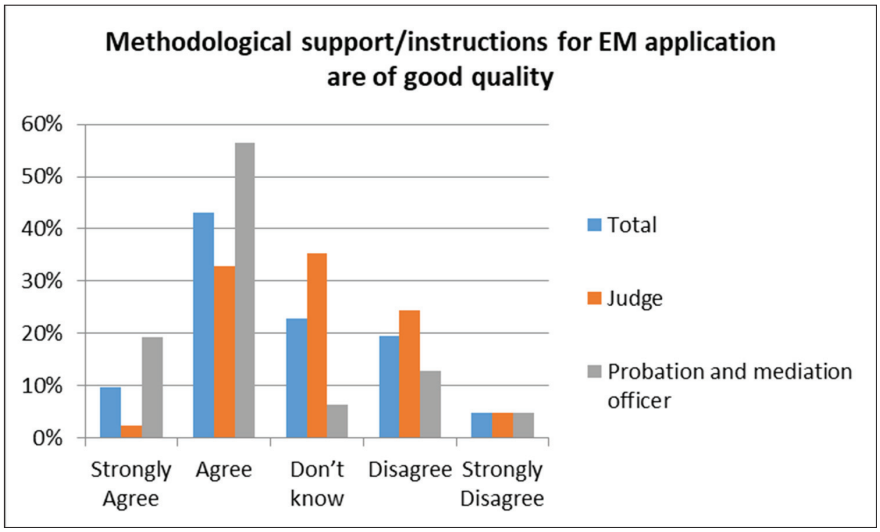
Based on the previous charts, we can state the following for the third group of statements:

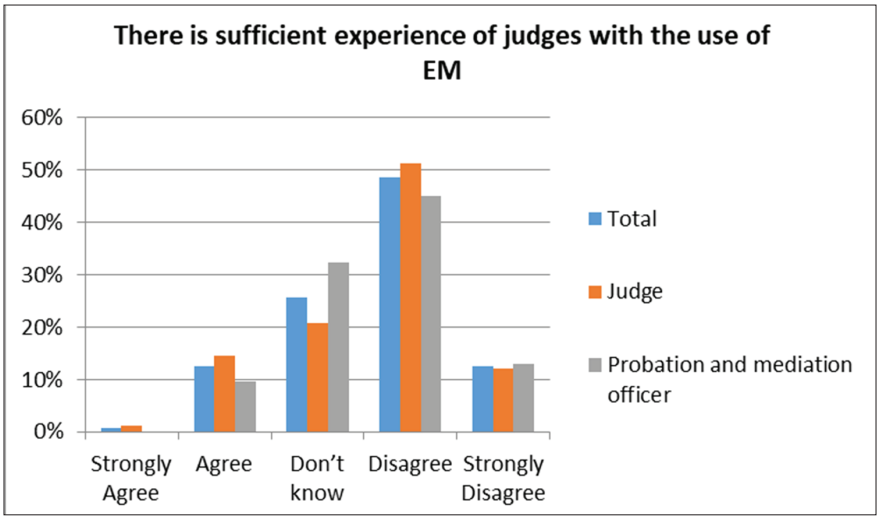
- The majority of respondents agreed with the statement that colleagues' support and assistance in the use of EM are adequate. The option "agree" was marked by the largest number of all respondents (51%) and the second most common answer was the option "strongly agree" (20%).
- In the case of the statement that there is enough sufficient information about the judge's procedure in EM, the opinions of respondents differ. The largest number of all respondents in this statement marked the answer "disagree" (35%) and the second-largest number, on the contrary, "agree" (32%). 18% of all respondents could not comment on the statement. In the case of only judges, the most preferred answer was "disagree" (38%) and "agree" (33%).
- In a similar statement, which focuses on the probation and mediation officers, that there is enough sufficient information on how the probation and mediation officer should proceed, it is interesting that the majority of all respondents, in this case, marked the option "agree" (47%) or "don't know" (19%) and only the probation and mediation officers themselves preferred the option "agree" (61%) or "strongly agree" (23%).
- 33% of all respondents "agreed" with the statement that there is enough sufficient information about EM. 26% of them could not express themselves and the same number preferred the answer "disagree" (26%). The most pronounced answer in the case of judges was "don't know" (33%) and in the case of probation and mediation officers, the answer was "agree" (44%).
- When saying that there is enough information about disadvantages/risks of EM, most of the respondents' answers are between "disagree", "don't know" or "agree" (all 38%). However, the chart shows a difference in the opinions of judges and probation and mediation officers. While judges have often chosen the option "don't know" (37%) and "disagree" (30%), probation and mediation officers preferred the answer "agree" (39%) and "disagree" (26%).
- An interesting finding in the statement on sufficient information on the economic efficiency of EM is the fact that despite the previous two positive answers of respondents relating to the economic aspects of EM (the statement that the introduction of EM will reduce the cost of serving a sentence), the answers to this statement were as follows. The majority of all respondents responded to this statement by "disagree" (33%) or "don't know" (28%). In the case of judges, the results of the answers are even more surprising, because their most common choice was the answer "disagree" (43%) or "don't know" (27%).
- When saying that there was enough information about the uneconomic efficiency of EM, most respondents marked the option "disagree" (38%) or "don't know" (36%).
- In the case of the statement that there is enough information on the number of EMs in other courts, the majority of all respondents answered that they "disagree" (32%) or "don't know" (24%). However, there is a difference between the answers of judges and probation and mediation officers. While judges preferred the answer "disagree" (38%)

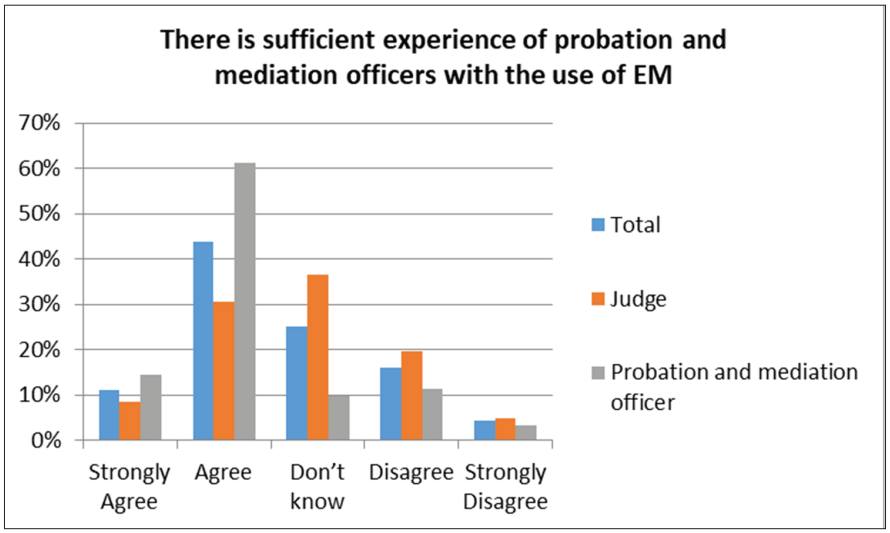
or “don’t know” (32%), probation and mediation officers described “agree” (34%) or “strongly agree” (24%) as an option.

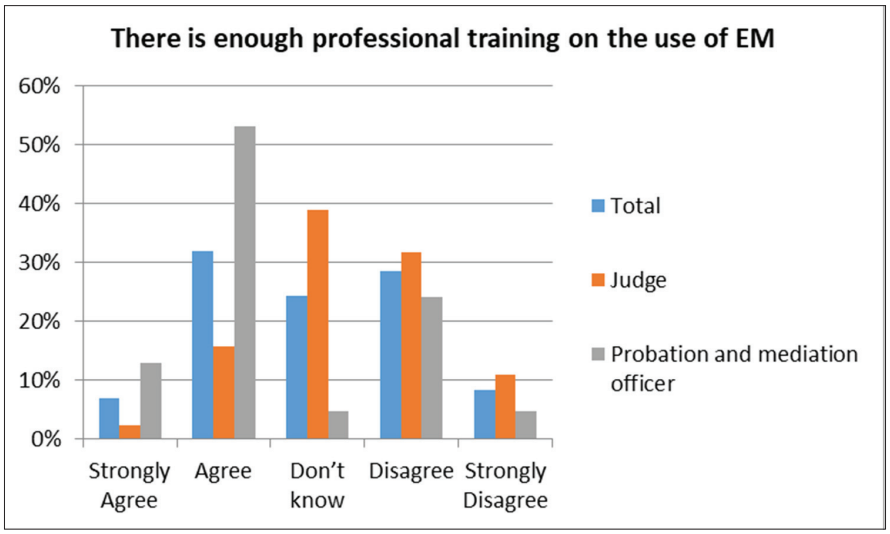
- When saying that there is enough information on the procedures for using EM in other courts, the majority of respondents marked the option “disagree” (32%) and as the second answer “don’t know” (31%). The difference between judges and probation and mediation officers in this statement is that while judges preferred the answer “disagree” (38%), probation and mediation officers “agree” (39%).
- The statement that there is enough information on the benefits of using EM in other courts, 39% of all respondents could not comment on it. The second most common answer was the option “disagree” 31%.
- To the statement that there is enough information about the negatives of the use of EM in other courts, 42% of all respondents could not express themselves. The second most common answer was the option “disagree” 36%.

