COMPARATIVE EVALUATION OF THE DE LEGE LATA LEGISLATION ON ALTERNATIVE PUNISHMENTS IN THE SLOVAK REPUBLIC IN COMPARISON WITH GERMANY

KOMPARATÍVNE ZHODNOTENIE PRÁVNEJ ÚPRAVY DE LEGE LATA ALTERNATÍVNYCH TRESTOV V SLOVENSKEJ REPUBLIKE V POROVNANÍ S NEMECKOM

***Veronika Tóthová*[1], *Ľuboslav Sisák*[2]**

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ABSTRACT

This paper concentrates on the comparation of the Slovak de lege lata legislation on alternative punishments with the legislation in Germany. From among alternative sentences the authors chose the sentence of house arrest and the sentence of community service. The authors focus on a brief historical development of the legal regulation of these alternative punishments, the reason for their introduction into the legal order of individual countries, how they have changed over time and what their current state is. In order to evaluate the legislation of alternative punishments in the chosen countries, the authors use the comparative method and formulate de lege ferenda proposals which can be found at the end of the article.

ABSTRAKT

Článok[3] *sa venuje komparácii slovenskej právnej úpravy de lege lata alternatívnych trestov v porovnaní s právnou úpravou v Nemecku. Autori si pre tento účel z alternatívnych trestov vybrali trest domáceho väzenia a trest povinnej práce. Príspevok sa zameriava na stručný historický vývoj právnej úpravy týchto alternatívnych trestov, dôvod ich zavedenia do právneho poriadku jednotlivých krajín, ako sa menili v čase a aký je ich súčasný stav. Za účelom zhodnotenia právnej úpravy alternatívnych trestov v jednotlivých krajinách autori využívajú komparatívnu metódu a formulujú návrhy de lege ferenda, ktoré sa nachádzajú v závere článku.*

I. INTRODUCTION

In order to assess the state of *de lege lata* legal regulation of alternative punishments, it is necessary to focus on the analysis of the substantive conditions for the imposition of punishments enshrined in the relevant provisions of Act no. 300/2005 Coll. Criminal Code (hereinafter also "Criminal Code"). Alternative punishments are based on the concept of criminal policy referred to as restorative justice.[4] Alternative sentences are sentences which, without being linked to imprisonment, guarantee the fulfilment of the purpose of the sentence in the same way as if an unconditional sentence of imprisonment had been served on a convicted

[1] JUDr., PhD., Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, Slovenská republika
University of Pavol Jozef Šafárik in Košice, Faculty of Law, Slovak Republic.

[2] Mgr., Univerzita Pavla Jozefa Šafárika v Košiciach, Právnická fakulta, Slovenská republika
University of Pavol Jozef Šafárik in Košice, Faculty of Law, Slovak Republic.

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[4] STRÉMY, T. – KLÁTIK, J. *Alternatívne tresty*. Bratislava: C. H. Beck, 2018, p. 24.

person. When imposing sentences, the judge has the option of imposing on the convicted person a sentence of imprisonment or a sentence that will be executed while the convicted person stays outside of prison. The purpose of alternative punishments is that they are not associated with the negative aspects of imprisonment, such as the disruption of emotional or family ties. The aim of expanding the possibilities of imposing these sentences is also to strengthen the principle that an unconditional sentence of imprisonment is the *ultima ratio*. This principle should only be applied if other means, i.e., sentences without imprisonment, have failed.[5] Among the punishments listed in section 32 of the Criminal Code, alternative punishments in Slovak law may be considered to be the sentence of house arrest, the punishment of community service, the alternativity of which follows directly from the provisions of section 34 (7) of the Criminal Code.[6] The aim of this article is to evaluate the state *de lege lata* of alternative sentences of house imprisonment and punishment of community service in the Slovak Republic and compare them with the legislation in Germany.

First of all, it is requested to point out that German criminal law is structured in a way that is atypical in comparison with the Slovak legislation. In addition to "general" criminal law (*allgemeines Strafrecht*; also called "adult" criminal law - *Erwachsenenstrafrecht*), there are relatively separate related branches, i.e., juvenile criminal law (*Jugendstrafrecht*)[7] and the so-called secondary criminal law (*Nebenstrafrecht*).[8] Criminal sanctions are largely regulated in the basic regulation of substantive criminal law - the Criminal Code[9] (*Strafgesetzbuch,* hereinafter as the "StGB" or, depending on the context, the "statute"), in section 38 et seq. The legislator systematically places them in a wider group of institutes, which he calls the "Legal Consequences of an Act".[10] As in Slovakia, also in German law the basic division of criminal sanctions is marked by double-tracking, also called bipartite system or dualism. There are thus two basic categories of sanctions - punishments (*Strafen*);[11] and remedial and security measures (*Maßregeln der Besserung und Sicherung*; these are similar to Slovak protection measures.[12] The StGB recognizes two so-called principal punishments, namely imprisonment[13] and a pecuniary punishment.[14] They are "principal" because all criminal offenses under the special part of the StGB (sections 80 et seq.) are always punishable by at least one of them. With regard to the possibilities of imposing a sentence of imprisonment, a convicted person may be punished either solely by imprisonment or by imprisonment together with a fine.[15] On the other hand, pecuniary punishments are always an option only as an alternative to imprisonment. German law does not recognize criminal offenses which the legislator would sanction solely with pecuniary punishment.[16] In German criminal law, a fine, together with a sentence imposing an act of work (performance of community service), constitute sanctions which can be described

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5 ROMŽA, S. et al. *Alternatívne spôsoby výkonu trestov.* Košice: Šafárik Press UPJŠ in Košice, 2018, p. 170.

6 Naturally, a pecuniary punishment can also be considered as an alternative punishment, if it is imposed in accordance with section 56 (2) of the Criminal Code, but for the purposes of the article we will not pay attention to this type of punishment.

7 Codified in *Jugendgerichtsgesetz,* BGBl. I 1974 p. 3427.

8 Secondary criminal law is fragmented in a set of regulations from various special areas of social life, in which the need for special criminal law regulation arose. Let us mention, for example, the Act on Narcotic Drugs (*Betäubungsmittelgesetz*), the Act on Road Transport (*Straßenverkehrgesetz*), the Army Criminal Act (*Wehrstrafgesetz*), as well as a number of economic and financial regulations. For their calculation see e.g. WEIGEND, T. Einleitung, margin number 18. In: CIRENER, G. – RADTKE, H. – RISSING-VAN SAAN, R. et al. (hrsg). *Strafgesetzbuch. Leipziger Kommentar*. Vierter Band, 13 Auflage, Berlin: De Gruyter, 2020.

9 *Strafgesetzbuch*, BGBl. I 1998 p. 3322 as amended by later legislation.

10 Name of Part 3 of the StGB.

11 Sections 38 to 60 of the StGB.

12 Sections 61 to 78 of the StGB.

13 Sections 38 to 39 of the StGB.

14 Sections 40 to 43 of the StGB.

15 MEIER, B. D. *Strafrechtliche Sanktionen.* Springer Verlag, 2019, p. 90.

16 Ibid., p. 66.

as a pair of alternative punishments in the strict sense. We do not find the sentence of house arrest in the sanction system of German law, but the institute of electronic monitoring is known and has been used in Germany for a long time. This also leads to the reason for choosing this country in order to compare the legislation of alternative punishments, as they can be inspiring for us in some ways.

