

PROCEDURAL ACTIVITIES OF PROBATION AND MEDIATION OFFICERS IN THE EXECUTION OF HOME ARREST

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ABSTRACT

This article focuses on the process of the Institute of Probation and Mediation Officer in the execution of electronic monitoring of persons with special reference to house arrest. The content shall include, in particular, the way in which the ESMO Project is put into practice, its legal basis and the possibilities for using this Project. Particular attention is paid to the individual steps in the activities of the probation and mediation officer, which must be fulfilled to be the monitoring of the controlled person successful during this monitoring.

Keywords: Technology for Enforcement, Domestic Punishment, Preliminary Investigation Institute, Probation and Mediation Officer, Electronic Monitoring.

INTRODUCTION

Alternative sentences as punishments meaning an alternative, possibility to the imprisonment sentences have been applied in different legal systems since 1950's, at a time of significant political, economic and legal changes in European countries. These punishments allowed the criminal legal system to apply elements of justice with reference to the perpetrator and their unlawful conduct. Imposition of punishments not associated with imprisonment presumed awareness of the group of less disturbed offenders, respectively offenders convicted of minor offenses, or offenders who violated the law for the first time to "learn" from departing from moral and legal rules and to take advantage of the opportunity to return to the values of a civil society. This new legal opinion was a response to sociological and legal research, in which the unconditional imprisonment deepened the feeling of the sentenced people that the society is not interested in their destiny and most of them got back to the "path of crime" after serving their sentence. In our criminal system, financial penalties, forfeiture of assets, forfeiture, prohibition on activities, travel restrictions, expulsion and other punishments have been gradually included in the criminal codes, where the most imposed are the fine and the labour penalty (Scerba, 2011). The subject of this article is an analysis of the house arrest, which has undergone various changes in its short period since its introduction and its importance has been empowered especially by an effective element of its control using technical means applied to the Slovak criminal law system through the Personal Electronic Monitoring in order to achieve more effective enforcement of the penalties principles (Scerba, 2010).

Probation and mediation officers, whose competences and tasks are governed by criminal law, have an irreplaceable role in the control process by technical means, not only in terms of house arrest but also when controlling duties and restrictions imposed within Court decisions.

The author of this article therefore necessarily refers to the position of the probation and mediation officer within this control process, with particular attention to the institute of preliminary investigation preceded by the process of obtaining information about the convicted, the environment the sentence is to be served in so that the result of such investigation could serve as the base for an effective and enforceable Court decision. The institute of preliminary investigation is one of the activities of the probation and mediation officer through which the authors map in detail the preparation, course and implementation of the institute, with particular reference to the control over this kind of punishment using technical means.

Alternative Punishments and their Application in Criminal Law

Restorative justice, as a new concept of criminal justice, known as restoring justice, got to the forefront of legal interest in the early 1980s first in Canada and the United States, and later this principle also finds its place in European criminal codifications (Stefanik, 2008; Karabec, 2003). It is based on a new understanding of the concept of crime perceived as a social conflict between individuals or parties to the act, which can be resolved with an active participation of the parties to the conflict.

“The crime is primarily an attack against people and interpersonal relationships. The response to the offense may or may not take the form of punishment (Sotolar et al., 2000)”

It is a qualitatively new understanding of not only responsibility for dealing with the infringement, but also the effort to recover, restore disturbed values and relationships (Cehlar, 2013). It enables the society to understand the underlying causes of crime prevent them and delegate the responsibility to the parties for committing. The purpose of the sentence is regulated in S. 34(1) of the Criminal Code:

“A penalty serves the purpose of protecting the society from the perpetrator of crime by preventing him from continuing to commit crime, and creating conditions for his re-education with a view to making him lead a regular life and, at the same time, discouraging other persons from committing crime; moreover, a penalty expresses moral condemnation of the offender by the society”.

Imposing a custodial sentence is the most serious state interference in a personal integrity. Restoring criminal justice, as opposed to the traditionally repressive notion of forensic criminal justice, applies so-called alternatives to punishment.

The meaning of the word "*alternative*" suggests that it is an admission of choice between two options, admission of choice. Its connection with punishment specifies the admission of a choice between two sentences, namely between an alternative sentence and a sentence of imprisonment. The Institute of Alternative Punishment extends the scope to a judge to apply the principle of individual punishment while providing assurance that if the effectiveness of the alternative punishment imposed was frustrated by the perpetrator, the judge can restore the frustrated purpose by imposing a custodial sentence.