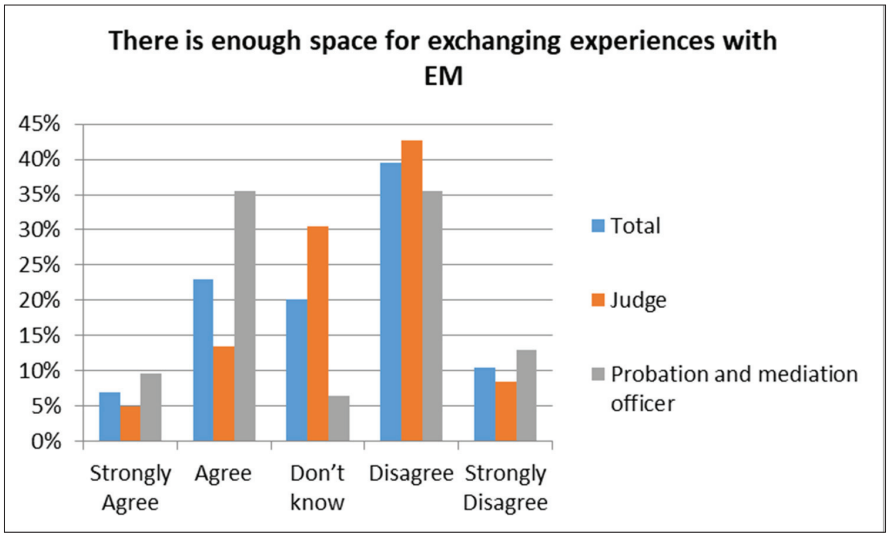
Charts 40 to 47: The rate of respondents’ agreement in the fourth group of statements

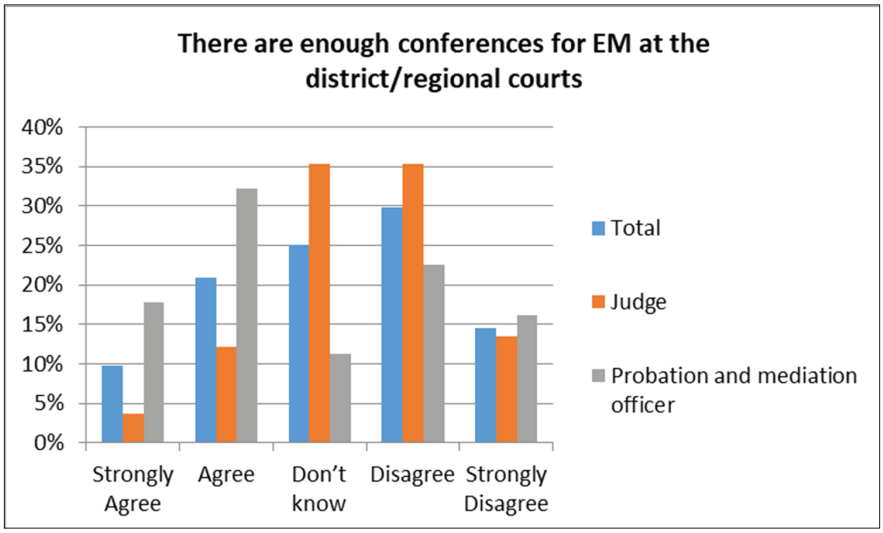


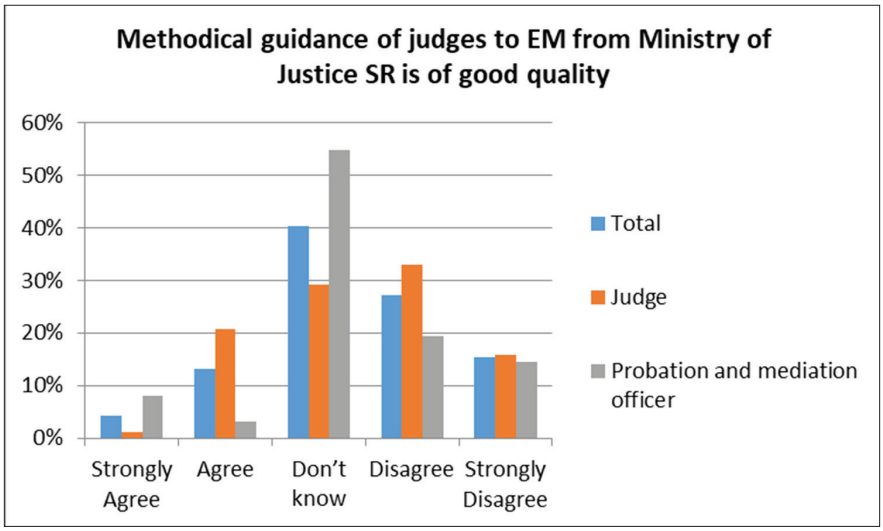


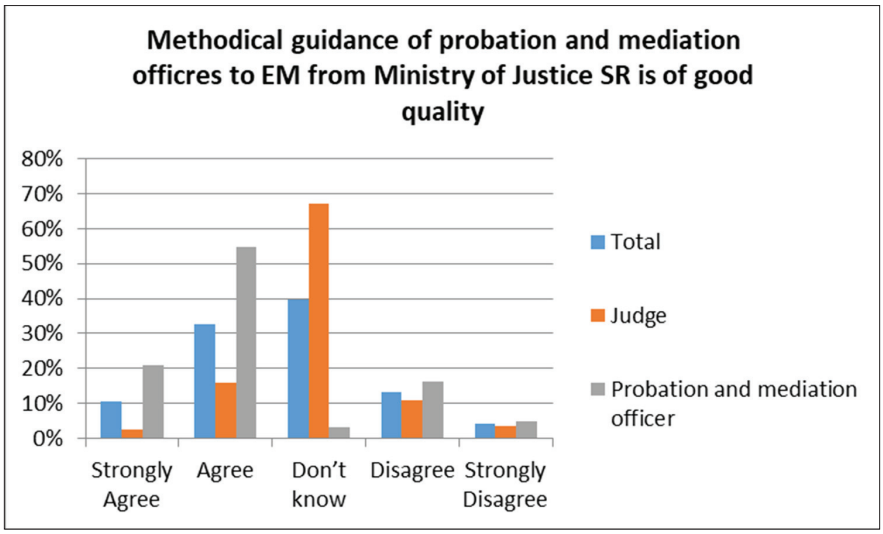

There is sufficient experience of probation and mediation officers with the use of EM
70%
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


There is enough professional training on the use of EM
60%
50%
40%
30%
20%
10%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


There is enough space for exchanging experiences with EM
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer







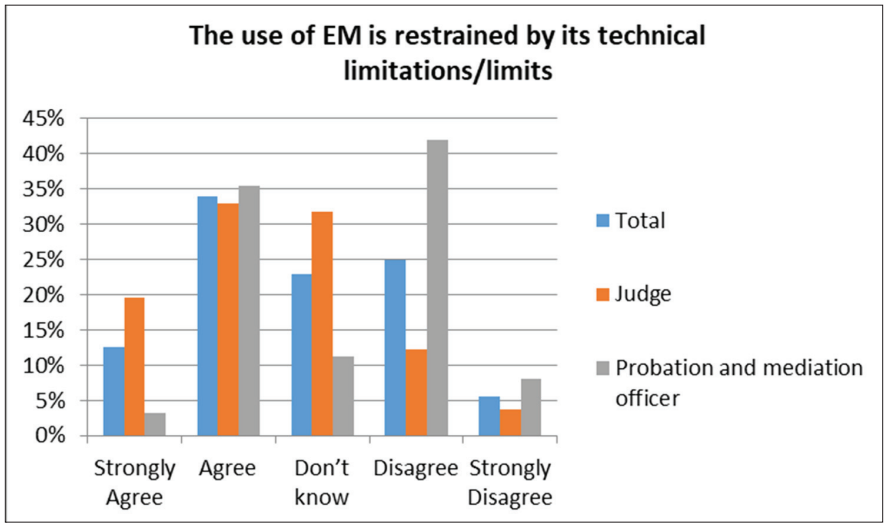
Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

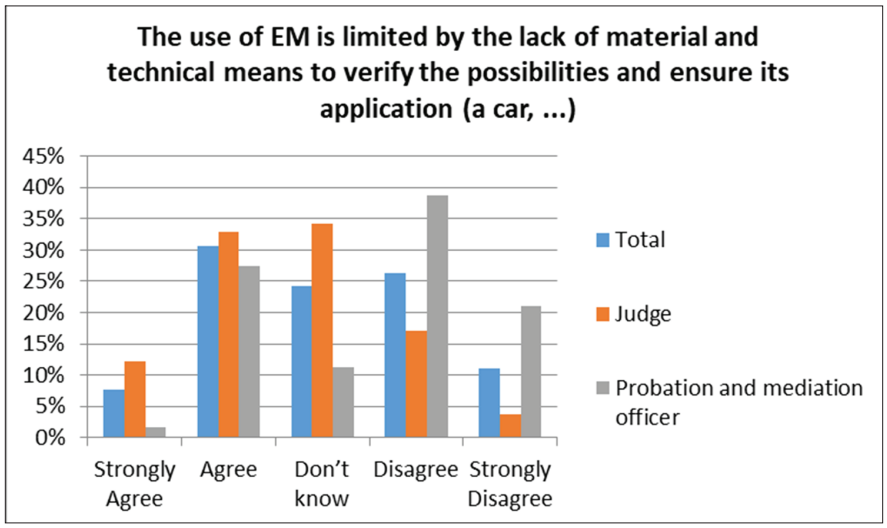
Based on the previous charts, we can state the following for the fourth group of statements:

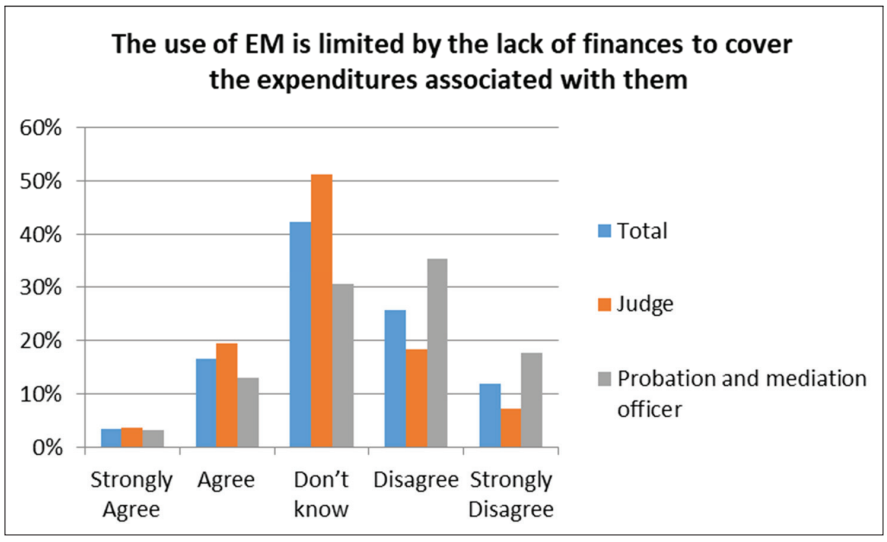
- The statement that the support/instructions for EM application are of good quality, most of all respondents indicated as "agree" (43%), with more than half of probation and mediation officers (56 %) describing this option as their answer. The second most preferred option for all respondents was the "don't know" option (23%) while judges (35%) mostly marked this option.
- In the case of the statement that there is sufficient experience of judges with the use of EM, the majority of all respondents described the option "disagree" (49%) or "don't know". (26%).
- In a similar statement, which focuses on probation and mediation officers, that there is sufficient experience of probation and mediation officers with the use of EM, it is interesting that the majority of all respondents indicated the option "agree" in this case (44%) or "don't know" (25%), and the probation and mediation officers themselves preferred the "agree" option (61%).
- Probation and mediation officers responded differently than judges according to deciding whether there is sufficient professional training on the use of EM. While probation and mediation officers chose the answer "agree" (53%) or "disagree" (28%), judges most often answered "don't know" (39%) or "disagree" (32%).
- When saying that there is enough space to exchange experiences with EM, all respondents described the option "disagree" (40%) and "agree" (23%). 20% of all respondents could not answer.
- In the case of the statement that there are enough consultations on EM at the district/ regional level of courts, the majority of all respondents chose the option "disagree" (30%) and then "don't know" (25%). It is also interesting to see from the chart that the judges most preferred the answer "don't know" or "disagree" (35% in both cases), while probation and mediation officers preferred the answer "agree" (32%) or "disagree" (23%).
- 40% of all respondents could not comment on the statement that the methodological guidance of judges to the EM from the Ministry of Justice of the Slovak Republic is of good quality. While judges in this statement most often described the option "disagree" (33%) and "don't know" (29%), probation and mediation officers voted "don't know" (55%) and the second most numerous answer was "disagree" (19%).
- In a similar statement focused on probation and mediation officers that the methodological guidance of probation and mediation officers to EM from the Ministry of Justice of the Slovak Republic is of good quality is interesting that while 67% of judges could not comment on this statement, 55% of probation and mediation officers marked the option "agree" and 21% "strongly agree".

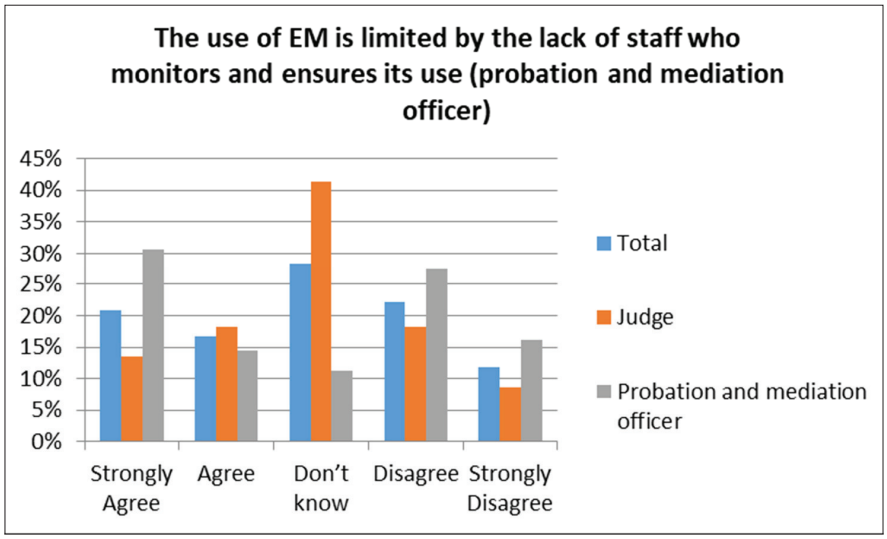
It is clear from the previous two statements that the probation and mediation officers evaluate the methodological guidance to EM by the Ministry of Justice SR more positively than the judges.

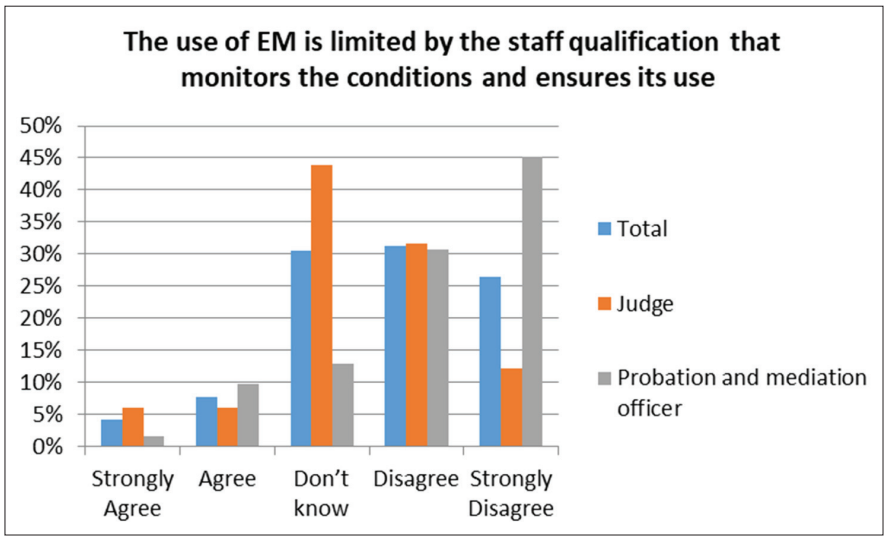
Charts 48 to 54: The rate of respondents' agreement in the fifth group of statements

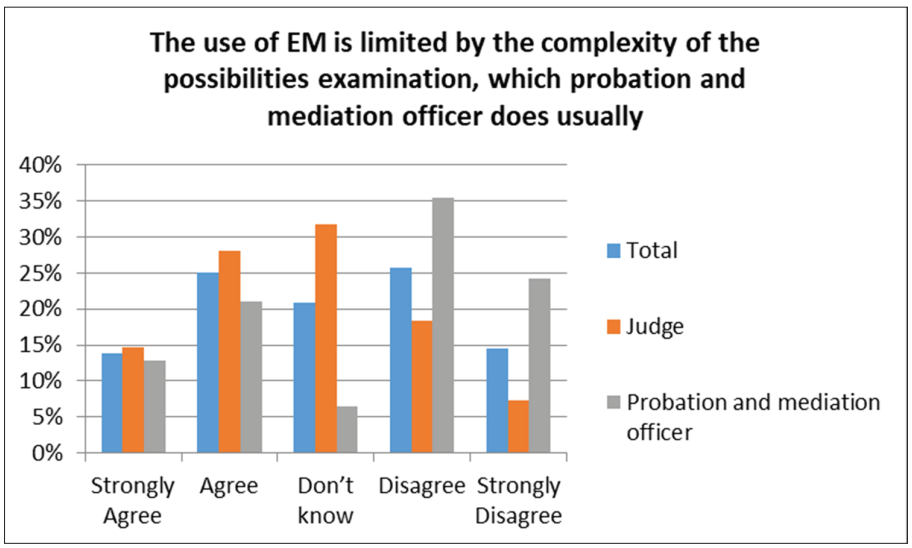


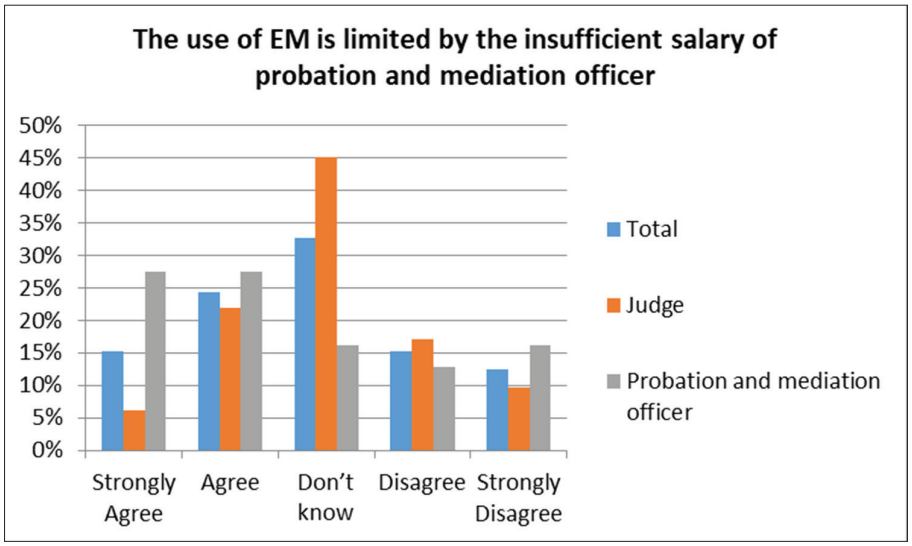





The use of EM is limited by the lack of staff who monitors and ensures its use (probation and mediation officer)
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The use of EM is limited by the staff qualification that monitors the conditions and ensures its use
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer


The use of EM is limited by the complexity of the possibilities examination, which probation and mediation officer does usually
40%
35%
30%
25%
20%
15%
10%
5%
0%
Strongly Agree
Agree
Don't know
Disagree
Strongly Disagree
Total
Judge
Probation and mediation officer



Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

Based on the previous charts, we can state the following for the last fifth group of statements:

- When saying that the use of EM is restrained by its technical limitations/limits, respondents mostly marked the option "agree" (34%) and then "disagree" (25%), and almost a quarter of all respondents could not express themselves (23%). The difference in the opinion of judges and probation and mediation officers is interesting. While judges most often described the option as "agree" (33%), probation and mediation officers, on the other hand, "disagree" (42%).
- The results were very similar in the case of the statement that the use of EM is limited by the lack of material and technical means to verify the possibilities and ensure its application (a car, ...). The "agree" option was the most marked (31%), then the "disagree" option (26%) and almost a quarter of all respondents could not comment (24%). And while judges most often referred to the option "don't know" (34%) or "agree" (33%), probation and mediation officers, on the other hand, "disagree" (39%).
- In the statement that the use of EM is limited by the lack of funding to cover the costs associated with the use of EM, the most numerous response from all respondents was the "don't know" option (42%), and more than half of judges (51%) marked it.
- As with the previous statement, the statement that the use of EM is limited by the lack of staff who monitors and ensures its use (probation and mediation officers) became the most numerous answer from all respondents, the option "don't know" (28%) and this option judges marked the most (41%).
- In the case of the statement that the use of EM is limited by the staff qualifications to monitor the conditions and ensure its use, we observe a difference between the opinions of judges and probation and mediation officers. While judges most often referred to the option "don't know" (44%) and "disagree" (32%) options, probation and mediation officers most often referred to the "strongly disagree" (45%) and "disagree" (31%) options.

