

ELECTRONIC MONITORING IN SLOVAK CRIMINAL JUSTICE

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Abstract: This contribution deals with electronic monitoring in Slovak criminal justice. Its objective is the assessment of the most crucial contemporary documents containing requirements addressed to competent national authorities, as well as its problems. To fulfil this objective, it analyses documents of the European Union and the National Council of the Slovak Republic. It is divided into three sections. The first section introduces the general legal background of electronic monitoring in Slovak national law. The second section analyses its legal basis – Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments. The third section is focused on special issues surrounding the electronic monitoring in the Slovak Republic. Despite the fact that electronic monitoring in Slovak criminal justice has been applied for some years, many problems occurred at the national level. Electronic monitoring in Slovak criminal justice is understood as an alternative in standard criminal proceedings. There is no obligation to use this system. Indeed, control by technical instruments is an optional possibility, not a mandatory obligation. Electronic monitoring in the Slovak Republic is regulated by the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments. This Act regulates the technical instruments and the conditions for their use in controlling the execution of certain selected types of decisions in criminal matters in criminal proceedings. The objective of the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments is to create the legal conditions for the effective application of the control of execution of certain selected decisions – in particular judicial decisions adopted by the courts – by technical instruments. Such technical instruments should improve the use of alternative sanctions or alternative criminal proceedings.

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Introduction

Electronic monitoring is a modern form of control of individuals in the enforcement of certain types of criminal sanctions. Electronic monitoring is a general term referring to forms of surveillance with which to monitor the location, movement and specific behaviour of persons in the framework of the criminal justice process.³ In some jurisdictions, where electronic monitoring is used as a modality of execution of a prison sentence, those under electronic monitoring are considered by the authorities to be prisoners. In some jurisdictions, electronic monitoring is managed by the prison, probation agencies, police services or other competent public agency, while in others it is implemented by private companies under a service-providing contract with a State agency. In some jurisdictions, the suspect or offender carrying the device is required to contribute to the costs of its use, while in others the State alone covers the costs of electronic monitoring.

Electronic monitoring was first used in the United States of America (Mair & Nee, 1990). In Europe available data showed already over decade ago that electronic monitoring in criminal matters is a useful measure in criminal proceedings. For example, in the United Kingdom it is considerable cheaper than custody.⁴ In principle, the legal regulation of electronic monitoring at the European level almost does not exist. National law(s) of individual States regulate(s) which sanctions fall within its scope. Nowadays, this system is applicable in the majority of European States, including the Slovak Republic.

National law of the Slovak Republic roots back to principles of Roman law (Turošík, 2013). Its long history shows that Slovak national criminal law has strong European traditions in regard to its substantive as well as procedural dimension (Jáger, 2015; Jáger & Gábriš, 2017; Jáger, 2018). Nowadays, modern Slovak national criminal law has European Aspects (Funta, 2014; Funta, Golovko & Juriš, 2016; Klimek, 2017). The literature in national criminal law shows that in the last decades legislative practice introduced alternative mechanisms in criminal proceedings (Ferenčíková & Michal'ov, 2018; Ferenčíková & Tóthová, 2018).

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³ See: Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring. Council of Europe. Adopted by the Committee of Ministers on 19th February 2014, at the 1192nd meeting of the Ministers' Deputies.

⁴ See: The Electronic Monitoring of Adult Offenders. Report elaborated by the National Audit Office. London: The Stationery Office, 2006.

Recodification of Slovak national criminal law by the Criminal Code⁵ and the Criminal Procedure Code⁶ of 2005 introduced a system known as ‘Control by Technical Instruments’, in connection with the introduction of a new (at that time) criminal sanction – house arrest. The purpose of this sanction is, first, to ensure that the enforcement of the decision imposing house arrest is being executed properly and, second, to obtain comprehensive information on its execution (Ivor, Polák and Záhora, 2016; Klátik et al., 2018).

The objective of this conference contribution is the assessment of the most crucial contemporary documents containing requirements addressed to competent national authorities, as well as its problems.

At the outset of the contribution, the historical method of research was used, namely in regard to the genesis of electronic monitoring. Special attention has been focused on historical issues also in the case of Slovak criminal justice. The most frequently used method was the analytical method of research. This method was used in regard to the analyses and assessments of literary sources, legislation, and implementation of electronic monitoring. Another frequently used method was the comparative method of research. Further, the synthetic method of research was used. It was used in particular in regard to the final evaluation.

Information gathered in order to elaborate the contribution was collected in particular through the three following gathering techniques. The first data gathering method was the review of scientific literature, in particular national literature, since the topic is focused on the national context; the works of renowned authors was analysed. The second data gathering method was access to legislation. Internet source databases were used, for example, Slov-Lex. It should be highlighted that not only consolidated legislation was used, but also original versions were analysed, in particular in the case of historical issues. Third, research into official documents of European organisations was conducted, in particular documents of the European Council.