II. COMMUNITY SERVICE

1. Germany

Around the mid-1980s, reform initiatives in relation to the current criminal sanctions system have repeatedly appeared in the Federal Assembly (*Bundestag*). No special attention was paid to the alternative punishments. The first efforts to significantly reform alternative punishments came in the 14th parliamentary term (1998-2002) of the Federal Assembly. In 1998, the Federal Ministry of Justice set up a Commission for the Reform of Criminal Sanctions, with the task of drafting new legislation. Building on the conclusions of the work of this commission, a Bill on the Reform of the Law of Sanctions was submitted to the Bundestag in 2002.[17] The leitmotif of the present bill was to reduce the number of short-term and alternative sentences of imprisonment.[18] Of all the legislative efforts made so far, it came for the first time with a substantial strengthening of the sentence in the form of community service in the system of criminal sanctions. After highlighting several positive aspects of community service in the role of punishment,[19] it was proposed to introduce community service as a primary substitute sanction for non-compliance with an imposed fine, instead of an alternative sentence of imprisonment. In any case, the offender's consent to the community service was insisted on; one daily rate of fine should correspond to 3 hours of work. Only after the failure of the community service was a substitute sentence of imprisonment to begin.[20] The proposed changes in the status of punishment in the form of community service in the system of criminal sanctions have mostly met with a negative response. In particular, they were criticized for breaking the coherence of the rules on sentencing,[21] not strengthening special prevention and not complying with the constitutional principle of equality.[22] Last but not least, practical problems were highlighted in the creation of a sufficient number of working positions,[23] as well as in the control

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17 *Bundestagsdrucksache* (hereinafter as „BT-drucks.“) 14/9358.

18 BT-drucks. 14/9358, p. 1.

19 Community service has been described as a means of positive special prevention. It is intended to represent the perpetrator's active actions towards reconciliation with society and emphasizes his/her social responsibility. It enables the perpetrator to symbolically remedy the evil committed and contributes to the restoration of legal peace (*Rechtsfrieden*). Through community service, the perpetrator finally comes into contact with persons who, through the honest performance of their work, contribute to the progress of society. Thus, such persons can have a positive effect on the perpetrator and serve as patterns of behaviour. BT-drucks. 14/9358, p. 10.

20 BT-drucks. 14/9358, p. 10.

21 HELGERTH, R. – KRAUß, F. Der Gesetzenwurf zur Reform des Sanktionenrechts. *Zeitschrift für Rechtspolitik.* 2001, Heft 7, p. 281; WOLTERS, G. Der Entwurf eines „Gesetzes zur Reform des Sanktionenrechts“. *Zeitschrift für die gesamte Strafrechtswissenschaft.* 2002, Heft 1, p. 74 et seq.

22 It was proposed that community service should not be allowed if its fulfilment was unlikely in advance. This was perceived as problematic when the offender, due to, say, physical or mental illnesses, even with the best of intentions, could not perform community service and therefore the court could not impose this punishment on him/her. Doubts were expressed as to whether such an approach was in line with the principle of equality. Ibid., p. 282. For similar intentions, but in relation to the drafts of the 15th election period, see STÖCKEL, H. Gedanken zur Reform des Sanktionenrechts. In: SCHÖCH, H. – DÖLLING, D. – HELGERTH, R. (eds). *Recht gestalten - dem Recht dienen. Festschrift für Reinhard Böttcher zum 70. Geburtstag am 29. Juli 2007.* De Gruyter, Reprint 2011, p. 623 et seq.

23 Ibid.; SCHNEIDER, U. Gemeinnützige Arbeit als »Zwischensanktion«. *Monatsschrift für Kriminologie und Strafrechtsreform*. 2001, Heft, 4, p. 282. For an opposite opinion see DÜNKEL, F. Reform des Sanktionenrechts – neuer Anlauf. *Neue Kriminalpolitik.* 2003, no. 4, p. 124.

of the performance of community service and their dismissal due to improper performance.[24] It is stated that, in terms of the proposed changes, community service would be a very demanding sanction for its execution in several respects, and it would therefore be questionable whether the costs of securing a sentence of imprisonment would be reduced if more space for community service was given instead.[25] The discussed proposal did not contain other changes in relation to alternative sanctions, but it never came into the form of legal regulation. In the forthcoming 15th term of the Federal Assembly (2002-2005), previous efforts were followed up by another proposal for the reform of the law of sanctions in 2004.[26] The sentence in the form of community service was to receive the rank of a principal punishment. The court would be given the opportunity to impose a sentence on the convicted person in the form of community service if it considered a sentence of imprisonment of less than 6 months and if other special conditions were met.[27] However, even this proposal did not reach a successful conclusion in the legislative process, mainly due to discontinuity in the governing coalition.[28] In the context of the proposals from the 15th term of the Federal Assembly (2002-2005), the *Stöckel* study,[29] which questions the appropriateness of the proposals submitted, based on rich statistics on various punishment factors in the form of community service, is particularly noteworthy. Since 2004, the Federal Assembly has been silent with regard to the reform of alternative criminal sanctions for a long time.[30] Only recently, in 2018, this issue was revived by another proposal to change the law.[31] It is characterized above all by a sharp criticism of the substitute sentence of imprisonment (*Ersatzfreiheitsstrafe*).[32] The core of the proposal is the complete abolition of the substitute sentence of imprisonment. In particular, the community service sentence has a weaker position in this proposal than in the 2004 proposal. The community service sentence should no longer take the form of a principal sentence but should be introduced instead of the to-be abolished substitute sentence of imprisonment.[33] In the current legislation, the punishment of community service is directly linked to a fine and a substitute sentence of imprisonment for the following reasons. The validity of a convicting judgment of a fine gives the convict a public obligation to pay the amount imposed in favour of the state treasury. If the convicted person does not voluntarily pay the amount imposed and if the fine is not enforced even by compulsory

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24 Controlling the performance of community service would require the deployment of a disproportionate number of staff; dismissal of public works due to improper performance would be possible only after lengthy, demanding and procedurally uneconomical proceedings. HELGERTH, R. – KRAUß, F. *Der Gesetzenwurf zur Reform des Sanktionenrechts,* p. 282.

25 SCHNEIDER, U. *Gemeinnützige Arbeit als »Zwischensanktion«,* p. 285.

26 BT-drucks. 15/2725.

27 These were the following conditions: the offender could not have been sentenced to unconditional imprisonment in the past; or if the execution of the custodial sentence would significantly jeopardize the redress of the damage caused to the victim of the crime. BT-drucks. 15/2725, section 55a paragraphs 1 no. 1 and 2, pp. 8 and 9.

28 *Schröder's* SPD together with s *Bündnis 90/Die Grünen* handed over the government to *Merkel's* CDU/CSU together with SPD.

29 STÖCKEL, H. Gedanken zur Reform des Sanktionenrechts. In: SCHÖCH, H. – DÖLLING, D. – HELGERTH, R. (eds). *Recht gestalten - dem Recht dienen. Festschrift für Reinhard Böttcher zum 70. Geburtstag am 29. Juli 2007,* p. 617 et seq.