- In the statement that the use of EM is limited by the complexity of examining the possibilities of its use, which probation and mediation officers usually do, the most frequently marked options were “disagree” (26%), “agree” (25%) and “don’t know” (21%). While the most common answers of judges were “don’t know” (32%) and “agree” (28%), in the case of probation and mediation officers the answer was “disagree” (35%) and “strongly disagree” (24%).
- In the case of the last statement of this group, that the use of EM is limited by the insufficient salary of probation and mediation officers, the most frequently marked option of all became “don’t know” (33%) and “agree” (24%). In the case of probation and mediation officers, the answer most often described as “strongly agree” (27%) and “agree” (27%). In the case of judges, “don’t know” (45%) and “agree” (22%).

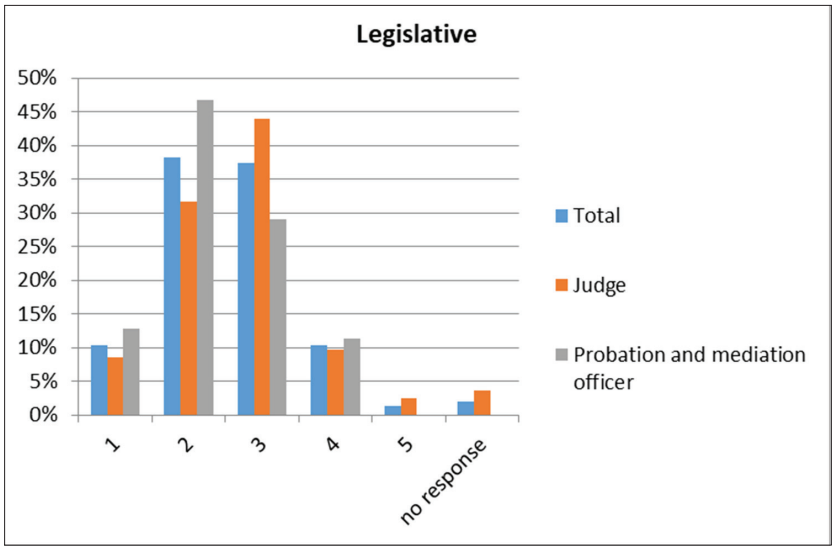
2.2.4 Level of conditions for the use of EM according to respondents

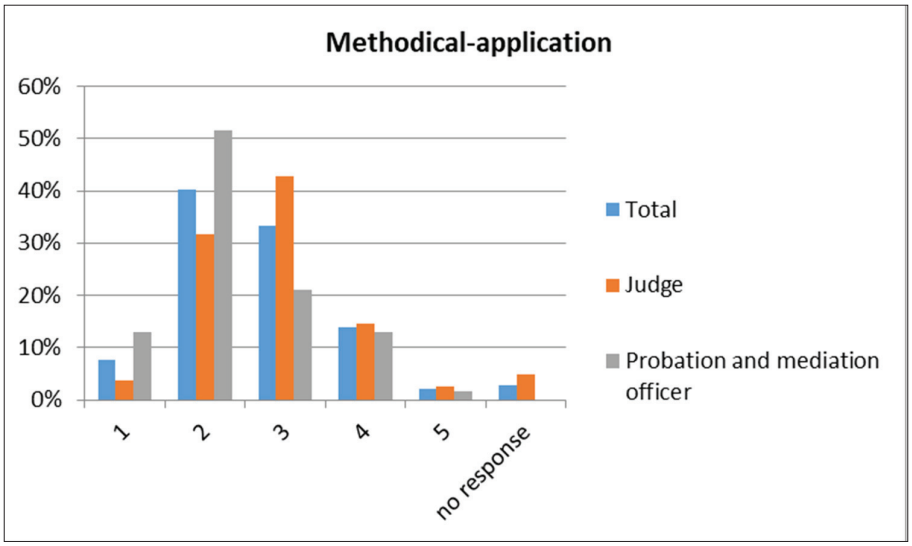
We deal with the results of the evaluation of the level of conditions for the use of EM. The respondents should evaluate with a school mark (1 best to 5 worst) their opinion on the circumstances of use of EM, furthermore, at which level is the ensuring of the requirements for the EM usage in Slovakia. We monitored them through 7 areas:

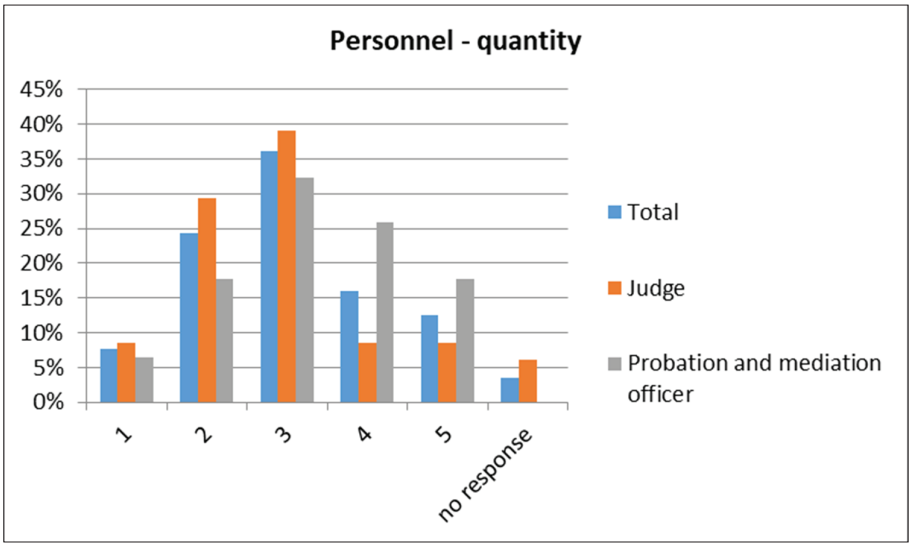
- Legislative;
- Methodical-application;
- Personnel (quantity);
- Personnel (quality);
- Financial;
- Material-technical;
- Organizational.

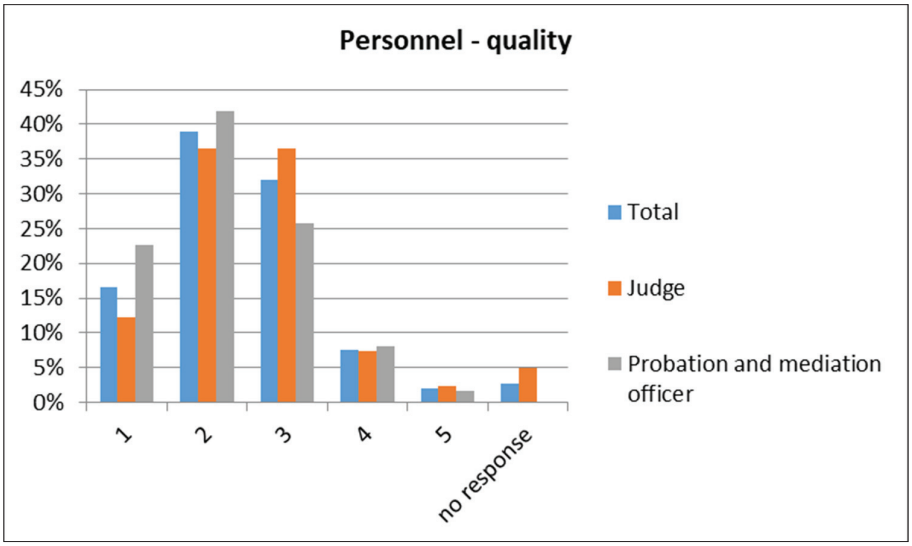
The following charts present how the mentioned areas turned out in the evaluation of our respondents.