In this context, the Resolution 16 of Seventh United Nations Congress, Milan "*to reduce the prison population, an alternative to imprisonment and the social integration of perpetrators*", which includes the main idea of a new trend of imposing criminal sanctions, namely "*imposing a custodial sentence as the sanction of the last institution...*". The draft of the Guidelines on

Alternative Sentence of Imprisonment, drawn up in preparation for the Eight United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1991, highlights, in the introduction, that the alternative must not include any loss of liberty. Furthermore, the perpetrator must be able to comply with the conditions specified and the duration of the alternative sanction must be directly proportional to the offense and the length of the imprisonment that would otherwise be imposed.

The system of alternative sanctions assumes that a significant part of perpetrators is less disturbed and, by imposing an alternative punishment; they will be given a 'chance' to reconsider their attitude, behaviour and consequences of their actions. As a result of unconditional imprisonment, the perpetrator is forcibly taken out of their natural way of life, family or work environment, which can make it more difficult to return from the sentence back to the "*normal*" environment and restore the original social ties. The imposition of non-custodial sentences is understood as an expression of trust and an effort to help the perpetrators. With the first-time perpetrators, these are usually minor offenses, where the court should consider the suitability of imposing a custodial sentence and, depending on the circumstances of the case, choose to impose an alternative. The execution of the imprisonment brings with it the threat of so-called "*criminal infections*", especially in the case of perpetrators who cannot subsequently be put into regular life. From an originally "*normal*" perpetrator, staying in prison, they can become a person unable to live in a normal society and legally assure their life needs, lead a proper life since they "*learn*" how to live in prison conditions.

Substantive Conditions of the Application of the House Arrest

The idea of restricting the perpetrator's freedom to the place of their dwelling is as old as humanity itself. In history, we find many personalities who were imposed this kind of punishment as a substitute for imprisonment; for example, Galileo Galilei was sentenced to house arrest for his ideas in 1633; Napoleon Bonaparte was serving his house arrest on Saint Helena Island (Jelinek, 2010).

"It was used as a tool of repression or isolation against opponents of political regimes and later as a tool to reduce prisoners in prison and reduce the cost of their imprisonment" (Stern et al., 2010).

The idea of so-called restorative justice prefers the imposition of so-called alternative punishments, among which house arrest has its irreplaceable place. Its efforts to enter the legal system of the Slovak Republic was presented "*as an effective tool for relieving overcrowded prisons, a mean of better social inclusion of convicted and reducing recidivism*" (Centes, 2006). The sentence of house arrest was introduced into legal practice as one of the alternative sentences in 2006. However, application practice has shown that imposing this alternative is not expedient in terms of its feasibility. The low number of imposition of this sentence has not produced the expected effect and it has not been shown that its imposition has reduced the number of prisoners. There were several reasons for this, namely the increasing agenda of probation and mediation officers in the form of imposing other alternative sanctions (e.g. compulsory labour penalties), reducing the number of probation and mediation officers in individual courts, but mainly the lack of control of this sentence done by mediation officers

randomly, even outside working hours, with security risks (Roma settlements), without cooperation with the police, etc.

Only the recodification of criminal codes, effective as of 1 January 2016, did introduce the institute of control using technical means in relation to the criminal sanction of house arrest in our legal system. The applicable legislation defines the conditions of imposition of house arrest in the provision of S. 53 of the Criminal Code as:

“The court may impose home arrest for a period of up to two years on the offender of a minor offence if

- 1. In view of the nature and gravity of the offense committed, the person and the circumstances of the perpetrator are sufficient to impose such sentence;*
- 2. The perpetrator has given a written undertaking to stay in the dwelling at the specified address at a specified time and to provide the necessary assistance in executing the control;*
- 3. The conditions for control using technical means are fulfilled.”*

In accordance with the criminal codes, the court may impose a house arrest for “*an offense, i.e. a negligent or intentional offense for which this Act provides in particular for a maximum term of imprisonment of no more than five years*” (S. 10 of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended). The amendment to the Criminal Code introduced the possibility of imposing this type of punishment on a juvenile offender, which had not been possible before. It may be imposed for a period of up to one year, subject to the consent of his legal representative. This change can be considered positive, as the juvenile offender remains in a family environment where family members influence them, which may help to re-educate and re-socialize those (Dianiska et al., 2016).

