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Summary

The establishment of an electronic monitoring system (EMS) was one of the key areas of the Czech government and a priority of the Czech Ministry of Justice (MoJ). It was also explicitly included in the objectives of penal policy, which declared the acquisition of an electronic monitoring system for the inexpensive and reliable oversight of offenders sentenced to house arrest and, where appropriate, as a substitute for imprisonment. From the beginning, the implementation of an EMS gave rise to many expectations and notions among the professional and general public, and for this reason the Czech Ministry of Justice requested an evaluation of the process of launching the EMS and its use. The Institute of Criminology and Social Prevention (ICSP) therefore undertook a research task titled *Evaluation of the EMS Implementation Process in the Czech Republic*. The research focused on both evaluating the process of preparation for the implementation of the electronic monitoring system and an evaluation of the implementation of the electronic monitoring system into practice. The research task was tackled using standard criminological research methods and techniques, in particular, document and media report analyses, descriptive statistics and the use of guided interviews within the framework of expert investigation.

The process of implementing the EMS in the Czech Republic was analysed in the framework of a summative evaluation carried out ex-post in this project. Although it mainly focused on the process of implementing the given system, it also partly touches on its effects. In view of the fact that part of the research team actively participated in the implementation process, the evaluation was a combination of internal and external evaluation. An internal evaluation was successfully conducted as part of an expert survey of stakeholders involved in the preparation and implementation of the EMS and in the collection of relevant sources. An external evaluation was then largely conducted through an analysis of the media image of the EMS implementation process, taking into account the need for due objectivity in terms of presented events.

The monograph begins by defining electronic monitoring (EM) according to the Council of Europe Recommendation of 2014, and outlines ways in which it can be used based on the

jurisdictions in individual countries. A brief history of the origin of the concept of electronic monitoring and the development of the technologies involved is then included, followed by a brief overview of the different forms of EMS application in European countries, pioneered by Sweden, the Netherlands, England and Wales. The origins of electronic monitoring here date back to the 1990s. Several models of electronic monitoring can be traced: *front door* models (EM as a type of punishment or as part of the conditions of alternative sentences), *back door* models (EM as part of the conditions of conditional release or as part of monitoring a released offender after serving a prison sentence), other models (e.g. the use of electronic monitoring in the field of immigration policy, in cases of domestic violence or to monitor inside prisons) and EM as part of measures replacing imprisonment in criminal proceedings. Electronic monitoring systems are currently used in more than 30 European countries in various forms.

One of these is the Czech Republic's closest neighbour, Slovakia. Here, a sentence of house arrest with the ability to monitor its execution by technical means was introduced from 1 January 2006, although the Electronic System for Monitoring Accused and Convicted Persons was only launched in 2013. The relevant legislation was prepared, a central office with data storage was built and hardware, including the necessary infrastructure was provided, together with a data backup system as part of this project. The pilot project took place in 2015 and the EMS was launched in Slovakia on 1 January 2016. However, the EMS was not used as much as expected in the following years. Therefore, appropriate legislative amendments were made to extend the option of imposing house arrest sentences and the obligation to remain at a specified address at specified times for parolees, with a simultaneous order to monitor them by technical means. These changes, together with education by the Ministry of Justice, led to a gradual increase in the use of EMS.

The introduction of the sanction of house arrest in the new Criminal Code effective from 1 January 2010 in the Czech Republic, included monitoring the execution of this sentence via electronic monitoring. Under Section 60 of the Criminal Code, a sentence of house arrest may be imposed on an offender for up to two years if, in view of the nature and gravity of the offence and the offender's character and circumstances, it may be reasonably considered sufficient to impose this sentence, possibly in conjunction with another penalty. Similarly, house arrest may be imposed on a juvenile pursuant to Section 26(2) of Act No. 218/2003 Coll. on Juvenile Justice, where the upper limit for this criminal sanction may not exceed half the upper limit stipulated in the Criminal Code. Electronic monitoring can also be used to monitor compliance with a reasonable obligation to remain at a specified residence or