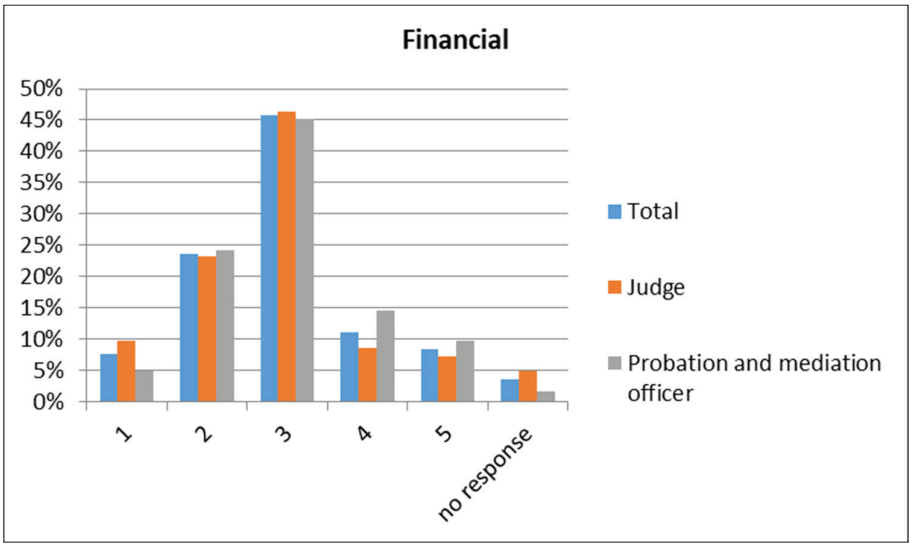
Charts 55 to 61: Level of conditions for the use of EM according to respondents

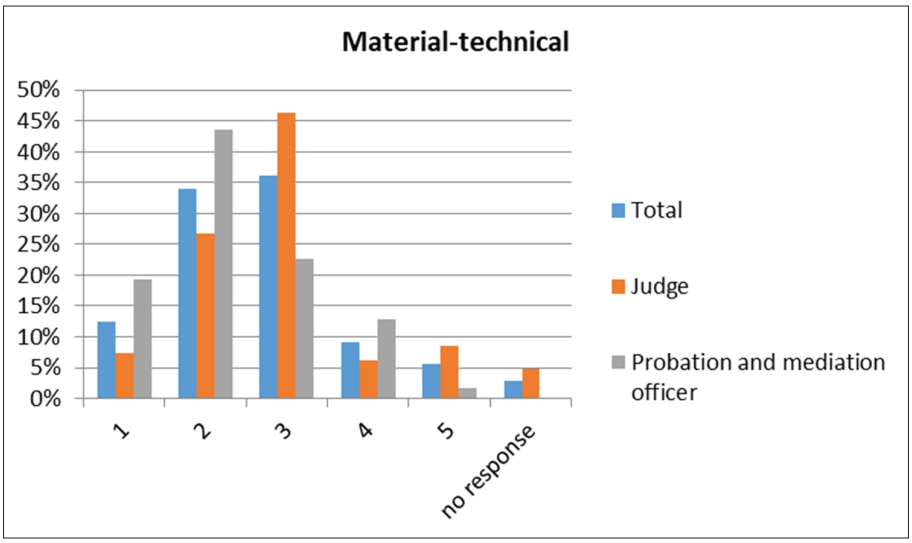


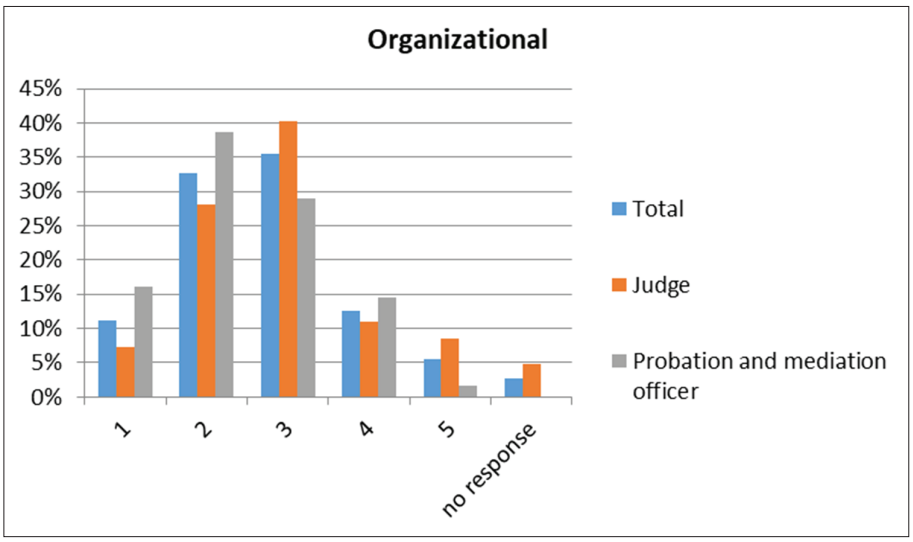

Methodical-application
60%
50%
40%
30%
20%
10%
0%
1
2
3
4
5
no response
Total
Judge
Probation and mediation officer


Personnel - quantity
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
1
2
3
4
5
no response
Total
Judge
Probation and mediation officer


Personnel - quality
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
1
2
3
4
5
no response
Total
Judge
Probation and mediation officer







Source: The processing of authors based on a national questionnaire survey within the research project APVV *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, 2020.

Based on the previous charts, we can state the following:

- Under the legislative conditions for the use of EM, a total of 38% of all respondents said that they considered these conditions to be laudable (mark 2) and the same percentage of respondents (also 38%) said that they viewed these conditions to be good (mark 3). The only difference between the two marks is that probation and mediation officers are more optimistic than judges who have more chosen the worse mark. A total of 10% of respondents marked grade 1 - excellent and a mark of 5 - fail, marked only by 1% of all respondents.
- In terms of methodological and application conditions, 40% of all respondents rated mark 2 as adequate. As in the previous case, this answer was preferred mainly by probation and mediation officers (52%) and judges were less optimistic and preferred mark 3 (43 %). A total of 8% of respondents marked mark 1, and only 2% of all respondents marked mark 5.
- In the case of personnel questions asked about the "quantity" of staff with EM on the agenda, it is interesting to note that for probation and mediation officers, the mark reaches 4 to the second-highest percentage (26%), and mark 5 is at the same level as for mark 2 (18%). Compared to all other charts within the group of questions devoted to the level of conditions for the use of EM, this is a discrepancy, which may indicate a problem on the part of probation and mediation officers. The judges also acted in this area as in all others (the most numerous marks 3 and 2).
- In the case of personnel questions asked about the "quality" of staff with EM on the agenda, all respondents have mostly preferred the mark 2 (39% in total) and then 3 (32% in total). Probation and mediation officers are again more optimistic (42% for mark 2, 26% for mark 3) than judges, who are in the same percentage of statements in this area for both mark 2 and mark 3 (37%). A total of 17% of respondents marked mark 1, and only 2% of all respondents marked mark 5.
- In the case of financial conditions, judges are most in line with probation and mediation officers in this area. They almost equally marked these conditions with a mark of 3 (46% in total) and then a mark of 2 (23% in total). In this case, mark 1 and mark 5 were marked equally by 8% of all respondents.
- From the point of view of material and technical conditions, all respondents have marked with the mark 3 (36% in total) and a mark 2 represents another significant percentage (in total 34%). Under this condition, we can observe that judges are not as optimistic about probation as probation and mediation officers. A total of 13% of respondents marked mark 1, and only 6% of all respondents marked mark 5.
- Under organizational conditions, respondents voted mark 3 (35%) and mark 2 (33%) the most. The relevant chart shows that probation and mediation officers are more optimistic even under this type of condition than judges who have chosen the mark 3 more. Mark 1 was marked by a total of 11% of respondents and mark 5 by only 6% of all respondents.

Based on the numerical answers of the respondents, we point out three additional findings. The most frequently marked mark (the one with the highest representation) is in the case of judges in most questionnaire questions focused on the level of conditions for the use of EM

worse than in the case of probation and mediation officers. Besides, both parties involved marked the question on financial conditions similarly, and the mediation and probation officers were the most critical in the question on personnel ("quantity") matters.

2.2.5 Evaluation of the open question

Within our questionnaire available to the respondents, there was one open question. We asked judges as well as probation and mediation officers for their opinion, proposal or recommendation, which would contribute and help in practice to use EM to a greater extent.

A total of 28 judges and 30 probation and mediation officers used this opportunity. Some respondents used this opportunity more and wrote an extensive text on the topic. Others wrote their opinion in just a few words. However, by a closer analysis of these texts, we have concluded that the answers contain often-repeated connections or recommendations. The most important and most frequently represented are listed below:

- Training, education and better information of judges and probation and mediation officers on the possibilities and conditions of using EM;
- Increasing the number of probation and mediation officers;
- Simplification of processes and reduction of the administrative burden of EM implementation;
- Improvement of technical equipment and security for EM performance (better equipment, signal security, devices without the need to connect to the main supply, etc.);
- Amendment and adjustment of legislation;
- Independence of the probation and mediation service;
- Possibility to use EM to a greater extent;
- Gradual improvement of EM as well as the trust that only time and practice will bring.

The results of the national survey follow the chapter on recommendations for policymakers and legal practitioners.

3. Recommendations for policymakers and legal practitioners

The role of electronic monitoring in its introduction was to improve the effectiveness of resocialization of convicted persons, prevent perpetrators of further crimes against the injured while reducing the financial burden of the state apparatus and increase the economic performance of the accused individuals and convicts at large. One of the goals of the APVV-15-0437 project was to conclude the recommendations for policymakers and legal practitioners. During the examined period of 2016 – 2020, we identified several deficiencies which had to be reflected by the adoption of a new legal regulation - an amendment. The most fundamental was the amendment of criminal codes by Act no. 214/2019 Coll. In addition to the amendments to the Criminal Code and the order made so far, some problems of application practice have remained, they have not yet been eliminated, and we summarized them in Chapter 3.

The implementation of electronic monitoring records register.

It is necessary to have quality data about monitored persons. Afterwards, we will be able to assess whether there is effective resocialization through electronic monitoring. The current collection of information and their processing is not at the required level. This recommendation reflects the fact that the Ministry of Justice of the Slovak Republic does not register individuals imposed with the EM decision after they have already served the decision with the EM.

Reasoning:

The establishment of a register that would ensure the detailed recording of information about the person imposed with the EM decision would contribute to the necessary statistics on the monitored persons. At present, they are insufficient. It is impossible to find out data from the current records about the person who has already served the EM decision or was prosecuted/convicted again, or a new decision was imposed on him/her ensured by the EM. It is difficult to determine whether the initially imposed decision with EM had a resocializing effect on the person accused/convicted.