“During the execution of home arrest, the convict shall be obliged, for the period of time determined by the court, to stay in their dwelling and premises adjacent thereto, lead a regular life and submit themselves to supervision by means of electronic monitoring devices (S. 53(2) of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended). During the execution of home arrest, the convict may leave their dwelling only upon previous consent given by a probation and mediation officer and only on the grounds of urgency and for the period no longer than necessary (S. 53(4) of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended)”

The house arrest could be imposed on the perpetrator for a shorter period of time, for a maximum of one year. In connection to house arrest, the recodification of the Criminal Codes changed the cases of violation of the restrictions or obligations resulting from this sentence. Until that amendment if a convicted person had failed to fulfil their obligations, the court changed their sentence into an unconditional imprisonment and two days of sentence not served equalled one day of the unconditional prison sentence; this amendment made the sentence not executed even stricter when one day of the house arrest sentence not executed is equal to one day of unconditional imprisonment. Where

“The convicted person fails to comply with the constraints or obligations arising from the house arrest or other restrictions imposed by the court, the court may change the house arrest into an unconditional imprisonment and one day of house arrest not executed is equal to one day of unconditional imprisonment (S. 53(5) of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended)”

Monitoring of the execution of the house arrest is governed by the Code of Criminal Procedure in S. 435, where the court shall order house arrest immediately after the judgment imposing the sentence becomes enforceable.

"The competent court for the enforcement of the decision imposing house arrest, including decisions and measures under S. 406, shall be the court with the jurisdiction the house arrest is to be executed in. As soon as the decision imposing the sentence of house arrest becomes enforceable, the President of the Chamber shall forthwith send one copy to the court in accordance with the previous sentence (S. 435(1) of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended)."

"At the same time, the court shall instruct the convicted person on the limitations and obligations arising from the sentence imposed and to the threat of changing that sentence into a custodial sentence. The monitoring of the execution of house arrest shall be carried out by a probation and mediation officer (S. 435(2) of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended)"

The monitoring consists of:

1. Using technical means in the execution of monitoring such punishment
2. Keeping documentation of all acts related to the monitoring
3. Evaluating the compliance with court-imposed reasonable restraints and obligations for the convict to lead a proper life
4. Examining the reasons for breaching the conditions of house arrest; and
5. Informing the court of such breach of the conditions of the execution of house arrest or failure to comply with appropriate restrictions and obligations, or failure to comply with the educational measures imposed on the juvenile by the court.

The course of the house arrest control is monitored by the appropriate probation and mediation officer in close cooperation with the operations centre which is "*communicating*" not only with the probation and mediation officer, but also the accused or convicted person. This process is described in detail in the Activation and Installation of Hardware Section. During the monitoring of house arrest, life situations may arise which must be immediately reported by the accused or convicted person to the probation and mediation officer or directly (e.g. outside working or working days) to the Ops Centre. These include e.g. obtaining documents, medical examinations, unexpected life events (funeral, hospitalization, etc.), when

"The probation and mediation officer may grant the convicted person upon their request exemptions from the sentence for the necessary time, however no longer than 48 hours (S. 435(6) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended)"

In case of circumstances and situations beyond 48 hours,

"The President of the Chamber may due to important reasons preventing proper execution of the sentence suspend the execution of house arrest for the necessary time (S. 435a(2) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended)".

Execution of house arrest is "*suspended by custodial sentence or execution of imprisonment sentence for another criminal case*" (S. 435a (1) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended). The time convict spent in custody or imprisonment by the convicted is not included in the time of the sentence (Klatik, 2014).

If the convicted person proves with their behaviour and the smooth execution of the monitoring of the sentence that the purpose of the sentence has been fulfilled:

“He/she they may apply for the waiver of the remainder of the sentence; and the court shall decide within 30 days (S. 435(4) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended)”

During the monitoring of house arrest, a probation and mediation officer may report to a judge or prosecutor a breach of house arrest or obligations and restrictions imposed by house arrest and

"With a resolution, the court changes this sentence or remainder of the sentence to an unconditional sentence of imprisonment during a public hearing; the convict must be heard before such decision (S. 435(3) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended)"