30 In 2010, four authors strongly advocated the introduction of community service as the main alternative punishment for an unenforceable fine. The main purpose is to marginalize (short) alternative custodial sentences. In addition, it was proposed to abolish a sentence of imprisonment of less than 6 months and to use, in particular, community service. For more detail see DÜNKEL, F. – FLÜGGE, C. – LÖSCH, M. – PÖRKSEN, A. Plädoyer für verantwortungsbewusste und rationale Reformen des strafrechtlichen Sanktionensystems und des Strafvollzugs - Thesen des Ziethener Kreises. *Zeitschrift für Rechtspolitik.* 2010, Heft 6, p. 175 et seq.

31 BT-drucks. 19/1689.

32 In particular, the alternative sentence of imprisonment is criticized for being of very short duration in the vast majority of cases. Short sentences of imprisonment (in the German environment "short" is understood as "less than 6 months") undermine the efforts to resocialise the offender and are not enough to achieve the educational goal. In addition, as a result of its execution, there is a risk of the convicted person being "criminally infected" due to his/her stay in the penitentiary institution. BT-drucks. 19/1689, p. 5.

33 BT-drucks. 19/1689, p. 3 et seq.

execution of the sentence,[34] the fine shall be converted into a subsidiary sentence of imprisonment, which is compulsorily imposed, if payment of the fine would be frustrated for any reason.[35] In this way, the repressive and preventive function of a fine is to be ensured in the sense that its imposition is associated with "punitive" effects even if the required amount is not paid, in the form of a subsidiary sentence of imprisonment.[36] The formula "1 daily rate corresponds to 1 day of imprisonment" is used to convert an unpaid fine into a subsidiary sentence of imprisonment.[37] The subsidiary sentence of imprisonment may not fall below the minimum of 1 day.[38] Due to the fact that the fine punishes mainly less and medium-serious crimes, non-compliance with it regularly leads to relatively short subsidiary sentences of imprisonment. However, the legislator wanted to avoid, as far as possible, the negative consequences of short-term imprisonment, and thus during the execution of a subsidiary sentence of imprisonment, it offers convicts a surrogate in the form of the performance of community service.[39] In practice, therefore, it is a "substitute for a subsidiary sentence of imprisonment". Due to its nature, the institute is often associated with the slogan "sweating instead of sitting" (*Schwitzen statt Sitzen*).[40] The Introductory Act to the Criminal Code[41] (*Einführungsgesetz zum Strafgesetzbuch,* hereinafter as the "EGStGB") empowers the federal governments to adopt regulations under which the authorities responsible for serving a sentence may allow a convict to avert the performance of a subsidiary imprisonment sentence by a free (in the sense of "voluntary") work, i.e., service. As soon as the convicted person has done this work, the subsidiary sentence of imprisonment shall be deemed to have been fulfilled. The work must be free of charge and must not be aimed at achieving economic profit.[42] It is usually performed in social facilities or institutions for environmental protection.[43] Today, all federal states have used the above-mentioned legal authorization, and in each of them a separate regulation specifying the details of the replacement of a subsidiary sentence of imprisonment by community service applies. These regulations largely coincide in imposing an obligation on the authorities responsible for the execution of a sentence to inform the convicted person of the possibility of submitting a proposal within a certain time limit for the conversion of an alternative sentence of imprisonment into community service. However, regulations of the federal states differ in the conversion formulas for converting a sentence of imprisonment into community service, as well as in the number of hours of work required per day (specific figures range between 3 and 6 hours per day).[44]

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34 The legal regulation of the compulsory execution of a fine is scattered in total of four pieces of legislation - the Criminal Procedure Code (*Strafprozessordnung*); the Criminal Enforcement Order (*Strafvollstreckungsordnung*); the Code of Enforcement for Judicial Claims (*Justizbeitreibungsordnung*) and the Code of Enforcement (*Einforderungs- und Beitreibungsordnung*).

35 Section 43, first sentence of the StGB.

36 RADTKE, H. § 43 Ersatzfreiheitsstrafe, margin number 2. In: V. HEINTSCHEL-HEINEGG, B. (hrsg). *Münchener Kommentar zum Strafgesetzbuch.*

37 Section 43, second sentence of the StGB.

38 Section 43, third sentence of the StGB.

39 § 293 *Einführungsgesetz zum Strafgesetzbuch,* BGBl. I 1975 p. 469, as amended by later legislation. For the history of work as a punishment in the German environment together with a sociological study, see WILDE, F. *Armut und Strafe.* Wiesbaden: Springer, 2016.

40 MEIER, B. D. *Strafrechtliche Sanktionen,* p. 81. This designation was first used by the federal state of Baden-Württemberg as the name for its project aimed at promoting community service as a surrogate for a subsidiary sentence of imprisonment. See the Baden-Württemberg web portal for more information: https://justizportal.justiz-bw.de/pb/,Lde/Startseite/Themen/Schwitzen+statt+Sitzen. "Sweating instead of sitting" subsequently gained popularity in professional and scientific texts, in which we often come across the term.

41 *Einführungsgesetz zum Strafgesetzbuch,* BGBl. I 1975, p. 469, as amended by later legislation.

42 Section 293 paragraph 1 of the EGStGB.

43 MEIER, B. D. *Strafrechtliche Sanktionen,* p. 81.

44 RADTKE, H. § 43 Ersatzfreiheitsstrafe, margin number 4. In: V. HEINTSCHEL-HEINEGG, B. (hrsg). *Münchener Kommentar zum Strafgesetzbuch*; PUTZKE, H. § 293 EGStGB, margin number 1 et seq. In: KNAUER, CH. (hrsg).

Community service is a voluntary decision of the convict. Enforcing them is inadmissible.[45] Therefore, if the convicted person does not perform these works of his/her own free will, he/she will return to the execution of the subsidiary sentence of imprisonment imposed on him/her in case of non-payment of the fine. However, this rule does not apply unconditionally. The Criminal Procedure Code gives the court the possibility to waive the execution of a subsidiary sentence of imprisonment if such execution would be unacceptably harsh for the convicted person.[46]

2. Slovakia

The introduction and acceptance of the punishment of community service[47] as an alternative punishment was far from turbulent in the Slovak Republic. The community service punishment was introduced into the Criminal Code as part of the recodification work as an alternative to short-term imprisonment with effect from 1 January 2006. It was the result of the work of the Commission for Recodification of Criminal Law, which began in mid-1999. Expansion of the range of punishments by the punishment of community service[48] is an expression of depenalisation, as it allows courts to increasingly resort to punishment without imprisonment. During short-term imprisonment, re-education and resocialisation processes could not be successfully developed, while on the other hand the negative impact of isolating the offender from society in the environment of other offenders often had a negative impact on the convict himself/herself. The expansion of alternative sanctions aims to reinforce the principle that unconditional imprisonment is an "*ultima ratio*", which should only be applied when other, less serious means of combating crime, including non-imprisonment sentences, have failed. By stationing the community service punishment in the system of penalties in section 32 of the Criminal Code in its third place, it only strengthened the position of this type of sanction as an alternative punishment. Since its introduction to the Slovak legal order, no significant changes to the regulation of community service punishment have occurred. The incompatibility of the imposition of the community service punishment and the sentence of imprisonment is explicitly regulated by sections 34 (7) (b) of the Criminal Code. The legal regulation of the community service punishment in the conditions of the Slovak Republic is contained in sections 54 - 55 of the Criminal Code.[49] The Criminal Code contains only the legal conditions for the imposition of this type of punishment, as the conditions for the execution of the sentence of community service are regulated by a special Act no. 528/2005 Coll. on the execution of the sentence of community service and on the amendment of Act no. 5/2004 Coll. on Employment Services and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Act on the Execution of Community Service Punishments"). As in Germany, the essential condition for

