Pre-Trial Detention and It's Alternatives in Lithuania, Estonia, Romania and Slovakia

Gintaras Švedas*
Justyna Levon**
DOI: https://doi.org/10.24040/sap.2023.10.4.189-209

Abstract:

ŠVEDAS, Gintaras – LEVON, Justyna: *Pre-Trial Detention and It's Alternatives in Lithuania, Estonia, Romania and Slovakia.* The article[1] deals with the regulation of grounds and duration of the pre-trial detention, as well as its alternative measures during pre-trial investigation stage in Estonian, Lithuanian, Romania and Slovak law. In addition, the article compares the available statistical data on the application of pre-trial detention and its alternative measures in the mentioned countries, as well as evaluates the significance of the trends of pre-trial detention and its alternative measures to the total number of imprisoned persons.

Key words:

Pre-trial detention; alternative measures; pre-trial investigation stage; Estonia; Lithuania; Romania; Slovakia

Introduction

Through the last 10 years Estonia and Lithuania (Baltic countries) made a noticeable step in decreasing the numbers of imprisoned persons. The number of incarcerated individuals in Estonia from 2012 to 2022 per 100,000 inhabitants decreased from 257 to 165 (i.e. by 36%); and in 2022 there were 2181 imprisoned persons.[2] In Lithuania, this rate during the same period decreased per 100,000 inhabitants from 334 prisoners to 191 (i.e. by 42.8%); and in 2022, there were 5086 imprisoned persons.[3] Meanwhile the results in Slovakia and Romania (Central Europe states) in the context of the Baltic countries seem quite different. The number of incarcerated persons in Slovakia from

* Gintaras Švedas, Vilnius university, Law faculty, Professor of Criminal Justice Department, Habilitated doctor of law. https://orcid.org/0000-0003-4238-3321

** Justyna Levon, Vilnius university, Law faculty, Docent of Criminal Justice Department, Doctor of Social (Law) Sciences. https://orcid.org/0000-0002-1270-5780

1 The article is written as part of the research project "Alternatives to imprisonment in post-Soviet states", which is financed by the Research Council of Lithuania (project funding agreement No. S-LL-21-6) under the funding program of joint research projects of Lithuania and Poland (DAINA-2) supported by the Council.

2 Aebi, M. F.; Cocco, E.; Molnar, L. Prison Populations SPACE I – 2022. 231027_SPACE-I_2022_FinalReport.pdf (unil.ch)

3 Aebi, M. F.; Cocco, E.; Molnar, L. Prison Populations SPACE I – 2022. 231027_SPACE-I_2022_FinalReport.pdf (unil.ch)

2012 to 2022 per 100.000 inhabitants decreased from 204 to 186 (i.e. only by 9%); and in 2022, there were 10,153 imprisoned individuals.[4] The number of incarcerated persons in Romania from 2012 to 2022 per 100,000 inhabitants decreased from 158 to 121 (i.e. by 23.8%); and in 2022, there were 23,010 imprisoned individuals.[5]

These results show that the number of imprisoned persons in Estonia and Lithuania during the ten-year period decrease is very similar and sufficiently significant. Meanwhile, in Romania (comparing with the Baltic countries), the decrease in the number of imprisoned persons is twice as low, and in Slovakia – as much as four times lower. The number of imprisoned persons is determined by various factors related not only to the imposition of imprisonment and arrest, but also to alternatives to a deprivation of liberty, conditional (early) release from imprisonment, etc. There is no doubt that the number of imprisoned persons is also affected by the application of provisional measures (especially pre-trial detention) during pre-trial investigation and trial stage. Pre-trial detention is the strictest provisional measure related to the deprivation of liberty. The application of such a measure during the pre-trial stage in a certain aspect affects the imposition of the deprivation of liberty punishment, because the time spent in pre-trial detention must be included in the imposed punishment. It is noteworthy that the application of pre-trial detention in the mentioned countries is also quite different, for example, in 2018, pre-trial detention was applied to 417 persons in Lithuania, 5900 – in Romania and 1124 – in Estonia, etc.