Principles and Legal Basis: Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments

Electronic monitoring in Slovak criminal justice is understood as an *alternative* in standard criminal proceedings. There is no obligation to use this system. Indeed, control by technical instruments is optional possibility, not a mandatory obligation.

Any technical instrument shall be used only *in accordance with the law and on the basis of a decision*. The decision for purposes of this system shall mean an enforceable decision issued by a court or public prosecution office in order to impose a prohibition, a restriction or an obligation, or enforceable decision imposing house arrest as the sentence. It should be noted that in the Slovak legal system, courts and public prosecution offices are understood as so-called law protection authorities (Šramel, 2016), including in the criminal law area.

Control by technical instruments is carried out by the probationary and mediatory officer of the court [(s)he works at court, i.e. (s)he is an employee of the court]. Indeed, the control is carried out by courts. All technical instruments are owned by the state. All information shall be recorded by the Central Monitoring System. This system is a part of the Central Information System of the Slovak judiciary, which is operated by the Ministry of Justice of the Slovak Republic. Moreover, the Ministry of Justice of the Slovak Republic is as well the administrator of the technical instruments.

Electronic monitoring in the Slovak Republic is regulated by the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments⁷. This Act regulates the technical instruments and the conditions for their use in controlling the execution of certain selected types of

⁵ Act of the National Council of the Slovak Republic of 20th May 2005 No. 300/2005 Coll. Criminal Code. Original name: zákon Národnej rady Slovenskej republiky z 20. mája 2005 č. 300/2005 Z. z. Trestný zákon.

⁶ Act of the National Council of the Slovak Republic of 24th May 2005 No. 301/2005 Coll. Criminal Procedure Code. Original name: zákon Národnej rady Slovenskej republiky z 24. mája 2005 č. 301/2005 Z. z. Trestný poriadok.

⁷ Act of the National Council of the Slovak Republic of 19th March 2015 No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments amended by later legislation. Original name: zákon Národnej rady Slovenskej republiky z 19. marca 2015 č. 78/2015 Z. z. o kontrole výkonu niektorých rozhodnutí technickými prostriedkami v znení neskorších predpisov.

decisions in criminal matters in criminal proceedings. In regard to the use of technical instruments in case of execution of custodial sentence, at the place of imprisonment for the purpose of the control of the convicted persons, the Act No. 475/2005 Coll. on the Enforcement of the Custodial Sentence⁸ shall be applicable. However, the provisions of Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments, when using the technical instruments in this context, shall be used appropriately.

The objective of the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments is to create the legal conditions for the effective application of the control of execution of certain selected decisions – in particular judicial decisions adopted by the courts – by technical instruments. Such technical instruments should improve the use of alternative sanctions or alternative criminal proceedings. The preparation of the draft version of the Act was focused as well, among others, on the redefinition of probation in the Slovak Republic, the new understanding of house arrest as a criminal sentence, and it introduced the possibility of turning the rest of the prison sentence into house arrest.

The evaluation of the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments has not yet been realised. However, its expected benefits are as follows:

- increasing of the security of citizens by introducing electronic services,
- improvement of social inclusion of convicted persons in criminal proceedings and reduction of recidivism,
- more efficient work of probationary and mediatory officers,
- reduction of the cost of imprisonment,
- increasing of confidence in alternative sanctions in criminal proceedings, and
- protection against domestic violence.

The legal regulation of electronic monitoring at the European level, in principle, almost does not exist. A comprehensive regulation has never been adopted to regulate this area. Indeed, European legal standards for electronic monitoring for all European States, including the Slovak Republic, do not exist. A modest reference to electronic monitoring contains only the Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions⁹. This Framework Decision was adopted by the European Union. The Preamble to the Framework Decision states that ‘where appropriate, electronic monitoring could be used with a view to supervising probation measures or *alternative sanctions*, in accordance with national law and procedures’¹⁰ (emphasis added). On the other hand, detailed provisions addressed to States are not stipulated in the Framework Decision. However, two important remarks in possible cross-border cases can be observed – application of the principle of mutual recognition and respect of fundamental rights.

Special Instruments

As seen above, electronic monitoring in Slovak criminal justice is understood as an *alternative* in standard criminal proceedings. There is no obligation to use this system. Indeed, control by technical instruments is an optional possibility, not a mandatory obligation.

Under the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments control by technical instruments shall mean an activity to verify compliance with the law,

⁸ Act of the National Council of the Slovak Republic of 22nd September 2005 No. 475/2005 Coll. on the Enforcement of the Custodial Sentence amended by later legislation. Original name: zákon Národnej rady Slovenskej republiky z 22. septembra 2005 č. 475/2005 Z. z. o výkone trestu odňatia slobody v znení neskorších predpisov.

⁹ Council Framework Decision 2008/947/JHA of 27th November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions as amended by the Framework Decision 2009/299/JHA. Official Journal of the European Union, L 337/102 of 16th December 2008. See also: Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision (2007/.../JHA) of ... on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences. Official Journal of the European Union, C 147/1 of 30th June 2007.