House Arrest within the European Union

The breakthrough period of the new concept of criminal justice has brought the possibility of imposing alternative sanctions in criminal law, but due to the various legal systems in the European Union, their use is considerably different. This also applies to the imposition and use of house arrest, the application of which was preceded by a pilot electronic monitoring aimed at testing the operation in practice. It included examining whether the costs incurred in carrying out such monitoring of the convicts would be relevant to the savings to be achieved by staying outside the institutions for imprisonment. House arrest has become an effective tool in reducing recidivism and limiting prison population in combination with elements of social re-education, not only as a means of isolating a socially dangerous person. As such, it certainly has its place in the system of alternative sanctions (Stern et al., 2010). The largest collaboration in the field of professional assistance in “introducing” probation and mediation institutes in the Slovak Republic was provided by the Czech Republic, where the pilot programs were implemented for a much longer period of time. House arrest was legally established in their legal system by the Act No. 40/2009 Coll. amended on 01/01/2010. In the Czech Republic, electronic monitoring of persons was launched in cooperation with the Probation and Mediation Service of the Czech Republic together with the Ministry of Justice of the Czech Republic on 01/08/2012. The pilot program enrolled 47 persons and its successful testing confirmed the financial return of the costs incurred compared to the stay of one convicted in prison. In the long run, this kind of punishment should bring considerable savings; solve the problems of overcrowded prisons and lack of funds in the judiciary (Klatik, 2017).

Monitoring of house arrest is entrusted to a probation officer of the Probation and Mediation Service of the Czech Republic, which, unlike in the Slovak Republic, has an independent institutionalized position and the probation officer is functionally independent of the mediation officer. The probation officer carries out random checks at the convict's place of residence, which is obliged to stay at the place of dwelling stipulated by the court and to allow the probation officer to enter the dwelling. Random checks are complemented by consultations with the convict at the Probation and Mediation Service, where the probation officer assists the convict in resolving their problems by providing professional assistance and counselling in order

to direct the convict to a proper way of conducting their lives¹. House arrest in the Czech Republic has been used very little since its introduction and, as in the Slovak Republic; the problem is its ineffective mean of monitoring. The judges refrained from imposing such sentences due to the problems with their execution and probation officers did not have sufficient time for such monitoring and their role was limited to monitor the presence of the person in the dwelling and not to help the perpetrator, thus the importance of probation was diminishing. This leads to a general consensus that the introduction of monitoring using electronic devices is the only truly effective and efficient way (Derks, 2002). In the Republic of Poland, house arrest has been regulated in the Criminal Code since 1 September 2009 and its legal conditions are almost identical to the legal systems of the Slovak and Czech Republic. Initially, it was applied only in Warsaw; later since 2012, it is applied across the country. A special feature of this law is that after its amendment in 2010, this kind of punishment could be imposed on a recidivist and its duration could be more than 6 months².

In other European countries, such as Austria, Belgium, England, Denmark, France, Sweden, house arrest is a part of their legal codes, although the execution of this kind of punishment varies considerably. Electronic monitoring as effective punishment control is currently in various stages of preparation in these countries. In Sweden, for example, the use of electronic monitoring has been extended also to victims of crime, as it is applied in the Slovak Republic.

The introduction of electronic monitoring is an inherent element of the future use of house arrest in Europe. Some European countries are at various stages of preparing or launching this modern monitoring technology. Radio frequency technology, GPS tracking, voice verification and remote alcohol consumption verification is used mostly.

The legal regulation of changing the remaining imprisonment into house arrest assumes that the general conditions for imposing house arrest under S. 53 of the Criminal Code are fulfilled, namely: the act committed is an offense; house arrest is sufficient with regard to subjective circumstances of the perpetrator as well as with regard to objective circumstances of the act committed; the perpetrator bounded themselves in writing to stay in the dwelling and comply with all the conditions and the conditions of electronic monitoring according to the Monitoring Act are fulfilled (The Act No. 78/2015 Coll. on Controlling the enforcement of some of the decision using technical means and on changes and amendments to some laws).

The provision of S. 65a of the Criminal Code completes another material condition, and that is the demonstration of positive personality changes with respect to the convict's behaviour and the fulfilment of the obligations imposed. In our opinion, the 5 remaining formal conditions under S. 65a of the Criminal Code are particularly restrictive, which can be summarized as follows:

“The convicted served one third of the sentence imposed or moderated sentence of imprisonment granted by the President of the Slovak Republic”

“The remaining part of imprisonment shall not exceed two years”

“It is not the execution of a sentence ordered after a decision on failing to comply with a probationary period determined in the case of conditional suspension of the execution of imprisonment; conditional suspension of the sentence with probation supervision; execution of the remaining sentence

ordered following the decision of failing to comply within the trial period in case of conditional discharge from imprisonment”

“House arrest has not been changed into a sentence of imprisonment;” and

“The convict had not been sentenced to imprisonment before committing a criminal offense (S. 65a of the Act No. 300/2005 Coll. on Criminal Code, as subsequently amended)”