Münchener Kommentar zur Strafprozessordnung, Band 3/2, 1. Auflage, C. H. Beck, 2018. For more details on the normative differences mentioned in the individual federal states, see QUENSEL, S. »Uneinbringliche« Geldstrafen in den USA und bei uns. *Monatsschrift für Kriminologie und Strafrechtsreform.* 2018, Heft 1, p. 62 et seq.

45 Pursuant to the constitutional prohibition of compulsory work under Art. 12 par. 2 and 3 of the Basic Law (*Grundgesetz*).

46 § 459f *Strafprozeßordnung*, BGBl. I 1987 p. 1074, 1319, as amended by later legislation. What is meant by "unacceptable harshness" is clarified by case law. It stated the basic rule of interpretation that unacceptable harshness must lie only in circumstances outside the scope of the sentence purpose. *Bundesverfassungsgericht* (3. Kammer des Zweiten Senats), Beschluß vom 24. 8. 2006 - 2 BvR 1552/06. In: *Neue Juristische Wochenschrift.* 2006, Heft 50, p. 3626. More in NESTLER, N. § 459f, mc. 4 et seq. In: KNAUER, CH. (hrsg). *Münchener Kommentar zur Strafprozessordnung, Band 3/1,* 1. Auflage, C. H. Beck, 2019.

47 In foreign legal regulations, the term community service is most often used for this type of sanction - also translated as public service, service for the municipality, order for public service, public benefit work. It must always be borne in mind that the nature of these sanctions is the same regardless of their designation.

48 Explanatory memorandum to the adoption of Act no. 300/2005 Coll., available at www.nrsr.sk.

49 For more detail, see the Act no. 300/2005 Coll. Criminal Code as amended by later legislation.

the imposition of this type of sanction is the offender's consent.[50] The community service punishment can be imposed only if the offender is convicted of an offense for which this statute allows the imposition of a sentence of imprisonment, the upper limit of which does not exceed five years. The negative definition of the conditions of the community service punishment is found in section 55 (2) of the Criminal Code, where it is stated that the court will not impose the community service punishment if the offender is incapacitated for work and disabled for a long time. If the above-mentioned positive conditions are met and the negative conditions for imposing a sentence of community service are excluded, the court may impose a sentence of community service in the range of 40-300 hours, while these time limits cannot be increased or decreased by the court. As mentioned above, the actual execution of the sentence of community service is stipulated by a special Act no. 528/2005 Coll. on the execution of the sentence of community service and on the amendment of Act no. 5/2004 Coll. on Employment Services and on Amendments to Certain Acts, as amended by later legislation. In section 2 of the cited Act, the convict is obliged to perform work for the benefit of the state, higher territorial unit, municipality or other legal entity that deals with schooling, culture, education, protection of human rights, development of science, development of physical culture, protection against fires, animal welfare, social assistance, social services, health care, environmental activities, religious activities, humanitarian activities, charitable activities or other non-profit-making activities of public benefit. The probation and mediation officer supervises and controls the execution of the sentence of community service.[51] The fact can be pointed out that the convicted person agrees to the imposition of the sentence of community service before the court and only after the validity of the imposition of this type of punishment, in a specified period, proceeds to discuss the conditions of the execution of community service, when he/she is assigned specific work. Given the fact that since the introduction of the community service punishment among the types of sanctions in the Criminal Code, there have been no fundamental changes in the conditions of its imposition, we believe that at present it would be appropriate to reconsider the negatively defined conditions of its imposition. It has already been decided that the legal limits of the punishment of community service are set and cannot be extended, but we believe that not every disability makes the imposition of the punishment of community service completely impossible. The content of the sentence of community service is defined in section 55 (3) of the Criminal Code, which stipulates that a convicted person is obliged to serve a sentence of community service in person, in his/her free time and without the right to remuneration. Expressing the term personally means that no one can represent a convicted person in the execution of this type of punishment. In his/her spare time basically means that the responsibility to carry out the sentence of community service is transferred to the convict himself/herself, who must manage his/her time in such a way as to fulfil a legal condition and serve the sentence within one year of his/her order. The condition without the right to remuneration includes the gratuitousness of the work performed by the convicted person within the sentence, i.e., the convicted person cannot make any profit from the performed work, and also the performed work cannot serve as a source of income for the convicted person. The conditions are strictly set for the case if the convicted person does not comply with the legal conditions of the imposed sentence and thus alternatively:

a) The convicted person did not lead a proper life at the time of serving the sentence,
b) The convicted person did not perform the work to the specified extent through fault,

[50] With reference to article 18 of the the Constitution of the Slovak Republic, published as no. 460/1992 Coll.

[51] FERENČÍKOVÁ, S. – MICHAĽOV, Ľ. – TÓTHOVÁ, V. Juristické aspekty alternatívnych trestov. In: *Alternatívne spôsoby výkonu trestov.* Košice: Šafárik Press UPJŠ v Košiciach, 2018, p. 170.

c) The convicted person has not complied with the restrictions or obligations imposed by the court, the court shall obligatorily convert the sentence of community service or the rest thereof into unconditional imprisonment by ordering one day of unconditional imprisonment for every two hours of unperformed work and deciding on the execution of this sentence.[52]

III. HOUSE ARREST PUNISHMENT

1. Germany

The first major legislative efforts in Germany to introduce a house arrest sentence linked to electronic monitoring were preceded by discussions in the professional public during the 1980s. The idea of a house arrest with remote electronic supervision was criticized at the time, as it resembled the ubiquitous control of Orwell's "1984" work and raised doubts about compliance with the Constitution.[53] However, the situation changed in the late 1990s, when the federal state of Berlin came up with an idea to introduce electronically monitored house arrest at the federal level. Almost all other federal states (except Bavaria and Saxony) have expressed an interest in testing this form of sanction through pilot projects. However, for any further development, it was necessary to adopt legislation that would allow electronic punishment to be served at home. In subsequent work on bills, house arrest was once included in the regulation of the execution of sentences, other times it was to be introduced as a separate sentence. However, the change in the governing coalition at the turn of the millennium caused the hitherto existing political will to enforce the sentence of house arrest associated with electronic supervision to fall. Thus, the legislative efforts made in the 1990s were unsuccessful and to this day have not reached the same dimensions[54] they once had.[55] From the above it can be stated that the punishment of house arrest in the form as we know it in the Slovak Republic simply cannot be found in German criminal law, but the institute of electronic monitoring and the possibility of its use was introduced in Germany in 2010.[56] While the law uses the term "electronic surveillance of residence" (*elektronische Aufenthaltsüberwachung,* also abbrev. to "EAÜ"),[57] the term

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52 For more detail, see section 55 (4) of the Criminal Code.