part thereof at specified times, imposed in the context of a suspended prison sentence. Another application of an EMS is to monitor the fulfilment of obligations imposed in connection with alternative flight and pre-trial detention under the provisions of Section 67(a) or (c) of the Code of Criminal Procedure. Electronic monitoring may similarly be used in cases where a decision is taken to suspend the prison sentence of a pregnant woman or mother caring for a child until it is one year of age, with the simultaneous imposition of monitoring or reasonable restrictions or reasonable obligations aimed at ensuring the convicted person leads a due and proper life. The execution of a sentence of house arrest is monitored by the Czech Ministry of Justice or by an organisational unit of the state established to conduct electronic monitoring by the Ministry of Justice in cooperation with the Probation and Mediation Service (PMS) through an electronic monitoring system enabling the detection of the convicted person's movements or by the Probation and Mediation Service through random checks carried out by probation officers. With effect from 1 January 2022, the Probation and Mediation Service will also be entrusted with monitoring the execution of house arrest sentences through the EMS.

The chapter devoted to the process of implementing electronic monitoring in the Czech Republic summarises the activities of working groups, the first of which was set up by the MoJ *even before the new Criminal Code came into force*. Among the main topics was the need to determine the administrator of the system of house arrests, its manner of financing and technical solution, defining the structure of house arrest sentences and an amendment of relevant legislation. The use of EM to oversee the execution of house arrest sentences has been considered since its establishment in the system of criminal sanctions. However, the Electronic Monitoring System "ON" (EMSON) Working Group, established in 2014, had a broader focus. Its main working material was prepared by the Concepts, Analyses and Strategies Subgroup, namely an *Analysis of Possibilities and Recommendations for the Use of an Electronic Monitoring System in the Penal Policy of the Czech Republic*. In the context of preparing a public contract, the KPMG company prepared a *Feasibility Study for the Implementation of an Electronic Monitoring System for Criminal Justice*. This included the results of surveys of EM technology suppliers and their evaluation, technical specifications, an assessment of options in terms of economics and a feasibility analysis. The synthesis resulted in a proposed solution that was a compromise between the author's original proposals and the client's comments and requirements.

The Institute of Criminology and Social Prevention participated in preparations for the implementation of electronic monitoring in the Czech Republic in a significant way,

especially as a member of the EMSON Working Group. ICSP processed numerous documents, not only in this group, that were used for the purposes of the necessary comparison of experience with the use of this form of monitoring abroad or for assessing the possibilities of implementing electronic monitoring in the criminal justice system of the Czech Republic. Other materials acquired by ICSP were also used to determine the optimal number of EMS devices.

The publication also mentions the unsuccessful attempts and lengthy process of selecting a supplier of the system and explains the shift from a classic open tender to the competitive dialogue option. The winner of the final tender announced in 2016 was SuperCom in February 2017. Following a review based on filed objections and a re-evaluation of submitted bids, the same company was selected again. The contract was signed on 26 September 2017 and the process leading to the implementation of the system in practice began on that date. In the first phase, the supplier provided the ministry with 280 bracelets, the operation of a monitoring centre for six years and training for Probation and Mediation Service and Ministry of Justice staff. In the next six years, the MoJ had the opportunity to use up to 2,000 devices, depending on current needs. The electronic monitoring system was finally launched on 21 September 2018.

Part of the study also aimed to present relevant ministerial materials that were created in connection with, or in direct response to the implementation of the EMS into practice, which also meant the need to amend internal governance regulations, specifically for the PMS and the relevant MoJ department. At the same time, it was necessary to prepare information for the professional and general public.

The PMS thus redrafted the EMS Manual, amended or created new templates and also created material for probation officers involved in monitoring offenders through the electronic monitoring system. In order to achieve the effective use of this new monitoring tool, the PMS also prepared a manual for judges and prosecutors who decide on the substitution of imprisonment or the imposition of sentences or measures whose execution can be overseen using electronic monitoring. After the start of EMS routine operation, the Methodology Department of the PMS Directorate organised ongoing working meetings of stakeholders at various levels. The aim was to ensure and support the sharing of best practices, the operative solution of problems arising from the application of EM and the methodological direction and coordination of cooperation both within the PMS and with external entities, most often the EMS Operations Centre established at the Czech Ministry of Justice. A training course was

prepared to develop the relevant competences of PMS staff responsible for the EMS agenda, i.e. EMS specialists and heads of EMS departments.