A petition to change the remainder of the prison sentence into house arrest shall be submitted to the competent court by the Director of a Correctional Institution in case of a perpetrator who:

1. Meets formal conditions set out in the separate regulation
2. Is placed in an A or B differentiation group with the appropriate level of guarding, in a special section, in a section of convicts with disabilities or, in the case of juveniles, in a differentiation group with a reduced regime, a differentiation group with a basic regime or was placed in a section with specialized treatment
3. Has no covered disciplinary penalty recorded
4. Remaining part the imprisonment is more than 60 days
5. Demonstrably agrees to the change of the remainder of the custodial sentence into house arrest.

The court must decide on the application of the Director of the Institute within 60 days at a public hearing where the convict must be heard.

“The convicted person is obliged to see the probation and mediation officer stipulated by the court or at the competent District Court, house arrest is to be executed under, in order to execute house arrest within 24 hours following their discharge from imprisonment (S. 414a (5) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended)”

When applying the use of the above-mentioned legal provision:

“The absence of consent of the convicted person to the change has become an obstacle to the submission of motions for changing the rest of the prison sentence into house arrest. At first glance, this is an attractive possibility of an early completion of imprisonment, which in practice remains unused, as the reasons for disagreement are poor social conditions after being released from prison, the need to find employment or calculate with the approaching date of conditional release when it is better to remain in execution of the sentence for several months longer and subsequently to be released without restriction than to be immediately released under house arrest, subject to significant restrictions which are not subsequently discharged by conditional release”(Foltynova & Foltyn, 2011).

Electronic Monitoring of Persons

The issue of electronic monitoring is preceded by the Recommendation CM/Rec (2014) of the Committee of Ministers of the Member States on Electronic Monitoring, issued by the Council of Europe and adopted by the Committee of Ministers on 19/02/2014. The statute of the Council of Europe declared the aim of greater unity among the EU Member States with a view to develop international cooperation in the field of enforcement of criminal sanctions, with cooperation in this area contributing to ensuring fairness and purposeful execution of criminal and legal sanctions so that human rights of the perpetrators would be respected leading effectively to reducing criminal activities.

The deprivation of liberty in the perception of criminal responsibility for the conduct of the perpetrators should be the last possibility of re-education. The increase in the prison population is becoming a risk of detention, which is not in line with Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as underlined in the relevant case-law of the European Court of Human Rights. Attention is drawn to the efforts of less disturbed perpetrators to involve them in effective and economically efficient work for society.

Electronic monitoring used in criminal proceedings should be a tool to eliminate overcrowded prisons and to prevent crime. With proper use, it is intended to help mitigate the negative impact on private and professional life of the electronically monitored person, as well as their immediate surroundings. Electronic monitoring as a whole is an opportunity for the perpetrators not to be taken into custody or sentenced to unconditional imprisonment in cases where the law allows for this alternative. This opportunity is also created so that they can continue to work, maintain their family economically, keep their social ties, etc. by their own responsible and not criminogenic behaviour.

In order to take an advantage of these objectives, it was necessary to stipulate a number of rules for putting electronic monitoring into practice to introduce it into the legislation, policy and legal practice of individual EU Member States. It was necessary to develop ethical and professional standards to make effective use of electronic monitoring and for this purpose to pass guidelines to be "*adopted*" by judges, prosecutors, corrective institutions, police and, last but not least, correctly applied by probation and mediation officials.

The introduction of electronic monitoring into the Slovak legal system was preceded by a pilot project-the Electronic Monitoring System for Persons, known as the "*ESMO*", implemented by the Ministry of Justice in 2013. Its aim was to implement the intentions of criminal recodification, which introduced the institute of monitoring using technical means into the legal system of the Slovak Republic as of 01/01/2016 in connection with house arrest, which until then had been used as minimum. The aim of the ESMO project was to create new legislation in connection with its practical application, to establish a supervisory centre (operational centre) of electronic monitoring of persons, as well as of monitored equipment. Last but not least, it was important to build an integrated information system that would make the work of probation and mediation officials more effective. The aim of the ESMO Project was to introduce electronic monitoring not only in the criminal but also in the non-criminal-civilian area.

In the area of crime, electronic monitoring should primarily focus on the control during the house arrest, ban on residence, prohibition to enter (into an object, in contact with protected persons), ban on the use of alcoholic beverages. The types of monitoring that were part of the ESMO Project but were not used for practical purposes (e.g. due to the unavailability of GSM or GPS coverage) were voice monitoring and discrete control. In civil proceedings, its use was aimed at protecting victims of domestic violence in case of an interim injunction ordering a party to the proceeding the prohibition to enter into the dwelling or in contact with a designated person.