The currently processed data on monitored persons are insufficient to determine the exact data of the resocialization effectiveness of this modern tool. From the point of view of the electronic monitoring resocialization function, in terms of the so-called monitoring recidivism, there is no information about the monitored persons at the level of courts or the central body of state administration of courts. This is a situation where it would be possible to find out that a person has already executed a decision (court or prosecutor's office) associated with electronic monitoring, and what decision (custody, enforcement or punishment, urgent measures in civil proceedings) and type of monitoring of a person (ban on approaching a

person, ban on entering a selected location, ban on the consumption of alcoholic beverages, etc.). It would be a register of electronic monitoring of persons, similar to the criminal record kept by the General Prosecutor's Office of the Slovak Republic.

A website establishment presenting current information on EM persons.

The recommendation is based on insufficient public awareness of electronic monitoring and its benefits for the community.

Reasoning:

The cornerstone for increasing public trust (including judges and prosecutors) in a functioning electronic monitoring system is awareness and presentation of the results of this tool. If people are sufficiently informed about the real functionality of the system and its benefits, they will start to be interested in the use or its application. Anonymized information on monitored persons would be regularly updated on the website so that the obtained data can be processed and subsequently analysed. The website should reflect partial information from the electronic monitoring register. The relevant state institutions (probation and mediation officers, the court, the prosecutor's office) will enter them. The public, as well as state authorities, should have access to information on the number of monitored persons in individual self-governing regions, cities or municipalities; differentiation of monitored persons in terms of gender, age, employment; the approximate duration of electronic monitoring; the sum of income tax benefits of monitored persons; the number of persons subjected to EM as a substitution for detention or as part of a sentence or protective measure imposed; and many other indicators that will make electronic monitoring an attractive instrument of achieving the elimination of socially pathogenic phenomena. The added value of the information lies in the possibility of further free use of information by the academic and student community. That would prevent the dissemination of misinformation on electronic monitoring.

Improve the data collection system on recidivism.

Based on the data published in the statistics annual reports of the Ministry of Justice of the Slovak Republic, it is not possible to assess the effectiveness of punishment (fulfilment of the purpose of punishment) with the application control of the technical means.

Reasoning:

In most European Union countries, recidivism is perceived as an elementary and irreplaceable measure of the effectiveness of the sanctions imposed. Even though its definition and assessment based on data on registered crime are marked by certain deficiencies. In recent years, European countries have been trying to improve the system of collecting recidivism data to compare them with each other. In the Slovak Republic, there is no uniform system for monitoring and evaluating the recidivism of convicted persons. Therefore, information about it does not give a perfect picture of this phenomenon in our country. From these statistics,

we cannot determine how many convicted recidivists were included in electronic monitoring. There are no statistical indicators that would allow us to evaluate how the ESMO improves the social inclusion of convicts and how it contributes to the fulfilment of the purpose of punishment.

Amending the legal regulation of the provisions of § 68(1) of the Labour Code following the example of the Czech Republic.

The proposed recommendation is based on the valid legal status of the Labour Code. The Labour Code allows the immediate termination of employment under the provisions of § 68 if the employee has been lawfully convicted of a criminal offence. Even though this is not related to the work performed and the employee is not unconditionally convicted and therefore does not have to serve a custodial sentence.

Reasoning:

The recommendation consists in amending Act No. 311/2001 Coll. on the Labour Code in § 68 under paragraph 1(1). It addresses the issue of immediate termination of employment by the employer if the employee is legally convicted of an intentional criminal offence. The employer may immediately terminate the employment even if the crime committed is not related to the performance of the employee's work. Moreover, this conviction does not limit the employee in any way or does not affect the performance of further work, even if it does not require integrity. According to the Czech legislation, the employer may immediately terminate the employment relationship if the employee was lawfully convicted of an intentional criminal offence to an unconditional sentence of imprisonment for more than one year. Then, if he/she was lawfully convicted of an intentional criminal offence committed while performing his tasks, or was convicted in connection with it to an unconditional sentence of imprisonment at least for six months. The Czech legislation is more acceptable for remaining in the convict's employment, as it significantly limits the number of persons with whom the employer could terminate the employment. The benefit of a house arrest sentence controlled by electronic monitoring (among other things) is the possibility of maintaining the convict's job and thus economic independence, so we see the current legislation in the Slovak Labour Code as an obstacle to achieving this goal.

Establishing of the recording of all telephone calls from the monitored person to the probation officer and the operation centre.

The recommendation is based on the absence of a recording of telephone communication between the monitored person and the probation officer and the ESMO Operation Centre.

Reasoning:

In the application practice of probation officers, rude and conflicting behaviour repeatedly arises on the part of monitored persons. They demand their supposed rights or assert their requirements for the performance of electronic monitoring and control by probation officers.

It was found out that the accused persons or convicts under electronic monitoring grossly behave to probation officers. The accompanying phenomenon is inciting the wholly artificial conflict situations often associated with the threat of harm to the probation officer. Any system does not record the behaviour of monitored persons and communication by telephone calls. The probation officer can only make an official record. In case there is a proposal from the probation officer to transform the sentence of house arrest to imprisonment, or when deciding on detention based on a breach of the control regime by the monitored person, he/she denies anything violent to the probation officer. In this context, the knowledge of the monitored person that communication with the probation officer (telephone or personal) is recorded would have a preventive-psychological effect on the monitored person and eliminate unwanted rude behaviour towards probation officers, often exceeding criminal law boundaries.

Recording telephone communications to the ESMO Operations Centre is desirable as well as for probation officers. When operational/security incidents occur, the operations centre communicates directly with the monitored person, if necessary.

The modernization of hardware and software equipment used to perform electronic monitoring.

Duplicate wearing of the device when performing monitoring of the movement of the inspected person and inaccurate definition of the boundaries of the monitoring area by ZUPKO - a device for controlling the movement of a person.

Reasoning:

In practice, the monitoring of the controlled person is carried out at a specified place with the help of a device for checking the positioning of the monitored person, which the accused/convicted person must have with him/her wherever he/she moves, especially outside the home. The monitored person must carry the device for controlling the movement and the bracelet on his/her foot. In practice, there are hundreds of security incidents, where the monitored persons usually unintentionally forget to take the above-mentioned equipment with them. Subsequently, the operation centre registers the information that the person is not detected, or their movement is unknown. Probation officers throughout the Slovak Republic consistently report insufficient coverage and intensity of GPS signals in the territory of the Slovak Republic in selected areas, which raises security and technical incidents. They described the inaccurate drawing of the borders of the Slovak Republic as a significant deficiency of the current system due to the low number of points for marking, which results in the occurrence of violations of zones by monitored persons, even though they are in Slovakia.

The decision-making on the probation officer's proposal to transform the decision with the EM to serve a custodial sentence within the time limits for deciding on custody criminal cases.

The recommendation is based on legislation amendments that will ensure a procedure acceleration for the conversion of a decision in the event of violating the conditions of the monitored person.

Reasoning:

This deficiency is based directly on the application practice of the court of the first instance, which due to its causal jurisdiction in Slovakia is extremely burdened by criminal complaints. The staffing by judges and administrative apparatus is undersized. The probation officer's proposal was based on a repeated violation of the control regime set for the convicted person. The convict did not respect the imposed restrictions and obligations, the ordered regime of control of movement and residence. Finally, the convict's partner herself, in whose household he lived, asked for several urgencies to decide to convert the rest of house arrest to imprisonment, because there were regular conflicts in the household. The proposal was included in the order, and at the same time, there was a sudden legal judge's incapacity for work in that department. It was not clear how long it would take (after six weeks of the incapacity of work, the court files of the legal judge must be redistributed).

Chronology:

– October 2019 - conversion of the custody to house arrest
– November 2019 - proposal of a probation officer for the transformation of house arrest to unconditional imprisonment
– June 2020 - the decision on the conversion of house arrest to unconditional imprisonment

Continuous technical/service support, so-called 24/7

The recommendation is based on the unavailability of service technicians on non-working days and public holidays. It results in the impossibility to set up a monitoring device.

Reasoning:

Continuous technical/service support, so-called 24/7

The recommendation is based on the unavailability of service technicians on non-working days and public holidays. It results in the impossibility to set up a monitoring device.

It is common if a judge receives for the preparatory proceedings a detainee with a request to be taken into custody, with the end of the period for the court's decision falling on a non-working day or public holiday. Given that the detainee was presented with extensive file material (an investigation file of several dozen volumes), it is up to the court to decide on the detention of the detainee after a thorough examination of the file and the hearing of the person. This process is usually accompanied by the time constraint of the legal deadline of 48 or 72 hours, which when studying the file, performing administrative acts of the court, or performing a preliminary investigation, the so-called IPI by the probation officer means that the court decides on the last day of the time limit. If this happens on a non-working day or public holiday, it is not possible to replace the custodial arrest. The service technician of the service support company is not on call. If the judge concludes that the reasons for detention are given, the detention may be replaced by the supervision of a probation officer while imposing restrictions or obligations performed by EM. The non-provision of service by the supply company on public holidays and non-working

days excludes this possibility of the court for the accused. That is a paradoxical phenomenon, as law enforcement agencies and the criminal departments of the courts have uninterrupted services precisely because of decisions in custody cases. This situation has persisted since the introduction of EM into practice in the conditions of the Slovak Republic and no adopted change so far. We like to state that a company providing a support service for monitoring costs the state budget more than 3 million euros per year.

In practice, there are cases that the device fails, e.g. during the Christmas holidays, when the service technician does not provide support. Therefore, the person is not electronically monitored, and the probation officer has no choice but to check the person randomly by phone to see if he/she is staying in the dwelling. If he has reserved areas where he should not be, this prohibition cannot be checked, as well as in the event of a technical failure of the station for measuring alcohol in the breath of a person. These people were not under the control of electronic monitoring for a total of five to six days due to the holiday. These, but also many other problems, are caused by insufficient technical support from the provider – a private company. Regarding this, it is desirable to make a compromise with the technical support provider, as well as change the schedules of courts for the services of probation officers.

The establishment of a direct telephone connection between the operational centre of the Police Force of the Slovak Republic and the ESMO operation centre and the possibility of direct redirection of the operation centre to the district directorates of the police force depending on the location of the monitored person, where was his/her last known movement.