For some time now, various publications have analysed and compared the criminal policy of European countries in the area of alternatives to imprisonment, the prospects of prison overcrowding, etc.[6] It should be noted that the practice of Lithuania and Estonia in applying non-custodial sanctions is often analysed at the international level, compared to other jurisdictions.[7] On the other hand, a comparison of the regulation and application practice of the pre-trial detention and its alternatives in Baltic countries – Lithuania and Estonia with the practice of Central Europe states – Romania and Slovakia can be described as almost non-existent (or at least very rare).

The aim of this article is to compare the regulation of the pre-trial detention and its alternative measures in Lithuanian, Estonian, Romania and Slovak law. Authors ask if

4 Aebi, M. F.; Cocco, E.; Molnar, L. Prison Populations SPACE I – 2022. 231027_SPACE-I_2022_FinalReport.pdf (unil.ch)

5 Aebi, M. F.; Cocco, E.; Molnar, L. Prison Populations SPACE I – 2022. 231027_SPACE-I_2022_FinalReport.pdf (unil.ch)

6 FLORE, D. – BOSLY, S. – HONHON, A. – MAGGIO, J. (eds.). *Probation Measures and Alternative Sanctions in the European Union, Intersentia*, 2012; BERNARDI A. (ed.), MARTUFI A. (coord.). *Prison overcrowding and alternatives to detention.* European sources and national legal systems, Jovene Editore, 2016; HEARD, C. *Alternatives to imprisonment in Europe: a handbook of good practice.* Antigone Edizioni, 2016; McNEILL, F. – ROBINSON, G. *Community Punishment: European Perspectives.* London : Routledge, 2016; etc.

7 For example: ROFRIGUES, A. M. – ANTUNES, M. J. – FIDALGO, S. – PINTO, I. H. – ISHIY, K. T. *Promoting Non-Discriminatory Alternatives to Imprisonment across Europe. Non-custodial sanctions and measures in the member states of the European Union comparative report.* E-BOOK_COMPARATIVE_STUDY.pdf (prialteur.pt). Instituto Jurídico da Faculdade de Direito da Universidade de Coimbra | University of Coimbra, 2022; etc.

there is a common Baltic way towards the reduction of incarceration rates particularly in pre-trial stage and it is of different nature compared with the Central European states – Romania and Slovakia practice. "Alternatives to pre-trial detention" in this article are understood as measures alternative to a pre-trial detention such as house arrest, bail, electronic monitoring, etc. In addition, in the context of this article for the comparison of statistical data, the total population of the countries is important, which on January 1, 2022, in Lithuania amounted to 2,662,000, Romania – 19,031,000, Slovakia – 5,460,000 and Estonia – 1,322,000 persons.

The article has been prepared also using the data provided to the authors in the (not-published yet) national reports written by the professor Jaan Ginter (2023-02-03) on Estonian regulation, professor Libor Klimek (2023-01-16) on Slovakia regulation, and professor Sergiu Bogdan (2023-01-10) on Romania regulation in the context of the DAINA-2 project – Polish-Lithuanian funding initiative – "Alternatives to deprivation of liberty in the post-soviet countries" (2021-2024).

1. The grounds and time-limits for the pre-trial detention

Traditionally, Codes or laws on criminal procedure provide provisional measures, which must prevent a suspect or accused person from performing certain actions that would hinder the normal course of the procedure and establishing the truth, as well as from committing new criminal acts.[8] Pre-trial detention is the most severe provisional measure to be applied in pre-trial stage of the criminal procedure of Baltic countries – Estonia and Lithuania, and Central European states – Romania and Slovakia. It may be noted that pre-trial detention called differently in the states: detention in Lithuania and Slovakia, committal in custody – in Estonia, pre-trial arrest – Romania (hereinafter referred to as pre-trial detention). However, in all countries it means deprivation of liberty of the suspect or the accused.[9]

Deprivation of human liberty is generally governed by constitutional rules, for example Article 20 of the Constitution of Lithuania states that "no one may be arbitrarily apprehended or detained. No one may be deprived of his liberty otherwise than on the grounds and according to the procedures established by law."[10] Meanwhile, according to the Article 17(5) of the Constitution of the Slovak Republic, a person may be taken into a detention only for the reasons and for the time specified by law and on the basis of a court decision.[11] These constitutional provisions are detailed by

8 VINGILĖ, A. *Problematiniai kardomųjų priemonių taikymo aspektai. Mokslinių straipsnių rinkinys. Visuomenės saugumas ir viešoji tvarka*. 2013 (9), p. 309-325.