Currently, electronic monitoring is used in criminal proceedings, namely:

1. To control the execution of imposed sentences;
2. House arrest;
3. Punishment of the ban on residence;
4. Punishment of the ban on participation in public events;

5. To control the observance of adequate obligations and restrictions in the framework of protective supervision, conditional suspension of imprisonment, conditional release from imprisonment, conditional cessation of criminal prosecution, imposed punishment.

Electronic monitoring has been applied under the legal system of the Slovak Republic since 1 January 2016 by the adoption of the Act No. 78/2015 Collection of Laws on Control of Enforcement of Certain Decisions using Technical Means and on Amendments to Certain Acts. Its adoption was exhaustively determined in the framework of criminal and civil law, when and under what conditions it is possible to order electronic monitoring, especially for monitored persons and especially for protected persons. In its statutory provisions, it also stipulates the possibility of using technical means at the place of execution of an unconditional imprisonment for the purpose of monitoring the convicts, which is carried out directly by the Prison and Judicial Guard Corps.

The regime for using technical means shall be determined by a probation and mediation officer under court order or prosecutor's order to ensure the proper exercise of monitoring by technical means (S. 16 of the Act No. 78/2015 Coll. on Controlling the enforcement of some of the decision using technical means and on changes and amendments to some laws).

Status of Probation and Mediation Officer in Criminal Law

The probation and mediation officer has a special position in the criminal law system, the bases of which were laid down in the bill on probation and mediation officers and on amendments to certain laws and were created throughout the legislative process as a priority legislative role of the Slovak Government for 2003 resulting from the regular Report of the European Commission and the Slovak Republic's Preparedness for the EU Membership of 09/10/2002. In that year, the Ministry of Justice launched a pilot project of the probation and mediation service in preparation for the adoption of the Act on probation and mediation officers. The bill envisaged the establishment of an institute of probation and mediation officer, including their status, operation, rights and competences. Together with the Probation and Mediation Officers Act, the National Council of the Slovak Republic adopted the Act on Judicial Officers, under which probation and mediation officers (together with senior judicial officers and a court secretaries) became a part of the professional apparatus in the courts. The bill was prepared by the Criminal Law Section and submitted to the legislative process in April 2003. Following discussion by the Legislative Council of the Government and the Government of the Slovak Republic, it was approved by the National Council of the Slovak Republic on 28 October 2003.

"The probation and mediation officer shall carry out the tasks of probation and mediation imposed by the court or any other competent authority and any other tasks provided for in this Act or in a separate Act (S. 25(1) of the Act No. 301/2005 Coll. on Code of Criminal Procedure, as subsequently amended)."

The probation and mediation officer is a specialist with specific competencies whose expertise includes not only knowledge of law but also social, psychological, communication and similar expertise due to close personal contact with the perpetrators and their victims (the damaged). Their status, operation, rights and competences are governed by the Act on Probation and Mediation Officers and on the amendment of certain laws of 28 October 2003, entering into force on 1 January 2004.

Functionally, the performance of the probation and mediation officer is divided into two areas, namely mediation and probation. For the purposes of this Act:

Probation

1. The control, organization and execution of probation programs for the accused, convicted or sentenced persons, which include obligations and restrictions (hereinafter referred to as the "accused").
2. The control of the sentences or restrictions imposed, which include probation or protective supervision.
3. Activities related to the provision of preliminary investigation of the accused.
4. Organization, coordination and execution of the sentence of compulsory labour and the sentence of house arrest.
5. Supervision of the accused's behaviour, if technical means are used to protect and strengthen probation.
6. Assisting the victims in case of a prohibition to enter in contact with or to stay near the victim's dwelling.
7. Assisting the accused, in the context of probation, to lead a proper life and to comply with the conditions imposed by a prosecutor or a court in criminal proceedings.

Mediation

The out-of-court mediation of settlement of disputes between the damaged and the accused (S. 4(1a, b) of the Probation and Mediation Officers Act No. 550/2003 Coll., as subsequently amended).

Mediation is used as an alternative method of criminal proceedings, in particular for the elimination of harmful consequences caused by a crime, especially when concluding an agreement on damages in case of conditional stay of criminal prosecution according to S. 216 of the Criminal Code or the conclusion of the conciliation agreement pursuant to S. 220 to S. 227 of the Criminal Code. Regarding the person of the probation and mediation officer, this is a specific sensitive and impartial attitude of the mediator.