53 KAISER, A. *Auf Schritt und Tritt – die elektronische Aufenthaltsüberwachung*. Wiesbaden: Springer, 2016, p. 19; DAHS, H. Im Banne der elektronischen Fußfessel. *Neue Juristische Wochenschrift.* 1999, Heft 47, p. 3469.

54 For one of the few more extensive articles from the recent past, see HOCHMAYR, G. Elektronisch überwachter Hausarrest. Gegenwart und Zukunft in Deutschland und Österreich. *Neue Zeitschrift für Strafrecht,* 2013, p. 13 et seq.

55 KAISER, A. *Auf Schritt und Tritt – die elektronische Aufenthaltsüberwachung,* s. 19. For details on the criminological aspects of electronic supervision of house arrest, see BÖSLING, T. Elektronisch überwachter Hausarrest als Alternative zur kurzen Freiheitsstrafe? *Monatsschrift für Kriminologie und Strafrechtsreform.* 2002, Heft 2, p. 105 et seq. It should be noted, however, that despite the failure of legislative efforts, some federal states have nevertheless implemented the planned pilot projects. They were of the opinion that the law in force at that time already provided a legal basis for the execution of a sentence in a home environment with electronic control. These are the federal states of Hesse and Baden-Württemberg. For details on their house arrest experiments, see KAISER, A. *Auf Schritt und Tritt – die elektronische Aufenthaltsüberwachung,* p. 21 et seq.; on Hesse see in more detail BRÜCHERT, O. Modellversuch Elektronische Fußfessel: Strategien zur Einführung einer umstrittenen Maßnahme. *Neue Kriminalpolitik.* 2002, no. 1, pp. 32–35; ALBRECHT, H. J. – ARNOLD, H. SCHÄDLER, W. Der hessische Modellversuch zur Anwendung der „elektronischen Fußfessel": Darstellung und Evaluation eines Experiments. *Zeitschrift für Rechtspolitik.* 2000, Heft 11, pp. 466–469; ALBRECHT, H. J. Der elektronische Hausarrest. Das Potential für Freiheitsstrafenvermeidung, Rückfallverhütung und Rehabilitation. *Monatsschrift für Kriminologie und Strafrechtsreform,* 2002, Heft 2, p. 84 et seq.; on Baden-Württemberg, see a quite up-to-date assessment WÖßNER, G. – MEUER, K. Implementierung und Folgen elektronischer Überwachung. *Monatsschrift für Kriminologie und Strafrechtsreform.* 2019, Heft 3, pp. 202–216; as well as WÖßNER, G. – SCHWEDLER, A. Aufstieg und Fall der elektronischen Fußfessel in BadenWürttemberg: Analysen zum Modellversuch der elektronischen Aufsicht im Vollzug der Freiheitsstrafe. *Neue Kriminalpolitik.* 2014, no. 1, pp. 60–78.

56 BGBl. I 2010, p. 2300. However, despite the absence of an explicit legal basis, it was used much earlier. This is related to the pilot projects mentioned in the previous footnote. See, for example, the case of the year 2001 – LG Frankfurt a.M., Beschluß vom 6. 12. 2000 - 5/27 Qs 64/00. In: *Neue Juristische Wochenschrift.* 2001, p. 697.

57 Section 68b paragraph 1 no. 12 of the StGB.

"electronic foot bracelet" (*elektronische Fußfessel*) has become more widely used in the legal and lay public.

So far, the most extensive study aimed at gaining practical knowledge from the application of electronic monitoring (hereinafter also referred to as the "EM") in protective surveillance dates from 2016.[58] The project focused on an experimental group of people who were actually ordered the EM. Given that electronic monitoring is currently admissible only within the framework of protective surveillance as one of the available orders[59] addressed to the convicted person,[60] we consider it necessary to at least briefly characterize protective surveillance in Germany and state the conditions of its imposition. Protective surveillance can only take place after the execution of a sanction restricting personal liberty – i.e., not only a sentence of imprisonment, but also a protective measure. It mainly fulfils the preventive and resocialising function. It represents a certain transitional period between the end of the execution of a sentence and the reintegration of the offender into society. During this period, the convict should be prevented from committing further criminal activity (prevention) and also helped to overcome his/her possible psychosocial disorders, so that he/she can reintegrate into society (resocialization), from which he/she was excluded due to a previous restriction of personal liberty.[61] Section 68 of the StGB offers a legal basis for the ordering of protective surveillance.

Under section 68 (1) of the StGB, the court may order protective surveillance if the formal and material conditions specified in the statute are met. Formal conditions include the condition that the law explicitly allows for ordering protective surveillance for the convicted crime. In addition, the offender must be sentenced to at least 6 months' imprisonment. Protective surveillance is thus focused on moderate and more serious crime - mainly sexual and violent crimes.[62] The presumption that the convicted person will continue to commit the crime is a material condition for a protective surveillance order.[63] *Ex lege* conditions of the protective surveillance order are set out in section 68 (2) of the StGB,[64] which refers to exhaustively listed cases. By orders,[65] the court authoritatively supervises the life of the convicted person during protective surveillance. Their role is to contribute to the fulfilment of the preventive and resocialisation function of protective surveillance, while not serving as a means of satisfaction or as a secondary sanction. The law divides orders into two categories. The first[66] is an exhaustive enumeration of orders and non-compliance with them is classified as a criminal

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58 BRÄUCHLE, A. – KINZIG, J. *Die elektronische Aufenthaltsüberwachung im Rahmen der Führungsaufsicht*. Universität Tübingen, Juristische Fakultät, Institut für Kriminologie, 2016. Available at [cit. 18.2.2021]: https://www.bmjv.de/SharedDocs/Downloads/DE/PDF/BereichMinisterium/Kurzbericht_elektronische_Aufenthaltsueberwachung_im_Rahmen_der_Fuehrungsaufsicht.html. For the sake of completeness, there are other empirical studies on electronic monitoring that have been carried out in some federal states as part of pilot projects on electronic-supervised house arrest. These are Hesse, Baden-Württemberg and Bavaria. For a summary of the results of these projects, see e.g. WALSCH, M. – PNIEWSKI, B. – KOBER, M. – ARMBORST, A. (hrsg). *Evidenzorientierte Kriminalprävention in Deutschland*, pp. 629–632. See in more details the works in footnote no. 55 above.

59 Orders (section 68b of the StGB) are similar to Slovak "restrictions and obligations" according to section 51 paragraphs 3 and 4 of the Criminal Code.

60 Provided for in section 68 et seq. of the StGB as *Führungsaufsicht.* This institute functionally corresponds to the Slovak understanding of protective surveillance according to sections 76 to 80 of the Criminal Code.