9 GODA, G. – KAZLAUSKAS, M. – KUCONIS, P. *Baudžiamojo proceso teisė*. Vilnius, 2011, p. 228.

10 Constitution of the Republic of Lithuania. The Constitution - Constitutional Court of The Republic of Lithuania (lrkt.lt)

11 Constitution of the Slovak Republic No. 460/1992 Coll. as amended by later legislation [Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov]. See, for example: DRGONEC, J. *Ústava Slovenskej republiky: Komentár* [Constitution of the Slovak Republic: Commentary], 2nd edition. Bratislava : C. H. Beck, 2019, 1792 pages; OROSZ, L. – SVAK, J. et al. *Ústava Slovenskej republiky: Komentár – Zväzok 2* [Constitution of the Slovak Republic: Commentary – Vol. II]. Bratislava : Wolters Kluwer, 2022, 840 pages.

criminal procedure laws, which were greatly influenced by the European Convention on Human Rights[12] (whose member states are Lithuania, Estonia, Romania and Slovakia), also jurisprudence of the European Court of Human Rights. Article 5 of the mentioned Convention provides that „[...] No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.“ It is noteworthy that the Codes on Criminal Procedure (furthermore – also CCP) of all states provide that pre-trial detention may be imposed only if the collected facts indicate that the act for which the criminal prosecution was initiated was committed, has the characteristics of a crime and there is a reasonable suspicion that the criminal act was committed by the suspect or accused person. Moreover, Codes on Criminal Procedure may provide some additional requirements for the imposition of pre-trial detention, for example, in Lithuania pre-trial detention may be imposed only for a crime, which is punishable by more than one year of imprisonment and where a less severe provisional measure cannot achieve the purposes of the provisional measures; in Romania, any provisional measure (including pre-trial detention) must be proportional to the seriousness of the charges brought against the person such measure is taken for, and necessary for the attainment of the purpose sought when ordering it, etc.

The grounds for the pre-trial detention are essentially the same in all states, but their regulation method and detail differ. For example, in Estonia it is extremely short, since Article 130 of the CCP of Estonia states that “suspect or accused may be taken into custody [...] order if he or she is likely to abscond from the criminal proceedings or continue to commit criminal offences and taking into custody is inevitable.“ Meanwhile, in Lithuania, Slovakia and Romania, it is sufficiently detailed and comprehensive. For example, Article 122 of the CCP of Lithuania states that grounds for imposition of pre-trial detention shall be based on a reasonable belief that a suspect will:

(1) abscond/go into hiding from pre-trial investigation officers, a prosecutor or a court. Where there are reasonable grounds for believing that a suspect will abscond/go into hiding from pre-trial investigation officers, a prosecutor or a court, pre-trial detention may be imposed taking into account the suspect’s family status, permanent place of residence, employment relationship, state of health, previous convictions, relations abroad and other circumstances;

(2) interfere with proceedings. Where there are reasonable grounds for believing that a suspect will interfere with proceedings, pre-trial detention may be imposed if there is evidence that the suspect may, himself/herself or through other persons, attempt: (a) to influence victims, witnesses, experts, other suspects, accused persons or convicted persons; (b) to destroy, hide or forge the objects and documents relevant to the investigation and hearing of a criminal act in court;

(3) commit new crimes. Where there are reasonable grounds for believing that a suspect will commit new crimes, pre-trial detention may be imposed if there is evidence

12 European Convention on Human Rights. European Convention on Human Rights (coe.int)

that the person suspected of having committed one or more grave or serious crimes or the less serious crimes (such as theft, robbery, extortion of property and destruction of property) may commit new grave, serious or referred less serious crimes prior to the passing of a judgment, also if there is evidence that a person suspected of a threat or an attempt to commit a crime may commit the crime while not being in custody.