Mandatory procedures also needed to be established for operations centre staff. The methodological instructions issued by the Director of the EMS Unit (now EMS Department) covered, for example, processing and protecting personal data in the electronic monitoring system in connection with its operation and the duties of EMS Department staff. The instructions issued by the Director of the EMS Department determined the rules for testing new functions and the correction of EMS errors, the procedure for collecting and processing proposals for changes, modifications and the development of the electronic monitoring system. Another Ministry of Justice internal regulation is *EMS Operations Centre Operating Regulations*. This includes basic information about the centre and further governs areas related to working conditions and operations. Comprehensive material on the activities and procedures carried out by Operations Centre staff is included in the *Manual for Operations Centre Staff*, with separate annexes on, for example, legislation governing electronic monitoring of individuals, the course and tasks of criminal proceedings, an interpretation of EMS technologies and resources, the procedure for passing a case to the Police of the Czech Republic, etc.

Other important documents were also produced in connection with the preparation of the public contract for the procurement of the EMS. For example, the document prepared by the PMS, *Analysis of the Estimated Development of the House Arrest Agenda*, which defined the requirements for the acquisition of an appropriate number of electronic monitoring devices based on a qualified estimate. Other PMS analytical material included the publication *The Electronic Monitoring System - House Arrest, Substituting Imprisonment and Other Alternatives*.

Interesting information about the EMS was also included in the final report by law firm Dáňa, Pergl & Partners, which relates a pilot project in 2012, when the PMS had the opportunity to test the operation of electronic monitoring on a smaller scale. The experience gained was to be used to prepare the wider, standard implementation of electronic monitoring in criminal justice practice in the Czech Republic.

While the above internal materials were intended exclusively for a limited group of justice professionals, the most important source of information on EMS for the wider public appears to be specialised websites. These offer detailed information on electronic monitoring systems, related legislation and provide up-to-date information on the number of monitored

individuals, including development trends. An information brochure on the *Electronic Monitoring System (EMS)* is also intended for the public.

The main part of the research was devoted to experts' experience with the implementation of the EMS in the Czech Republic. For this purpose, we contacted selected experts who actively participated in the process of forming the electronic monitoring system in the Czech Republic, its implementation and the launch of its operation at the very beginning. The method of guided interviews was chosen to record valuable and historically unrepeatable experiences and these were conducted between June and September 2020. The aim was to preserve the knowledge of experts from the early days of the EMS, which can be used for its potential further development in the future. A total of 15 experts who were actively involved in the EMS implementation process at various stages took part in the interviews. Experts from the MoJ, PMS and ICSP were represented, some of whom directly represented the top management of these entities. The group of respondents also included researchers, probation officers and specialists in the areas of legislation, PMS methodologies and work procedures.

The entire interviews were captured on audio recordings, which were subsequently processed in the form of written anonymised outputs. Respondents were asked questions about the importance of their experience with the use of EMS abroad, what developments experts noted in the search for an optimal EMS solution, what options for the use of the EMS were considered at the time, what role ethical aspects relating to personal data protection played in the decision to use the EMS, and how respondents perceived the composition of the working group that dealt with the implementation of the EMS in the Czech Republic at the time. Questions also focused on the parameters of the tender for the procurement of the EMS (technical, operational, financial) and the dilemmas of the decision-making process on the most suitable solution (purchase x sale of the system, determining the system operator, requirements for technical solutions and requirements for system functions, etc.). A separate topic of the interviews concerned the reflection of the EMS in the public space at the time of system preparation and the beginnings of its launch, when experts were asked, for example, how they perceived the media at that time, and its comments on the acquisition of the EMS, or the approach of the Ministry, respectively the PMS to its own PR and whether they thought it was successful in adequately communicating the topic of the EMS to the public through the media. As part of the conducted interview, experts were also asked for recommendations they would give future contracting authorities and authors of any future public contracts for the procurement of an EMS based on their current knowledge of how an EMS works in practice.