The basis of the probation work is a restrictive monitoring of the obligations and restrictions imposed by court or prosecutor's decisions in the form of probation supervision of the accused or convicted, but also psychosocial assistance for the perpetrators, their motivation or professional guidance in eliminating their harmful habits and addictions (e.g. drug addiction, alcoholism).

"The probation and mediation officer shall assist to deal with the criminal case (where appropriate, in one of the specific forms of criminal proceedings) or that a non-custodial sentence may be imposed and properly executed or that custody can be replaced by another appropriate measure. For this purpose, the probation and officer shall

1. Procures documents relating to the person accused on their family, social and work environment;
2. Establish conditions for a decision to suspend the prosecution or to approve the conciliation;
3. Carry out any acts to conclude an agreement between the aggrieved party and the accused on compensation for the damage caused by the crime or for the purpose of eliminating the damage caused by the crime;
4. Supervise the conduct of the accused during the probationary period and control the execution of non-custodial sentences;
5. Perform any other acts in criminal proceedings in the execution of probation and mediation (S. 3(1) of the Probation and Mediation Officers Act No. 550/2003 Coll., as subsequently amended)."

The activities of the probation and mediation officer are very extensive and diverse under the above-mentioned legal provision. It is defined by a written instruction of the President of the Chamber, a single judge and in the pre-trial proceedings of the prosecutor. The probation and mediation officer shall report to the people specified above on the outcome of their activities and make proposals for further action. Within their operation, the probation and mediation officer also closely cooperates with other criminal authorities and in cooperation with other state authorities or institutions.

"In connection with the performance of probation and mediation, the probation and mediation officer shall be entitled to address State authorities, municipalities, other legal entities and natural persons with a request to provide the necessary data. These persons are obliged to comply with the request of the probation and mediation officer without undue delay. The probation and mediation officer shall, for the purpose of providing assistance from the Police Corps, be in charge of the enforcement of the court's decision (S. 4(2) of the Probation and Mediation Officers Act No. 550/2003 Coll., as subsequently amended)."

This position of probation and mediation officer also assumes the provision of protection in the performance of their activities within the meaning of the Act No. 171/1993 Coll. on the Police Corps.

Probation and Mediation Officer in Monitoring Process of House Arrest

Monitoring of the execution of house arrest is only one of the duties carried out by a probation and mediation officer on the basis of written instructions by a judge or prosecutor during court proceeding or prosecutor in the pre-trial proceedings. Prior to the introduction of electronic monitoring into criminal law, this kind of punishment was a part of the Criminal Code, but its control by probation and mediation officers without technical means was very problematic. Monitoring was limited to a random check of the convicted person, i.e. whether the person was in the dwelling or adjacent premises at the time of the probation and mediation officer's visit. This form of control proved to be ineffective over time and was considered one of the main reasons for not imposing this kind of punishment.

During the actual control of house arrest, the probation and mediation officer is the contact person between several units, both within the Ministry of Justice of the SR directly with the operational centre of the Ministry of Interior, but especially within the Ministry of Interior with individual units of the Police Force. This is a very specific and time-consuming part of the control where the probation and mediation officer must evaluate quickly information and respond flexibly to various changes in the control system. This is not only in relation to convicts, judges and prosecutors, but also in relation to the institutions mentioned above.

The implementation of the institute of preliminary investigation begins with the assignment of a new case upon court instructions considering the possibility of imposing this kind of punishment or the instruction of a prosecutor regarding the possibility of using the guilt and punishment agreement. The case is assigned electronically to the appropriate probation and mediation officer in the PMS System (Probation and Mediation Service) which is connected to the operations centre via a court register for technical control purposes.

In the case of a judicial order or a prosecutor's order leading toward preliminary investigation for the purpose on deciding on house arrest, two control regimes are possible:

A regime for monitoring the presence of the inspected person at a specified time and place using technical means:

1. Presence control equipment;
2. Personal identification device (bracelet);
3. Regime for controlling the compliance with the prohibition of alcohol - this type of regime is usually part of the imposition of house arrest, where the convicted person is also prohibited from consuming alcohol using technical means;
4. Alcohol consumption control equipment;
5. Personal identification device (wristband)-if two modes are established, only one personal identification device is sufficient.