It is noteworthy that the Codes of Criminal Procedure of the states also provide for certain specific grounds for pre-trial detention. For example, in Lithuania the ground for imposition of pre-trial detention shall include a request to extradite a person to a foreign state or surrender him/her to the International Criminal Court or under a European Arrest Warrant, a request of a foreign state for temporary detention of the wanted person pending the receipt of a request to extradite the person or a European Arrest Warrant, and a request of a foreign state to place a convicted person on pre-trial detention pending a decision on recognition of a judgment of a foreign state's court and execution of a punishment. In Estonia, an accused person may be taken into custody by a court in order to secure execution or to ensure execution of imprisonment imposed by a judgment of conviction.

Meanwhile, the Codes of Criminal Procedure of Central European states provide grounds for pre-trial detention related to the accusation of committing certain crimes. For example, in Slovakia the ground for pre-trial detention is the fact that an accused is criminally prosecuted for criminal offenses of terrorism. In Romania pre-trial arrest of the defendant can also be ordered if the evidence generate reasonable suspicion that they committed specific offenses, such as: an offense with direct intent against life, an offense having caused bodily harm or death of a person, an offense against national security as under the Criminal Code and other special laws of Romania, an offense of drug trafficking, weapons trafficking, trafficking in human beings, acts of terrorism, a money laundering, counterfeiting of currency or other securities, blackmail, rape, deprivation of freedom, tax evasion, assault of an official, judicial assault, corruption, an offense committed through electronic communication means or another offense, for which the law requires a punishment of no less than 5 years of imprisonment and, based on an assessment of the seriousness of facts, of the manner and circumstances under which it was committed, or the entourage and the environment from where the defendant comes, of their criminal history and other circumstances regarding their person, it is decided that their deprivation of freedom is necessary in order to eliminate a threat to public order.

Pre-trial detention in all countries may be imposed at the motivated request of the prosecutor only by the order of judge (pre-trial judge) or court (in trial).

Meanwhile, the initial length of the pre-trial detention and its extension are regulated quite similarly, and the overall length of the pre-trial detention is regulated differently in all states. For instance, in Slovakia the length of custody within the framework of basic or extended period in pre-trial proceedings and custody within the court proceedings shall be limited to the necessary required time. The basic period of custody in the pre-trial proceedings is seven months. The extension of the term of custody may last up to seven months, however the term of custody in the pre-trial proceedings may not exceed: (a) seven months if a criminal prosecution for a minor offence is being conducted; (b) 19 months if a criminal prosecution for a crime is being

conducte; (c) 25 months if a criminal prosecution for a particularly serious crime is being conducted. However, the overall term of custody in the pre-trial proceedings together with the custody in the proceedings before the court shall not exceed: (a) 12 months if a criminal prosecution for a minor offence is being conducted; (b) 36 months if a criminal prosecution for a crime is being conducted; (c) 48 months if a criminal prosecution for a particularly serious crime is being conducted. Finally, if the criminal proceedings is held for particularly serious crime for which an imprisonment for 25 years or life imprisonment may be imposed or for criminal offences of terrorism, and it was not possible to complete the proceedings due to the complexity of the case or other serious reasons before the overall term of custody lapsed, and if release of the accused could frustrate or seriously prejudice the purpose of the criminal proceedings, the court may decide, even repeatedly, on prolongation of the overall term of custody in criminal proceedings for necessary time. The overall term of custody together with its all prolongations, however, must not exceed 60 months.

In Romania, during the criminal investigation, the term of a defendant's pre-trial arrest may not exceed 30 days. The extension of a defendant's pre-trial arrest term may be ordered for a maximum period of 30 days. The judge may also award, during the criminal investigation, further extensions; however, each such extension shall not exceed 30 days. The total duration of the defendant's pre-trial arrest during the criminal investigation cannot exceed a reasonable term, and can be no longer than 180 days. During the trial in first instance, the total duration of a defendant's pre-trial arrest may not exceed a reasonable period of time and cannot exceed half of the special maximum limit of imprisonment provided by law for the offense for which the court is examining the case. In all cases, the duration of pre-trial arrest in first instance may not exceed five years.