The recommendation is based on the absence of direct contact or the direct line of the operation centre of the Police Force of the Slovak Republic to the ESMO operation centre.

Reasoning:

Due to the occurrence of a security incident of the monitored person (intentional removal of the identification device), there were communication discrepancies between the probation officer, the operation centre, and the police department. It would be desirable to introduce crisis procedure manuals at the ESMO operation centre. For example, if the operation centre detects an unauthorized removal or damage to the bracelet by the monitored person, the operating centre should firstly contact the district department of the police force at the place where the last movement of the person or a technical/security incident was recorded. Subsequently, communicate to the probation officer. That is a valuable time when it is more likely to trace people.

Application of the probationary project of the Bratislava Regional Court entitled "One probation and mediation officer for electronic monitoring" in other regions of the Slovak Republic.

A pilot project is taking place at the Regional Court in Bratislava. The head of the probation and mediation department appointed one probation and mediation officer from a specific district court whose agenda consists only in ensuring the control of the execution of decisions

with electronic monitoring. Its establishment started on 24 May 2019. A meeting of probation and mediation officers was held at the Regional Court in Bratislava, and a proposal of one probation and mediation officer for electronic monitoring was presented. All probation and mediation officers attended the meeting, and they expressed their support for the project. On 27 May 2019, the head of the probation and mediation department informed the Ministry of Justice of the Slovak Republic about such intention to change in the Bratislava Region and delivered a project proposal for one probation and mediation officer for electronic monitoring.

The head of the probation and mediation department in the Bratislava Region in cooperation with probation and mediation officers in the Bratislava Region prepared a measure for the project of one probation and mediation officer for electronic monitoring. The President of the Regional Court in Bratislava under file no. 1SprV / 272/2019 of 26 July 2019 issued a measure in connection with the preliminary investigation and the implementation of monitoring by technical means with effect from 1 August 2019. The President of the District Court Bratislava I under 1SprR / 27/2019 issued the amendment no. 4 to the work schedule for 2019. In term III he commissioned Mgr. Martina Bachanová to perform activities following Act no. 550/2003 Coll. on Probation and Mediation Officers and on Amending and Supplementing Other Relevant Acts and following the relevant provisions of the Decree of the Ministry of Justice of the Slovak Republic no. 543/2005 Coll., as amended, such as managing the institutes of the preliminary investigation of the EM and subsequently all decisions, performing probation supervision of the monitored persons and to provide cooperation to all criminal judges in the district of the Regional Court in Bratislava regarding the EM and proceed under Act no. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments and on Amending and Supplementing Other Relevant Acts. A 13Pr register was created for this purpose. The 11Pr and 11M departments stopped the idea of Mgr. Martina Bachanová. Due to the delivery of new vehicles by the Ministry of Justice of the Slovak Republic to each regional court (assigned to the probation department), the pilot project of one probation officer can also be implemented in more distant places, or on the ground. The pilot project acquires the possibility of its application also in regions where there are greater distances between individual district courts and the regional court and at the same time there is no problem of transporting a probation officer to remote places for Institute of the preliminary investigation. The head of the probation and mediation department at the Regional Court in Trenčín is performing, similarly, probation and mediation activities related only to electronic monitoring. She has appointed herself as a probation officer for EM purposes due to the workload of probation officers in district courts.

At the same time, a Methodological Guideline was issued on 30 July 2019 to unify the procedure concerning the measure of the President of the Regional Court in Bratislava dated 26 July 2019. Any instruction to enforce Institute of the preliminary investigation of EM delivered to the clerks' office of another district court will not be registered. It will be forwarded through the Central Government Portal to the District Court Bratislava I. That does not result in duplicate entries in the registers. In addition to working hours during probation, probation and mediation officers ensured the control of decisions by technical means according to § 21 par. 1 of Act no. 78/2015 Coll. by immediately verifying the reported security incidents, in

particular by interviewing a controlled person, a protected person or a local investigation. The probation and mediation officer has made a written record of each verification of a security incident. After necessary modification, the emergency service starts at 2 p.m. and ends at 6 a.m. on working days. During non-working days and holidays, the service starts at 6 p.m. and ends at 6 a.m. the following day.

All presidents of courts in the district of the Regional Court in Bratislava were sent a request for the possibility of holding a meeting to present the project of one probation and mediation officer for electronic monitoring. Mgr. Martina Bachanová and the technical instruments were presented to judges and senior magistrates in the district of the Regional Court in Bratislava, that is at the Regional Court in Bratislava, the District Court Bratislava I, the District Court Bratislava II, the District Court Bratislava IV, the District Court Bratislava V, the District Court Pezinok and the District Court in Malacky and questions about electronic monitoring were answered and provided decision templates. The technical equipment and a specific probation officer for the EM was introduced at the Regional Prosecutor's Office in Bratislava, the District Prosecutor's Office in Bratislava III, the District Prosecutor's Office in Bratislava IV and the Pezinok District Prosecutor's Office. Finally, in cooperation with the director of Detention centre and Prison, they have prepared and have given three lectures for convicts and accused persons in the execution, have introduced technical equipment and have explained concepts such as probation supervision, protective surveillance and monitoring by technical means. The awareness in application practice with EM has substantially increased within the Bratislava Region, which is also noticeable in the increasing tendency to use EM in the Bratislava Region.

From the annual report of the head of the probation and mediation department of the Regional Court in Bratislava dated 08 October 2020, it is clear that probation and mediation officers see benefits in the project of one probation and mediation officer for electronic monitoring. Probation and mediation officers are unduly overworked. Their agenda is specific. In the past, the probation and mediation officers summoned the participants of the probation process but, sometimes, they were absent from the workplace due to a sudden Institute of the preliminary investigation, installation or a swap of technical means and had to move the agenda of probation and mediation. They remained under pressure and time constraints.

Conclusions

Nowadays, there is pressure for efficient use of public resources. It is necessary to look for economically efficient and socially acceptable solutions to various problems that include the sentences imposition issue and their implementation in practice, either in the form of imprisonment or the imposition of alternative forms of punishment. At the beginning of this monograph, we outlined that excessive punishment in society does not lead to a more effective remedy for the perpetrator, on the contrary, it can be traumatic for the convict and his surroundings or the community. Exposing convicted persons to the criminogenic environment of institutions serving a custodial sentence by imposing an unconditional execution leads to the beginning of a convict's criminal career at a professional level. A convicted person can enter prison as a pickpocket and exits it as a trained robber. That is the way some experts in penitentiary care describe the excessive effort of courts to punish excessively. Even early philosophers focused on the claims that the law should mirror society and not society the law. The legislation should reflect the needs of the community. At present, there is a situation where the legislator, not on the initiative of society, but because of the action of individuals, creates several legal norms in a short period. In practice, we sometimes observe when the lawmaker approves a law during the legislative term of another one, which is to amend the Criminal Code and the Code of Criminal Procedure at the same time. Unreasonably frequent amendments of a legal regulation do not lead to its clarification, but in legal chaos and disagreement of legal applicators.

Electronic monitoring is a tool of restorative justice. And like any other novelty, it has its advantages and disadvantages in the judicial system. EM can establish a balance between the punishment, a desire to satisfy the public to ensure just punishment for the wrong done, and behavioural change by encouraging more socially responsible behaviour of monitored persons and secure their rehabilitation (see Gainey, Payne 2000; Gainey et al. 2000; White 2001). Martinovic (2002) points to other socially important goals of EM programs, such as reducing the public tax burden by eliminating the costs associated with traditional sentence, as well as protecting the perpetrator from corruption or stigmatizing prison effects, but also the need to maintain family and community ties. The results of the national survey support these ideas within judges and on the part of probation and mediation officers. Finally, all EM programs aim at suppressing crime through increased responsibility and monitoring. They strengthen public safety by using more traditional approaches or community supervision based on probation, parole, and the belief that this approach will reduce recidivism (Renzema, Mayo-Wilson 2005).

The results of our research showed that in the years 2016 to 2020 the imposition with electronic monitoring recorded a growing trend mainly affected by the amendment approved in Act no. 214/2019 Coll. of 26 June 2019 amending Act no. 300/2005 Coll. Code of Criminal Procedure, as amended and on Amendments and Supplements to Certain Acts. The alternative punishments carried out using the EM as a form of supervision can be imposed not only for

offences but from 1 August 2019, even for crimes with a maximum penalty, not more than ten years. Besides, the amendment made it possible to apply the EM also to parole from imprisonment for 25 years or to a life sentence, thus significantly expanding the number of offenders sentenced to house arrest. The results of our research also confirmed that after the implementation of EM has its use a growing tendency (Nellis 2013).

Currently, there is a debate in several countries, whether to use EM as a separate form of punishment or an intensive surveillance and treatment program. The question is how we will use EM in the future. Whether as a separate tool and an alternative form of punishment (in the context of reducing prison overcrowding and reducing public resources) or as a technical tool to replace various non-technological tools in national probation, prison or surveillance programs of offenders released from prison. As the research results presented in this scientific monograph, the answer opens up many other questions and problems, and thus a lot of opportunities for further research. The authors and the research team of this project would like to focus on the protection of personal data of monitored persons, the area of automatic data processing concerning monitored persons, the area of interfering with the rights of monitored persons using automatic data processing results (or artificial intelligence, etc.). We consider interesting the research about the possible transfer of some activities (duties and competencies) related to the necessary actions for a check on the technical and other conditions for the applying of EM within the institute of preliminary investigation from probation officers (or the state) to lawyers.

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Act No. 301/2005 Coll. Code of Criminal Procedure, as amended

Act No. 475/2005 Coll. on the Execution of the Punishment of Imprisonment and on Amendments and Supplements to Certain Acts as amended

Act No. 550/2003 Coll. on Probation and Mediation Officers and on Amending and Supplementing Other Relevant Acts

Decree No. 178/2015 Coll. Ministry of Justice of the Slovak Republic of 27 July 2015 on material and technical conditions of use of technical means

Explanatory Report on the Act. No. 214/2019 Coll.