"Where the examination of the fulfilment of the conditions for the enforcement of a judgment using technical means is carried out in the jurisdiction of the court whose judge instructed the execution, the instruction shall be immediately allocated to the probation and mediation officer of that court (S. 33b of the Decree of the Ministry of Justice of the Slovak Republic No. 543/2005 Coll. on Administrative and Office Code for Courts)"

Following a written instruction, which also stipulates a time limit for carrying out the preliminary investigation (usually within 10 days), the probation and mediation officer finds out basic information about the person accused-whether he is free, in custody or serving their service of imprisonment. The probation and mediation officer seeks to obtain as much preliminary information as possible about the family, social, occupational or health situation so they will know as much as necessary about the accused and such information will enable them to prepare additional questions when meeting the accused in person.

CONCLUSION

Regarding its development up to the present, house arrest as one of the most specific alternative punishments, which is a part of the Slovak criminal law, is probably one of the most punishments in the attention of general public, both lay and professional and academic. After the introduction of technical means into the system of monitoring house arrest, the requirements of judges and prosecutors were fulfilled, which was to ensure effective and purposeful monitoring of the sentence if imposed; however, with regards to the statistic results during electronic monitoring period and after this period, there have not been any major changes, rather the contrary. According to statistics provided by the Ministry of Justice of the Slovak Republic, house arrest was imposed on 17 persons in 2014, i.e. less than in 2011 prior to the launch of electronic monitoring, when it was imposed on 28 persons. During the following years, i.e. between 01/01/2016 and 25/01/2018, house arrest was imposed on 45 persons using technical means. To complete this, it should be noted that the technical means themselves are currently most used to control the obligations and restrictions imposed under probation surveillance as a substitute for custody-between 2016 and 25/01/2018 imposed in 105 cases. The highest number of house arrest for the given period is imposed in the Žilina Region-27 cases and in the Banská Bystrica Region-26 cases. In terms of the expediency of imposing this kind of alternative punishment, its usefulness and effectiveness, which is to be achieved by reducing the prison population and the occupancy of prisons, should also be highlighted. According to the latest statistics, provided that the accused, convicted and sentenced who have been monitored so far, in

other circumstances, could have been in custody or in prison (this cannot be precisely excluded), the state would save on the electronic monitoring of the convicts conducted so far in Slovakia € 678,342 in total between 01/01/2016 and 23/10/2017. Based on the calculation, since 1 January 2017 throughout the Slovak Republic, electronic monitoring was used for 16,275 days, while the costs of one convicted in custody or serving their sentence of imprisonment were €41.68 per day in 2016. It is also worth to consider the spending of funds for building new prison facilities at a time when the Slovak Republic has a high number of technical means and an expensive electronic system for controlling various types of punishments.

In addition to statistical indicators of imposition of house arrest, the Ministry of Justice of the Slovak Republic was interested in insufficient use of house arrest monitored by using technical means. The final report of the Supreme Audit Office of the Slovak Republic on control of the use of the Electronic Monitoring System of Accused and Convicted Persons in February 2017 shows that there was no expected benefit from the introduction of electronic monitoring for several reasons, namely in the legislation area due to late training of judges, prosecutors and probation and mediation officers, due to the malfunction and lack of time to 'test' the ESMO System in practice, but also to an excessive increase in the number of convicts who were to be eligible for monitoring. The final report also contains a number of recommendations for increasing the use of the ESMO System and the margins available in the field of court decision-making and the capacity of probation and mediation officers.

With house arrest, which was of interest to the authors, several data were gathered from probation and mediation officers regarding the use of technical means, who partially anticipated such a development in terms of the actual application of this kind of punishment in such conservative environment of criminal law and also due to lack of time for the pilot project. During the pilot project, the problems, probation and mediation officers came across as a part of their position, related to the cooperation with the Police Force of the Slovak Republic or the Prison and Judicial Guard Corps not governed for a long period of time, and their weak position and protection by the Probation and Mediation Officers Act which has not addressed their new position since 2015 in relation to the execution of house arrest monitoring. It should also be noted that probation and mediation officers, in addition to their professional experience, had to assume joint responsibility for the use of technical means in solving technical problems, such as installing and removing technical means, GPS signal search, technical equipment maintenance, detection of electrical wiring in controlled households, etc. Nevertheless, the probation and mediation officials themselves expressed their satisfaction with this form of the control of the sentences imposed.

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ENDNOTE

1. <https://www.pmscr.cz/trest-domaciho-vezeni/></ref>

2. <http://isap.sejm.gov./index.jsp>

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