Meanwhile, in Estonia, a preliminary investigation judge may issue an authorisation for up to two months to hold the suspect or the accused in custody. The preliminary investigation judge also may extend the specified time limit based on a reasoned request of the prosecutor by up to two months. However, during pre-trial proceedings, a person suspected or accused of a criminal offence in the first degree may not be held in custody for more than six months and a person suspected or accused of a criminal offence in the second degree for more than four months. A suspect or accused who is a minor may not be held in custody during pre-trial proceedings for more than two months. In the case of particular complexity or extent of a criminal matter or in exceptional cases arising from international cooperation in criminal proceedings, a preliminary investigation judge may extend the above-mentioned time limits for holding in custody at the request of the Prosecutor General.

Furthermore, in Lithuania initially the pre-trial detention may not be imposed for a period longer than three months and two months for juveniles. An extension of the pre-trial detention is possible, but for a period not longer than up to six months. The six months period of the pre-trial detention can be extended: if the case is very complex or has a particularly large scope, the judge of a region court can grant incremental extensions of three months or two months for juveniles, but the overall duration may not exceed nine months for adults and six months for juveniles during the pre-trial investigation stage. In cases involving serious or grave crimes, as well as

in cases where suspects or accused persons are members of a group of accomplices, an organised group or a criminal association, or when persons are arrested or detained in a foreign State, the term of the pre-trial detention may not last for more than 18 months and 12 months for juveniles during the pre-trial investigation stage. Once the pre-trial investigation has been finished and procedure has progressed to the trial stage, the possibility of further extensions is without limit. On the contrary, during the entire criminal procedure, the pre-trial detention cannot last more than two-thirds of the maximum punishment of imprisonment, provided in the sanction of the Article of the Special part of the Criminal Code of Lithuania for the most serious crime that is under the investigation and trial.

A comparison of the legal regulation of grounds and length of the pre-trial detention of all states does not show significant fundamental differences. Meanwhile, the statistics of the application of the pre-trial detention (which is presented in the Table 1) show fairly significant differences between the Baltic countries and Central European states.

Table 1. Number of detained persons 2016-2021[13]

Year	Estonia Detained persons	Lithuania Detained persons	Slovakia Detained persons	Romania Detained persons
2013	773	1 102	1 288	1 989
2014	605	942	1 363	1 845
2018	391	611	1 516	1 978
2019	362	606	1 579	1 926
2020	466	726	1 631	2 045
2021	459	581	1 618	2 263

In Baltic countries, during 2013-2021 application of the pre-trial detention decreased almost twice, for example, in Lithuania from 1102 in 2013 to 581 in 2021. True, the application of the pre-trial detention grew by 28% (from 362 in 2019 to 466 in 2020) in Estonia and 19% (from 606 in 2019 to 726 in 2020) in Lithuania in 2020. Meanwhile, in Slovakia application of the pre-trial detention during 2013-2021 increased by even 25%, from 1288 in 2013 to 1618 in 2021. In Romania, the application of the pre-trial detention remained quite stable during this entire period, and the highest growth was in 2021 and amounted to about 10% (from 2045 in 2020 to 2263 in 2021).

In Estonia, the decrease of application of the pre-trial detention, according to J. Ginter, is determined by the expedition of pre-trial investigation and court proceedings as well as the stricter view of the courts on authorizing pre-trial detention. Moreover, recently courts have required more severe grounds for pre-trial detention from the Prosecutor‘s Office and this indicates that the old tradition of the Soviet period to keep persons waiting for their trial in prisons is wading away. Similar conclusions

13 The table was compiled by the authors according to the Council of Europe Annual Penal Statistics Annual reports – Council of Europe Annual Penal Statistics (unil.ch)