¹⁰Recital 11 of the Preamble to the Framework Decision.

obligations or restrictions imposed by decision by technical instruments and by a central monitoring system.¹¹ A decision for purposes of this Act shall mean an enforceable decision issued by a court or public prosecution office in order to impose a prohibition, a restriction or an obligation, or enforceable decision imposing house arrest as the sentence.

The Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments regulates seven applicable technical instruments, their applicability and enforcement, namely:¹²

- Personal identification device¹³. This device allows unambiguous identification of the supervised person. This person shall tolerate such device on his/her body during the entire duration of his/her supervision.
- Device to check presence at the place of enforcement of the decision¹⁴ (presence control device). This device allows to check the presence of the supervised person at a specified time at a designated location. The person shall tolerate such supervision during the entire duration of the inspection.
- Person's positioning device¹⁵. This device allows to check the movement and residence of the supervised person, i.e. the device checks current geographic location of the supervised person. The person shall tolerate such supervision of his/her location during the entire duration of the inspection.
- Proximity warning device¹⁶. This device makes it possible to detect the proximity of the supervised person to the protected person and subsequently to alert the protected person, of course, immediately. The person shall tolerate such supervision during the entire duration of the inspection. Moreover, in this case as well the protected person shall use the device. Otherwise the system would not be efficient.
- Alcohol control device¹⁷. This device allows to check the prohibition of drinking alcohol by the supervised person. The control is carried out by the breath alcohol level with the biometric identification of the person.
- Voice verification device for the presence of the inspected person¹⁸. This device allows the telephonic verification of the presence of the supervised person at a designated location and at a specified time.
- Device of probationary and mediatory officer¹⁹. This device is used by officer(s), not by supervised person. (S)he has the right to supervise the supervised person at a specific location without the knowledge of the person being inspected.

As far as conditions for control by technical instruments are concerned, first, any device must be available. It means that the Ministry of Justice of the Slovak Republic does not own an unlimited number of devices. As seen, proximity warning device can be used only with approval of the protected person. The use of an alcohol control device requires the written consent of an adult person living with the supervised person in a common household. If the protected person is a child/minor, written consent is not required; control can only be carried out if it is in the best interests of the minor. A judge or prosecutor shall take into account the opinion of the child (if possible).

As seen, control by technical instruments is carried out by the probationary and mediatory officer of the court [(s)he works at court, i.e. (s)he is an employee of the court]. Indeed, the control is carried out by courts. (S)he shall install and deinstall technical instrument; activate and deactivate the mode of use

¹¹ Article 2(a) of the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments.

¹² Articles 4-10 of the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments.

¹³ Slovak: osobné identifikačné zariadenie.

¹⁴ Slovak: zariadenie na kontrolu prítomnosti.

¹⁵ Slovak: zariadenie na určenie polohy kontrolovanej osoby.

¹⁶ Slovak: zariadenie varovania blízkosti.

¹⁷ Slovak: zariadenie kontroly požitia alkoholu.

¹⁸ Slovak: zariadenie hlasového overenia prítomnosti kontrolovanej osoby.

¹⁹ Slovak: zariadenie probačného a mediačného úradníka.

of the technical instruments; record, report and resolve possible incidents; and verify the availability and functionality of the technical instruments and their maintenance.

Conclusion

Electronic monitoring in criminal proceedings is applicable in the majority of European States, including the Slovak Republic. Recodification of the Slovak national criminal law by the Criminal Code and the Criminal Procedure Code of 2005 introduced a system known as ‘Control by Technical Instruments’, in connection with the introduction of a new (at that time) criminal sanction – house arrest.

Electronic monitoring in Slovak criminal justice is understood as an alternative in standard criminal proceedings. There is no obligation to use this system. Indeed, control by technical instruments is an optional possibility, not a mandatory obligation. Any technical instrument shall be used only in accordance with the law and on the basis of a decision.

Electronic monitoring in the Slovak Republic is regulated by the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments. This Act regulates the technical instruments and the conditions for their use in controlling the execution of certain selected types of decisions in criminal matters in criminal proceedings. The objective of the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments is to create the legal conditions for the effective application of the control of execution of certain selected decisions – in particular judicial decisions adopted by the courts – by technical instruments. Such technical instruments should improve the use of alternative sanctions or alternative criminal proceedings.

Under the Act No. 78/2015 Coll. on Control of the Enforcement of Certain Decisions by Technical Instruments control by technical instruments shall mean an activity to verify compliance with the law, obligations or restrictions imposed by a decision by technical instruments and by a central monitoring system. A decision for the purposes of this Act shall mean an enforceable decision issued by a court or public prosecution office in order to impose a prohibition, a restriction, an obligation, or an enforceable decision imposing house arrest as the sentence.

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