61 MEIER, B. D. *Strafrechtliche Sanktionen*, p. 296.

62 Ibid., p. 299.

63 Section 68 paragraph 1 of the StGB.

64 These are e.g. serving a sentence in full (section 68f of the StGB), conditional release from the exercise of a protective measure restricting personal liberty (sections 67b, 67c, 67d para. 2 of the StGB), release from the so-called security protection (free translation of the *Sicherungsverwahrung* pursuant to section 67d (3) of the StGB; this institute most closely resembles Slovak detention in terms of the intensity of the interference with personal liberty) and other institutes (section 67d para. 4 to 6 of the StGB).

65 Section 68b paragraphs 1 and 2 of the StGB.

66 Section 68b paragraph 1 StGB.

offense, if other requirements are met.[67] The second group of orders[68] is characterized by a demonstrative enumeration and their violation is not associated with criminal liability. Electronic monitoring falls into the first category of orders. The primary precondition for such order is that the court has imposed an order on the convicted person which in some way restricts his/her movement.[69] Electronic monitoring then ensures control over compliance with such an order. Pursuant to the legal text, the court may therefore order the convicted person to have the technical means necessary for electronic surveillance of his/her stay and movement and to keep them in working order at all times and not endanger their functionality.[70] However, the issuance of this order is subject to the fulfilment of relatively demanding conditions.[71] The legislator deliberately did not specify the means by which electronic monitoring should be carried out. He wanted to avoid having to amend the legal text after every technological innovation that began to be used in monitoring.[72] He even explicitly calls for the supervision of technological progress and the takeover of modern developments, if they contribute to the streamlining of electronic monitoring.[73] At present, electronic monitoring is provided by the so-called two-part system. The person concerned wears two devices on the body - one on the ankle and the other on the hips. The ankle bracelet transmits a position signal of the wearer based on GPS ("Global Positioning System") and a mobile transmitter. The addition of a GPS mobile transmitter is intended to ensure that the position can be determined even in places where the GPS signal does not reach - e.g. in undergrounds. The bracelet cannot be manipulated, nor can it be removed without destroying it. The device on the hips (so called the "Personal Tracking Unit" – PTU) is also worn by the wearer continuously, but he/she puts it to a separate station whenever he/she is at home. The federal-wide electronic monitoring control centre is located in the state of Hesse (the city of Bad Vilbel). Prior to the start of electronic monitoring, geographical data on the places where the person concerned has either been ordered to stay or prohibited from staying shall be entered into a database at this centre. During electronic monitoring, the bracelet sends regular signals to the centre. Exact data on the location of the bearer are not transmitted only from his/her home. The collection of data on the specific position of the bearer in his/her household is perceived as a disproportionate and in fact unnecessary interference with the private sphere. The interruption of the transmission of specific data on the position of the wearer at a time when he/she is at home technically allows the above-mentioned device on the hips - the PTU. Placing it in a designated station in the home actually cancels the transmission of the GPS position. The control centre thus only has information on the fact that the subject is at home. As soon as the wearer enters the forbidden zone, or leaves the zone ordered, starts to damage or manipulate the bracelet, or its battery runs out, an alarm is triggered in the control centre. At the same time, the bracelet on the foot begins to vibrate. The holder is contacted and notified that he/she is violating the court order and for what reasons. If the carrier cannot be contacted or, after being warned, continues to violate the order, police units will be called to him/her.[74] It is certainly worth noting that the number of EM cases first increased rapidly.

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67 Violation of the order during protective surveillance according to section 145a of the StGB.

68 Section 68b paragraph 2 of the StGB.

69 It regards order under section 68b paragraphs 1 nos. 1 a 2.

70 Section 68b paragraph 1 no. 12 of the StGB.

71 Section 68b paragraph 1 no. 12 of the StGB, conditions set forth under numbers 1 to 4.

72 BT-drucks. 17/3403, p. 35.

73 Ibid., p. 36.

74 MEIER, B. D. *Strafrechtliche Sanktionen,* s. 303; KAISER, A. *Auf Schritt und Tritt – die elektronische Aufenthaltsüberwachung,* p. 95 et seq.; GROß, K. H. – RUDERICH, D. § 68b, margin number 24 et seq. In: V. HEINTSCHEL-HEINEGG, B. (hrsg). *Münchener Kommentar zum Strafgesetzbuch*; WALSCH, M. – PNIEWSKI, B. – KOBER, M. – ARMBORST, A. (hrsg). *Evidenzorientierte Kriminalprävention in Deutschland.* Wiesbaden: Springer, 2018, p. 624 et seq.

Recently, however, the ordering of electronic monitoring has stabilized and in 2016, only 76 persons had an EM ordered throughout Germany.[75]

2. Slovakia

Similar to the community service punishment, the house arrest punishment was introduced into the legal order of the Slovak Republic on 1 January 2006, when the Criminal Code entered into force. This type of house arrest is called the so-called "Front-end" type, which can undoubtedly be considered as an alternative punishment to imprisonment. The option of an alternative in relation to imprisonment can be deduced from section 34 (7) of the Criminal Code, according to which a sentence of house arrest and a sentence of imprisonment may not be imposed side by side. It can be stated that, from the moment of its introduction into the legal order of the Slovak Republic, the legal regulation of house arrest has undergone, in contrast to the punishment of community service, significant changes. The legal regulation of house arrest is found in section 53 of the Criminal Code and its execution is regulated in section 435 of Act no. 301/2005 Coll. Criminal Procedure Code (hereinafter referred to as the "Criminal Procedure Code"), which can be considered as the basic normative regulation of this type of alternative punishment. The original regulation in the Criminal Code allowed the court to impose a house arrest sentence of up to two years on the offender. Pursuant to section 34 (6) second sentence of the Criminal Code, according to which for a crime whose upper limit of the penalty of imprisonment set in a special part of the statute exceeds five years, the court must impose a sentence of imprisonment, thus limiting the imposition of house arrest to the category of crime - offense with a maximum penalty not exceeding five years.[76] From the beginning, the sentence of house arrest was presented as an effective tool for relieving overcrowded prisons, a means of better social inclusion of convicts and reducing recidivism. The fact that the execution of a sentence of house arrest is a cheaper alternative to the state budget itself in comparison with the unconditional execution of a sentence of imprisonment cannot be overlooked either.[77] The house arrest punishment has been imposed a total of 278 times since its introduction into the Slovak legal order, i.e., from 2006 to 2015. In 2006 6 times, in 2007 25 times, in 2008 28 times, in 2009 51 times, in 2010 59 times, in 2011 28 times, in 2012 25 times, in in 2013 21 times, in 2014 17 times, and in 2015 18 times. Over the years, the imposition of house arrest represents only 0.1% of the total number of convictions, which clearly cannot be considered a success in meeting the above-mentioned goal in relation to the introduction of house arrest.[78] Most experts considered the reluctance of judges to impose this type of sentence as the reasons for this situation, but the most serious reason was the method of controlling the execution of the house arrest itself, which was exclusively directed by probation and mediation officers who performed this control in person, outside working hours, and thus the adoption of legislation on an electronic monitoring system, which should generally facilitate the execution and control of house arrest itself, was considered a key issue. The efforts of the Ministry of Justice of the Slovak Republic resulted in the adoption of Act no. 78/2015 Coll. on the control of the execution of certain decisions by technical means, which was to solve this problem and create

[75] BRÄUCHLE, A. – KINZIG, J. *Die elektronische Aufenthaltsüberwachung im Rahmen der Führungsaufsicht,* pp. 3–5. However, there were huge differences between the practices of the individual federal states. E.g. Bavaria alone registered 45 people with EM. In contrast, Bandenburg, Bremen and Saxony-Anhalt did not register a single person with EM.