The interviews showed that most experts who had the opportunity to obtain information about EM through a study trip, through participation in an international conference on the topic of electronic monitoring, or through the targeted study of available materials, rated their experience with the use of EMS abroad as important and useful. When respondents commented on the experience of specific countries during the interview, they most often mentioned inspiration from Norway and Slovakia. During the interviews, it was also noted that the opinions of some experts somewhat relativized the key importance of experience abroad, given that it is not possible to easily transfer the different judicial systems and practices of other countries over to the conditions of the Czech Republic.

It is clear from experts' comments that the original view of the potential and scope of options for the use of the EMS varied at different stages of preparation and was, in summary, quite broad. In addition to the original elementary requirement to provide an electronic form of monitoring house arrest, other uses were considered. Respondents mentioned the potential within the Prison Service and following the release of offenders on parole. The possibilities of its use in probation houses, protecting victims and to monitor individuals evicted from the home for a certain period of time in cases of domestic violence were also mapped, and the use of the EMS in monitoring sentences banning entry to cultural and other social events or driving bans were considered. Discussions were also held on the use of the EMS to monitor risk patients who were ordered to undergo outpatient protective treatment. The use of the EMS in areas outside criminal justice was also considered, for example, to monitor individuals staying in the Czech Republic in the context of various migration waves or to monitor individuals under quarantine during the Covid-19 epidemic.

The issue of ethical aspects and data protection on the implementation of the EMS was designated as very important or even essential by the majority of interviewed experts, especially in view of the major intervention in the privacy of individuals that EM represents. The emphasis placed on the secure handling of personal data and privacy also played a significant role in considering whether it would be appropriate for the system to be operated by, for example, a private company, or whether the data could be stored abroad.

In terms of the perception of the composition of the working group, or the groups that dealt with the implementation of the EMS in the Czech Republic at that time, interviewed experts appreciated the advantages of the EMSON Working Group, especially in ensuring the participation of all relevant experts and sharing information in the framework of regularly scheduled joint meetings. On the other hand, however, some respondents saw certain limitations in this broad participation of individual members, both in the dynamics of such

a large working group and in the inconsistent level of active involvement by some of its members. From this perspective, some experts felt it was more effective to work in smaller working subgroups, which were set up for this purpose in the multidisciplinary EMSON Working Group. However, experts considered the outputs of the EMSON Working Group to be very important and indispensable for the following next phase of competitive dialogue, which eventually led to successfully awarding the EMS supplier contract.

Experts were rather ambivalent about the perception of the media in connection with the EMS. At the same time, they reflected that the media's interest in the issue of the EMS changed over time and basically corresponded to events around the EMS at different stages of repeated efforts for its acquisition. The media mainly responded to potentially attractive and long-tracked topics that could be of interest to the wider public. Interviewed experts, however, criticised the media's one-sided and selective approach to the choice of topics and the presentation of the EMS, and unanimously felt that the potential of the topic was not sufficiently exploited, especially in the area of its contribution to society or its impact on existing work with PMS clients.

On the issue of handling PR, some respondents were critical of both the PMS and MoJ. Experts attributed reserves on the part of the Ministry of Justice to the organisational changes at the Ministry from 1 January 2019. With regard to the PMS, experts' responses included comments pointing to PMS limited resources and personnel in the area of its own PR.

When asked how experts perceived the technical, functional and operational requirements set for the potential supplier, they agreed that the set parameters were generally very strict, which respondents felt was motivated by the desire to find the best possible system for the Czech Republic. However, some experts' comments, based on experience with the operation of EMS, suggest that certain selected parameters should be reviewed in the event of another public contract. Although the use of this technology for victim protection was considered at the very beginning when drafting tender documentation, experience in practice has shown a number of previously unforeseen problems and circumstances that have resulted in the technology only being used sporadically for the victims of crime.

Although all interviewed experts consider the implementation of an EMS after many years and several previously unsuccessful attempts to be an undisputed success, at the same time, they pointed out numerous reserves and limitations in their comments. Critical assessments often focused on experience with the system supplier. Respondents' unfavourable evaluation also related to the scope of EMS use in practice, where the total number of installed devices did not meet initial expectations.