were made by scholars of Lithuania and Slovakia. For example, S. Bikelis states that statistical changes in Lithuanian practice in the use of pre-trial detention is a signal about changes unrelated to any legal reforms. Cultural changes between practitioners in the use of pre-trial detention had been noticed and this shift in judicial and prosecutorial attitude might be explained by the steady promotion of high standards in the precedents of the European Court on Human Rights and Lithuanian higher courts as well as internal communication within prosecutorial organization and academic discourse; the influx of the younger generation into the judiciary and the prosecution; and finally the effective implementation of the European Arrest Warrant system which has lowered the risk of a suspect's absconding.[14] Meanwhile, L. Klimek indicates that, in Slovakia, the changes of the lesser application of pre-trial detention can be partially explained with a change of lawyer's generations also, since representatives of younger generations are eager to apply alternatives more often. In Romania, in the opinion of S. Bogdan, the application of pre-trial detention was mostly influenced by the new norms, which consisted of the removal of the issuing of the pre-trial detention by the Prosecutor himself, the entire procedure being placed in the jurisdiction of a judge.[15] Additionally, the conditions for issuing the pre-trial detention were rewritten as to further accentuate the need of existing solid clues regarding the commission of a crime, compared to the old regulation, which only required reasonable suspicion.

On the other hand, statistics of number of imprisoned persons (including detainees) and it's trends during 2013-2022 (which is presented in the Table 2) show that the application of the pre-trial detention does not significantly affect the total number of imprisoned persons in Baltic countries and Central European states.

Table 2. Total number of imprisoned persons (including detainees) 2013-2021[16]

Year	Estonia Imprisoned persons	Lithuania Imprisoned persons	Slovakia Imprisoned persons	Romania Imprisoned persons
2013	3 256	9 621	10 152	33 122
2014	2 962	8 977	10 179	31 637
2018	2 525	6 599	10 028	23 050
2019	2 399	6 485	10 294	20 689
2020	2 450	6 138	10 555	20 570
2021	2 341	5 320	10 489	21 774
2022	2 181	5 086	10 153	23 010

14 For more, see: BIKELIS, S. Suėmimo taikymo pokyčiai Lietuvoje: teisinės kultūros perspektyva. In *Kriminologijos studijos*, 2018, vol. 6.

15 Comparing the statistical data of 2003 and 2014, the number of pre-trial detainees in Romania was reduced by almost 50 percent (HALCHIN, D. Romanian prison system makes invaluable advances through foreign support. Romanian prison system makes invaluable advances through foreign support - JUSTICE TRENDS Magazine (justice-trends.press))

16 The table was compiled by the authors according to the Council of Europe Annual Penal Statistics Annual reports – Council of Europe Annual Penal Statistics (unil.ch)

As it was already mentioned, in Baltic countries, during 2012-2022, the total number of imprisoned persons decreased very significantly, somewhat lower – it was observed in Romania, while in Slovakia, it remained quite stable throughout this period. In absolute numbers, this decrease in the mentioned period amounted to 1,075 persons in Estonia, 4,535 persons – in Lithuania and 10,112 persons – in Romania. Meanwhile, the decrease in the application of the pre-trial detention was observed only in the Baltic countries and amounted to 324 persons in Estonia, 521 persons – in Lithuania. Thus, when evaluating the comparison of these trends in absolute numbers, it can be concluded that the application of the pre-trial detention did not have a significant impact on the reduction of the total number of imprisoned persons in Baltic countries (Estonia and Lithuania) and Central European states (Romania and Slovakia).

2. Alternatives to the pre-trial detention and their application

The Codes of Criminal Procedure of Lithuania, Estonia, Romania and Slovakia provide for a wider or narrower list of alternative provisional measures for pre-trial detention.

Article 120 of the CCP of Lithuania presents an exhaustive list of separate provisional measures (which may be called as alternatives to the pre-trial detention): an intensive supervision, a house arrest, a bail, an obligation to reside separately from the victim and (or) prohibition to approach the victim closer than a prescribed distance, a seizure of documents, a suspension of a special right, an injunction to report periodically to the police and a recognizance.[17] A provisional measure for a soldier may be an observation by the command of the military unit where he/she is doing his/her service, and for a minor – a committal to the supervision of the parents, or foster parents or the administration of a children's institution.