[76] See in more detail section 53 para. 1 of the Criminal Code and section 34 para. 6 of the Criminal Code.

[77] "The annual cost of a convicted person in prison is approximately EUR 15,000, while the cost of a convicted person under house arrest is approximately EUR 500 per year."

[78] Statistical data available at www.justice.gov.sk.

real conditions for the introduction of electronic monitoring of persons.[79] The Electronic Monitoring Services of Accused and Convicted Persons Project (hereinafter referred to as the "EMSAC") was put into operation on 1 January 2016. The main reason for implementing the EMSAC project was the commitment of the Ministry of Justice of the Slovak Republic defined by the Program Statement of the Slovak Republic 2012-2014 according to which the Ministry was to pay special attention to the possibilities of imposing alternative punishments and increased emphasis on crime prevention. However, in practice since 2016, i.e., from the effective date of the law until 2018, the sentence of house arrest was actually imposed a total of 57 times. In 2016 23 times,[80] in 2017 only 14 times and in 2018 only 20 times, which means that the percentage of house arrest in relation to the total number of convicts remains unchanged. The cited statistics also show that even the introduction of the possibility of using an electronic monitoring system was not a reason for courts to impose house arrest compared to previous years. Due to the economic and personal workload of Slovak prisons, several experts called for a change in the possibility of imposing a house arrest also in the categories of offenses committed due to negligence, with an upper limit exceeding five years.[81] This situation was also to address the possibility of expanding the use of control by electronic means - the EMSAC program, which is an immanent part of house arrest. The idea of the Ministry of Justice of the Slovak Republic of expanding the legal regulation of the use of technical means, including support for the imposition of house arrest, progressed in such manner that at the 152nd session of the Government of the Slovak Republic it submitted a bill amending the Criminal Code.[82] Following this, the substantive regulation of house arrest logically changed too. At present, the provision of section 53 (1) of the Criminal Code regulates the conditions for the imposition of house arrest punishment, according to which a court may impose a sentence of house arrest on the offender of a criminal offense for up to four years. With reference to the division of criminal offenses, on the basis of the criterion of seriousness for offenses and crimes, the Criminal Code precisely defines in the provision of section 53 (2), that the court may impose a sentence of house arrest for an offense with an upper limit of the penalty provided by this Act not exceeding 10 years, but at least at the lower limit of the punishment of imprisonment established by this Act.[83] It is therefore clear from that provision that house arrest punishment may be imposed also for crimes. Another condition that forms the essence of house arrest is a written promise by the offender, in which the offender declares that he/she will stay in the residence at the specified address at a specified time and will provide the necessary cooperation in the exercise of control. The last obligatory condition for the imposition of this type of sentence is the fulfilment of the conditions for the exercise of control by technical means, which are examined by the court before the decision on the imposition of a sentence of house arrest. With reference to the legal regulation, it is necessary for the court, when imposing this type of sentence, to define precisely the period for which the convicted person will stay in the residence[84] and to state the exact place of execution of this type of sentence. The entire course

[79] KLÁTIK, J. – HRUŠKA, R. – ŽUFFA, M. Elektronické náramky pre odsúdených páchateľov. In: Sekcia verejného práva. *Zborník z II. ročníka medzinárodnej vedeckej konferencie Banskobystrické zámocké dni práva*. Banská Bystrica: Belianum, 2017, p. 75.

[80] For the first time, a sentence of house arrest was imposed, together with the possibility of using electronic monitoring, for the attempted crime of injury to health together with the crime of rioting, by the District Court Martin on 13 January 2016.

[81] KLÁTIK, J. Posilnenie ochrany obetí domáceho násilia elektronickým monitoringom osôb. In: *Kriminologické možnosti riešenia domáceho násilia*. Bratislava: Wolters Kluwer, 2017.

[82] Explanatory memorandum available at [cit. 18.2.2021]: https://rokovania.gov.sk/RVL/Material/23719/1.

[83] This modification was done by amendment no. 214/2019 Coll., by which Act no. 300/2005 Coll. Criminal Code was modified and amended and by which certain laws have been modified and amended, in force as of 1 August 2019.

[84] Pursuant to section 122 para. 5 of the Criminal Code, according to which a dwelling is a house, flat and other premises used for housing, as well as premises and land belonging to them, which, however, must be closed as a part of the dwelling.

and control of the execution of a sentence of house arrest is performed by the probation and mediation officer, who also controls the fulfilment of restrictions and obligations that can be imposed on this type of sentence in accordance with section 51 (3) and (4) of the Criminal Code. If the convicted person fails to comply with the obligations imposed by the judgment and the restrictions arising from the sentence of house arrest, the court shall convert the sentence of house arrest or the rest of it into an unconditional sentence of imprisonment. The Criminal Code determines in section 53 (6) the method of conversion, where the court decides by a resolution in a public hearing, after questioning the convicted person. The court converts a sentence of house arrest into an unconditional sentence of imprisonment in a ratio of 1:1, which in practice means that one day of failed house arrest is equal to one day of imprisonment and the court must also decide on the manner of its execution.

Undoubtedly, in the conditions of the Slovak Republic, an alternative punishment in the form of a house arrest, especially since 2016, is closely connected with the use of the institute of electronic monitoring. The reason for strengthening this institute was the amendment to the Criminal Code effective from 1 January 2016, when section 65a of the Criminal Code enshrined the institute of converting the remainder of unconditional imprisonment into house arrest, which is considered another type of house arrest, also referred to as the "Back-end" type.[85] It can be considered as an alternative to conditional release from imprisonment. The essence of the "Back-end" type of house arrest is that the offender is sentenced to an unconditional sentence of imprisonment and, after serving a certain part of it, the rest of the unexecuted sentence is converted into a sentence of house arrest.[86] This option was used in 2016 - 2 convicts, in 2017 - 7 convicts and in 2018 a total of 10 convicts. These figures also indicate that the use of the institute in question has not been very popular. It can be stated that the possibilities of using the institute of electronic monitoring are connected with other alternatives of its use in criminal law.[87]

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[85] The conditions for imposing this type of punishment are regulated by Section 65a of the Criminal Code.

[86] TÓTHOVÁ, V. – FERENČÍKOVÁ, S. Innovation in criminal policy of imposing alternative sanctions in Slovak republic. In: *Zborník príspevkov z medzinárodnej vedeckej konferencie „CBU International Conference Proceedings".* Praha 2019.