The text also maps the media image of the process of EMS implementation. A set of 2,864 media outputs from 2009-2018 and the first half of 2019 was obtained through the Ministry of Justice press department based on keywords related to the studied issue. The content of these outputs was analysed in terms of selected thematic areas. In terms of news volume, the topic of EMS received the most media coverage in 2010, with 1,050 reports. The most prominent media coverage during the above period focused on the extent to which the EM system would be used, whether this was to monitor house arrests, to use EM as a substitute for imprisonment, or to monitor compliance with the reasonable obligation to remain at a specified residence or part thereof at specified times. There was also reference to the considered use of the EMS to monitor other alternative sanctions, such as banned entry to sports, cultural and other social events or in the prison service. The media also dealt with the course of tenders and experience with the application of EMS abroad to a greater extent. The media were slightly less interested in the topic of the contracting authority and EMS operator or the expected date the EMS would be put into practice. Somewhat surprisingly, the ethical aspects of EM remained outside the media's interest. However, in general terms, it can be said that despite uneven media coverage of the defined sub-topics, the public basically had enough relevant information about the potential uses of the EMS and its implementation process.

Selected statistical data from the first two years of the system's operation is also presented to illustrate the implementation of EM in practice. This was prepared on the basis of data provided by the Analytical Department of the Probation and Mediation Service. It provides information on the number of bracelets used between September 2018 and September 2020 and the number of individual institutes monitored by the EMS. During this period, electronic monitoring was used in 501 cases, the vast majority of which (almost 75%) were used to monitor sentences of house arrest. The overall ratio of men and women among monitored individuals was also examined, with men significantly predominating in the selected period (86%). The average age of monitored individuals was generally 37. The paper also gives an overview of the use of EM by geographical location; the system was most often used in the North Bohemian Region, while at the level of PMS centres, it was most often used in Prague. Another analysed factor was the type of crime for which offenders were sentenced to electronic monitoring. This was mostly (knowing that the monitored person could have committed more than one offence) the offences of obstructing the execution of an official decision, theft and evasion of mandatory maintenance. Data was also collected on the number of reports on the violation of EM conditions sent to the PMS based on recorded serious

incidents and the manner in which cases of imposed EM are terminated. The presented outputs showed that during the initial two years of operation of the electronic monitoring system, neither the predicted number of individuals nor the capacity of the system was met. In addition, after the first year of operation, problems with the supplier arose, which have persisted to the present day.

The Probation and Mediation Service, as the operator of the EMS, prepared material to evaluate the implementation and functioning of the EM system after six months of use and after one year. The content was an evaluation of routine operation, an assessment of current practice and an analysis of possible causes limiting the more widespread use of the system. It was noted that the implementation was successful, with an emphasis on high standard of developed methodologies. The organisational structure has also proved effective. The potential for the institute of protected person status has remained untapped, even after the change in PMS terminology (now supported person), there has been more of a shift towards providing information about the offences of the monitored offender. The need for the institute of preliminary investigation and adequate information for all stakeholders was emphasised for the further and successful use of monitoring bracelets.

In conclusion, the authors mention the vision of explanatory memoranda to draft laws, establishing the institute of house arrest and the option of using the EMS to replace imprisonment, and the expected benefits of the existence of an EMS. An integral part of the research was to ascertain the views of experts involved in the preparation and implementation of the EMS on whether the implementation of the system was in line with the intentions of the design and development materials. For this reason, the final outputs include an overall evaluation of the observations of experts who participated in the implementation process. Although these are rather critical, a number of factors that may have influenced their personal opinion (e.g., their job title, their own expectations, practice in the field, or current problems with the supplier) must be taken into account. However, the positive view of all participating experts of the very fact the EM system was finally successfully implemented in the Czech Republic after such a long time and several unsuccessful attempts must be emphasised.

To what extent expectations in connection with the routine operation of EM have been met, its application practice and how cooperation between the stakeholders works - these are other vital questions regarding the operation of the electronic monitoring system in the Czech Republic that should be answered in the follow-up research task by the ICSP *The Electronic Monitoring System in the Application Practice of the Czech Republic*.

Translated by: Presto