Explanatory Report on the Act. No. 321/2018 Coll.

Summary

Electronic monitoring is a relatively flexible tool that we can use at all stages or phases of criminal justice, such as pre-trial measure, rest, the possibility of early release from prison, or a universal mechanism used to reduce the prison population. European countries practise EM in various ways. Some of them use EM as an autonomous sentence (e.g. Belgium, Slovakia, the United Kingdom). Besides, it is a possible way of an alternative to imprisonment in the case of short-term sentences (France, Norway) or an alternative to imprisoning in the case of short- and medium-term sentences (Belgium, max 3,5 years). Italy, Lithuania, Poland, and Slovakia use EM as a house arrest punishment and an alternative to prison as well. The monitoring system has gradually proved its worth in the USA and Scandinavian countries where it is a suitable alternative to the short-term custodial sentences. Electronic monitoring is a new tool in the field of criminal justice. The concept of electronically monitored offenders originated in the 1960s. Its implementation did not become a reality until 20 years later. They first applied electronic monitoring in Europe was in Great Britain in the late '80s. Since then, many countries around the world have used electronic monitoring, including the jurisdictions of several European countries. Countries consider it or preparing to introduce it. The Recommendation CM/Rec (2014) of the Committee of Ministers to member States on electronic monitoring issued by the Council of Europe and adopted by the Committee of Ministers on 19 February 2014 preceded the issue of electronic monitoring. The Statute of the Council of Europe has declared an effort for greater unity among the various EU Member States to develop international cooperation in the area of prosecution of criminal sanctions, with cooperation in this area contributing to the administration of justice and the effective implementation of criminal sanctions to respect the human rights of perpetrators, which would effectively reduce crime. The deprivation of liberty as criminal responsibility for the conduct of offenders should be the last alternative for re-education. The increase in the prison population becomes a risk to the prison system, and it is not under the Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as emphasized by the corresponding jurisdiction of the European Court of Human Rights. The efforts to involve less disturbed offenders in effective and economically efficient work for society are of concern. The electronic monitoring used in criminal proceedings is a tool to eliminate overcrowding in prisons and to prevent crime. If we use it properly, it should help mitigate the negative impacts on the private and professional life of the electronically monitored individuals, as well as their close surroundings. Electronic monitoring as a whole is an opportunity for the offender not to be imprisoned or to be sentenced to unconditional custody in cases where the law allows to use it as an alternative. This opportunity creates an option to continue the work, secure the family, maintain social ties, etc. through his responsibility and not criminogenic behaviour. It was necessary to establish several rules for the implementation of electronic monitoring in practice to apply it to the legislation, policy and legal practice of the individual Member States of the European Union.

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Index

Appendix

Appendix 1 Report for the purposes of determining the imposition of EM

Regional Court in Banská Bystrica Skuteckého 7 974 01 Banská Bystrica Report of the year: 2016	**Number of persons with EM (total)**	**Accused**	**Convicted**
Number of security incidents			
Number of operation incidents			
Number of monitored persons with EM, based on the decisions in criminal proceedings			

Part A

EM carried out on the basis of a decision on			
imposition of the house arrest punishment		-	
substitution from the rest of custodial sentence to house arrest punishment		-	
imposition of the prohibition on residence		-	
imposition of PROTECTIVE SUPERVISION + restrictions and duties		-	
conditional suspension of the execution of the custodial sentence + restrictions and duties		-	
conditional discontinue of criminal prosecution + restrictions and duties			-
replacement of detention by supervision of probation officer			-
conditional suspension of punishment + restrictions and duties			
Number of persons with re-performed EM after proper administration of the decision with EM			
Number of persons punished again after proper administration of the decision with EM			
Number of persons with EM based on another adjudication – which:			

* Explanatory notes
EM – electronic monitoring
TDV – house arrest punishment
ZTOS – the rest of custodial sentence
TZP – prohibition on residence
VTOS – execution of a custodial sentence
TS – criminal prosecution
restrictions and duties – compliance control is provided by EM

IPI – Institute of preliminary investigation

Institute of preliminary investigation	**Total**
number of Institute of preliminary investigation with house arrest punishment	
number of Institute of preliminary investigation with substitution premene the rest of custodial sentence to house arrest punishment	
number of Institute of preliminary investigation with substitution of the custody with the supervision of probation officer	
number of Institute of preliminary investigation with urgent measures	
number of Institute of preliminary investigation with another adjudication – which:	

	Strongly Positive	Positive	Neutral	Negative	Strongly Negative
How do you perceive EM as an alternative form of punishment?					
How do you perceive the number of monitored persons in the electronic monitoring system?					
How do you perceive EM in terms of the number of administrative tasks of your workplace?					
How do you perceive EM in terms of saving public finance?					
How do you perceive EM in terms of recidivism of monitored persons?					

Part B

Please introduce (if any) your positive EM experience:

Please introduce (if any) your negative EM experience:

Please introduce (if any) the application issues with EM:

Please provide your suggestions for improving the operation of EM:

Appendix 2 Questionnaire for judges and probation officers

Dear Sir or Madam!

In connection with the issue of electronic monitoring of individuals (EM) within the research project *Interdisciplinary approach to the electronic monitoring of accused and convicted persons in the Slovak environment*, we turn to you as an important subject with a request for cooperation. Our goal is to know in more detail the obstacles that limit the use of electronic monitoring of accused and convicted persons.

The cooperation consists, on the one hand, in answering questions that will allow us to see the problem from your point of view and, on the other hand, we want to create a platform to point out and clarify those aspects of EM that are not covered by the questionnaire.

The cooperation is anonymous and your answers will be used exclusively within this project.

We are aware of your busy scshedule, but we believe that you will still find the time and your opinions will help our mutual efforts.

In case of any questions, please do not hesitate to contact us: xxx – JUDr. Zoltán Valentovič, PhD.

Thank you for your time and willingness to cooperate.

Are you?	Judge	Probation and Mediation Officer

What is your opinion on the statement:	Strongly Agree	Agree	Disagree	Strongly Disagree	Don´t know
the implementation of EM will reduce the cost of serving a sentence					
the implementation of EM will increase the security of citizens					
the implementation of EM will improve the social inclusion of convicted persons					
the implementation of EM will reduce the recidivism					
the implementation of EM will increase the confidence in alternative punishments					
the implementation of EM will improve the family protection (in terms of social ties, income etc.)					
the implementation of EM will reduce the economic consequences of the detention of a convicted persons and their families					
the implementation of EM will reduce the social consequences of the detention of a convicted persons and their families					

the implementation of EM will increase the family protection from domestic violence					
the implementation of EM will reduce the vandalism at events					
the implementation of EM will improve the protection of sensitive areas					
EM is an effective tool for controlling of covicts					
it is necessary to motivate to use EM					
EM will add more activities and slow down court proceedings					
the use of EM will add more activities to probation and mediation officers					
learning to use EM takes a lot of time					
the use of EM requires a willingness to change common practice					
there are concerns/respects before the new EM procedure					
the use of EM will weaken the reputation/ authority of the court					
the use of EM will improve the reputation and authority of the court					
the support and assistance of colleagues in the use of EM is adequate					
there is sufficient information about the judge's procedure in EM					
there is sufficient information about the probation and mediation officer's procedure in EM					
there is sufficient information about the positives of EM					
there is sufficient information about disadvantages/risks of EM					
there is sufficient information about economic efficiency of EM					
there is sufficient information about uneconomic efficiency of EM					
there is sufficient information about numbers of EM in other courts					
there is sufficient information on the procedures for using EM in other courts					
there is sufficient information on the benefits of using EM in other courts					
there is sufficient information on the negatives of using EM in other courts					
methodological support/instructions for EM application are of good quality					

there is sufficient experience of judges with the use of EM					
there is sufficient experience of probation and mediation officers with the use of EM					
there is enough professional training on the use of EM					
there is enough space for exchanging experiences with EM					
there are enough conferences for EM at the district/regional courts					
methodical guidance of judges to EM from the Ministry of Justice SR is of good quality					
methodical guidance of probation and mediation officers to EM from the Ministry of Justice SR is of good quality					
the use of EM is restrained by its technical limitations/limits					
the use of EM is limited by the lack of material and technical means to verify the possibilities and ensure its application (a car, ...)					
the use of EM is limited by the lack of finances to cover the expenditures associated with them					
the use of EM is limited by the lack of staff who monitors and ensures its use (probation and mediation officer)					
the use of EM is limited by the staff qualification that monitors the conditions and ensures its use					
the use of EM is limited by the complexity of the possibilities examination, which probation and mediation officer does usually					
the use of EM is limited by the insufficient salary of probation and mediation officer					

Please, use the school mark (1 – 5) to classify the level of these conditions of use of EM:

At what level do you think these conditions of use of EM are ensured?

Legislative	
Methodical-application	
Personnel – quantity	
Personnel – quality	
Financial	
Material-technical	
Organisational	

As you are an important subject in the process of using EM, we would like to ask you for your opinion – attitude – proposal – recommendation, which you think would contribute/ help to use EM to a greater extent:

.....

.....

.....

.....

How long does your professional experience last?

up to 4 years	5 – 9 years	10 – 14 years	15 – 19 years	20 – 24 years	25 years and more

What age category do you belong?

30 – 34	35 – 39	40 – 44	45 – 49	50 – 54	55 – 59	60 – 64	65 and more

In which Self-Governing Region is the court, where you officiate?

Bratislava	Trnava	Trenčín	Nitra	Žilina	Banská Bystrica	Prešov	Košice

Are you? Female Male Have you imposed an EM? Yes No

Where dou you officiate?

District Court	Regional Court	Supreme Court	Specialized Criminal Court

ELECTRONIC MONITORING IN SLOVAKIA: RESULTS OF A SLOVAK NATIONAL SURVEY AND RECOMMENDATIONS FOR POLICYMAKERS AND LEGAL PRACTITIONERS

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