[87] In connection with the existing technical possibilities of controlling the conditional release from serving a sentence, there was a deviation from the previous concept of conditional release from 1 January 2019. Act no. 321/2018 Coll., amending and supplementing Act no. 550/2003 Coll. on Probation and Mediation Officers and on Amendments to Certain Acts, as amended, and Amending Certain Acts, the legislator amended section 66 para. 1 of Act no. 300/2005 Coll. Criminal Code with a new letter c), which also with the introductory sentence of section 66 para. 1 reads: "A court may release a convicted person on parole if the convicted person serving his or her sentence has proved improvement by performing his or her duties and behaviour and may be expected to lead a decent life in the future, and if he or she is a person convicted of a crime who has not been before committing a criminal offense in the execution of a custodial sentence after serving one half of the unconditional sentence of imprisonment imposed or by a reduced unconditional custodial sentence by the decision of the President of the Slovak Republic; the court shall at the same time order the inspection by technical means." At the same time, the legislator supplemented the provision of section 415 of the Criminal Procedure Code with a new paragraph 2, which reads: "The court decides on the conditional release from imprisonment of a person convicted of a crime after serving half of it only on the proposal of the director of the penitentiary institution or the director of the penitentiary institution in which the sentence is served. "Prison History" as the assessed formal condition for conditional release, the exclusivity of the proposal of the director of the prison and the ordered technical inspection as a mandatory part of the conditional release created a new type of conditional release. With the aim of uniform application, the internal regulation of the prison, Order of the Minister of Justice of the Slovak Republic no. 15/2018 amending Order of the Minister of Justice of the Slovak Republic no. 16/2015 on the treatment of accused and convicted persons, as amended by Order of the Minister of Justice of the Slovak Republic no. 9/2016, which determined to the directors of the penitentiary institutes the basic criteria for assessing the concepts of "proving improvement of the convict" and "expectation of the convict's proper life after release", the obligation to file a petition for conditional release if the specified criteria are met fulfilling the conditions for carrying out inspections by technical means. The said internal regulation created the basic (minimum) preconditions for the use of the institute of conditional release with ordered technical control in the conditions of the prison, as it determines for which convicts the director of the penitentiary institute must submit a proposal for conditional release. However, it also does not restrict the director of the institute from the possibility to file a motion with other convicts. In 2019, the directors of the institutes sent a total of 143 motions for parole with the ordered control by technical means to the competent court,

IV. CONCLUSION

In German criminal law *de lege lata*, there is one alternative punishment in the true sense of the word and one quasi-alternative punishment. The first category includes a fine, and the second includes a punishment in the form of community service. Efforts to reform (also) alternative punishments can be seen around the turn of the millennium. While the drafts to change the law did not intend to significantly affect the legal regulation of fines, the opposite is true of the punishment in the form of community service. A common feature of virtually all drafts is the "promotion" of a sentence in the form of community service to the position of a primary sanction for unpaid fines, substituting a subsidiary sentence of imprisonment. Also the scholarship expressed agreement with the suggested feature. In other respects, the individual drafts differ in the approach to punishment in the form of community service in terms of classification into the main or other types of punishment, in the possibilities of imposing them, the method of execution, control and the consequences of non-compliance. This group of proposals usually met with a negative response from the professional public. It can therefore be stated that in Germany there has long been a relatively strong demand for the strengthening of punishment in the form of community service in the system of criminal sanctions, but so far no politically, legally and economically acceptable draft has been put in place that could be translated into law. Based on the above, it can be stated that the regulation of the community service punishment, as enshrined in the Criminal Code of the Slovak Republic, goes much further than in Germany. In the sense indicated in the article, perhaps the academia should consider the question of the effectiveness of the imposition of this type of sanction, given the fact that the capacity to impose this type of punishment undoubtedly has greater potential.[88] As already indicated, the possibility of imposing a community service punishment would not have to be completely ruled out for disabled offenders, as not every disability makes it impossible to serve a sentence of community service. It is clear that this issue is directly related to economic and personnel security, which should be an immanent part of addressing the issue of the possibility of expanding the imposition of this type of sanction.

As regards the sentence of house arrest, it is clear that German criminal law does not provide for this sanction. Although one could have the impression that house arrest might become a part of the German system of sanctions based on the relatively strong demand for its introduction in the late 1990s, a change in the governing coalition coupled with a turnaround in political will thwarted the initiative. The possibilities of using electronic monitoring, and all follow-up pilot projects, were launched in the last century. However, the fact cannot be overlooked that the very possibilities of using electronic monitoring in Germany cannot be confused with the very legislative regulation of the house arrest punishment, as we know it in our country. As stated in the article, Germany has so far not accepted the house arrest punishment as a separate sentence and still considers the use of electronic monitoring only as an order in the framework of protective surveillance. However, its regulation is conditional on the fulfilment of demanding conditions. Technically, electronic monitoring is carried by a two-part system. GPS and PTU technologies as well as mobile data are used to transmit carrier position data. This data is

while a total of 72 convicts were conditionally released in 2019 and another 34 convicts proceedings are still pending. 37 proposals of the directors of the institute were rejected for non-fulfilment of technical conditions or on the basis of a court decision for other reasons. For more details, see the ZVJS (prisons) statistical yearbook for 2019, available at www.zvjs.sk.

[88] Since the introduction of community service punishment after the recodification of the Criminal Code in 2005, it had an increasing tendency in the number of impositions until 2015. This statement is supported by the fact that the punishment of community service was imposed a total of 42 times in 2006 and in 2015, a total of up to 3037 times. Since 2016, the imposition of the punishment of community service has been declining rapidly, when in 2016 it was imposed in a total of 1599 cases, in 2017 only in 1393, and in 2018 it was only 834 cases.

received and processed by the federal centre in Hessen. Several entities participate in the implementation of electronic monitoring, in particular the police, probation surveillance, the protective surveillance station and selected medical staff. In detail, however, the implementation of electronic monitoring differs in the federal states. As mentioned, the most extensive study on practical experience with electronic monitoring was carried out between 2012 and 2015. Although its results can identify places in need of improvement, doubts about maintaining electronic monitoring have not been expressed. Based on the above, it can be stated that we are significantly further than Germany in terms of the legislative regulation of the house arrest punishment in the Criminal Code. In the conditions of the Slovak Republic, house arrest was still considered an alternative to short-term imprisonment, with the legislation in force before 1 August 2019. Since the new legislation on house arrest came into force, statistical indicators still indicate that no method of effective imposition of house arrest has been found in the Slovak Republic so far, and the related effective use of electronic monitoring itself. The question therefore remains whether the situation will change after the new legislation on house arrest, and whether statistics will actually increase in the number of house arrests using electronic monitoring, or the institute of electronic monitoring will be used for other alternatives in the indicated sense, e.g. in the institute of conditional release from imprisonment.

KEY WORDS
alternative punishments, house arrest, community service, comparison

KĽÚČOVÉ SLOVÁ
alternatívne tresty, trest domáceho väzenia, trest povinnej práce, komparácia

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CONTACT DETAILS OF THE AUTHORS

JUDr. Veronika Tóthová, PhD.
Assistant Professor
Pavol Jozef Šafárik University in Košice
Faculty of Law, Department of Criminal Law
Kováčska 26, 040 75 Košice, Slovakia
E-mail: veronika.perdukova@upjs.sk

Mgr. Ľuboslav Sisák
PhD. Candidate
Pavol Jozef Šafárik University in Košice
Faculty of Law, The Institute of International Law and European Law
Kováčska 26, 040 75 Košice, Slovakia
e-mail: luboslav.sisak@student.upjs.sk