Provisional measures may be imposed with a view of securing the presence of a suspect during the proceedings, unhindered pre-trial investigation, court hearing, the execution of the judgment and the prevention of commission of new criminal acts. Provisional measures may be imposed only where there is a probable cause that a suspect committed a criminal act. A prosecutor, a judge or the court, when deciding whether there is a need to impose a provisional measure and selecting its type, must take into account the gravity of the criminal act committed by a suspect, his/her personality, whether he/she has a permanent residence and a job or any other legal source of livelihood, his/her age, condition his/her of health, his/her marital status and other circumstances which might be pertinent when determining this issue. Several provisional measures less severe than the pre-trial detention may be imposed at the same time. Moreover, a more severe provisional measure may be imposed upon the suspect who violates an imposed provisional measure.

17 The Prosecutor General has adopted methodological recommendation on application of these provisional measures: Generalinio prokuroro įsakymas „Dėl Rekomendacijų dėl kardomųjų priemonių, išskyrus suėmimą, skyrimo ikiteisminio tyrimo metu tvarkos ir nustatytų sąlygų laikymosi kontrolės patvirtinimo", TAR, 2015, No. 19096.

An intensive supervision, a house arrest and an obligation to reside separately from the victim and (or) prohibition to approach the victim closer than a prescribed distance may be imposed only by the ruling of the pretrial judge or the court; other provisional measures – by the prosecutor's decision or the ruling of the judge or the court. It should be noted that in urgent cases such provisional measures as a seizure of documents, a suspension of a special right, an injunction to report periodically to the police, a recognizance, an observation by the command of military unit and a committal to the supervision of the parents, or foster parents or the administration of a children's institution may be imposed by the decision of the pre-trial investigator. The pre-trial investigator must immediately inform the prosecutor about it. A provisional measure may also be imposed for an accused and the convicted person.

A house arrest shall be an obligation for a suspect during the prescribed time to stay at home, not to attend public places and not to have contacts with certain people. When applying this provisional measure, the term and conditions of house arrest shall be determined in the ruling of the judge or the court. Initially, the house arrest may not be imposed for a period longer than six months; this term may be extended for three months. Number of extensions is unlimited.

An intensive supervision shall be the control of the suspect by the electronic means of surveillance. Intensive supervision as a provisional measure may be applied in Lithuania from 2015.[18] Initially, the intensive supervision may not be imposed for a period longer than six months; this term may be extended for three months. Number of extensions is unlimited. A suspect shall be informed that the pre-trial detention may be applied against him/her, for the breach of the conditions of intensive supervision. The suspect must be aware of the electronic monitoring device and adhere to the established schedule, also he/she is not allowed to remove, damage or destroy an electronic monitoring device.

A suspect may be obliged to reside separately from the victim and (or) prohibited to approach the victim closer than a prescribed distance.[19] Moreover, the suspect may also be obliged not to communicate in any form and to seek contact with the victim and persons who are living with the victim or to visit the specified places where the victim or persons who are living with the victim are at present. The suspect must leave the house, where he/she lived with the victim.

18 Lietuvos Respublikos baudžiamojo proceso kodekso 71, 75, 120, 121, 126, 132, 139, 179, 183, 218, 219, 233, 236, 261, 273, 279, 285, 286, 317, 319, 426, 427, 428, 429, 432 straipsnių pakeitimo ir papildymo ir Kodekso papildymo 131(1), 430(1) straipsniais įstatymas. Valstybės žinios, 2013-07-13, Nr. 75-3769.

19 The obligation to reside separately from the victim was introduced to the list of provisional measures in 2004 (Lietuvos Respublikos baudžiamojo proceso kodekso 120, 121, 126 straipsnių pakeitimo ir kodekso papildymo 132(1) straipsniu įstatymas. Valstybės žinios, 2004-11-26, Nr. 171-6307). Moreover, the obligation to reside separately from the victim was improved by determining that a person may be obliged to reside separately from the victim, and also may be prohibited to approach the victim closer than a prescribed distance (Lietuvos Respublikos baudžiamojo proceso kodekso 120, 121, 126, 132(1), 139 straipsnių ir priedo pakeitimo įstatymas. TAR, 2015-05-18, Nr. 7564).

A bail shall be an amount of money paid by a suspect, his/her family members or relatives, also by other persons, enterprises or institutions into a deposit account of the prosecution office or the court. The amount of cash shall be determined by the official or the court, who imposes this provisional measure, taking into consideration the nature of the committed criminal act, the extent of the impending punishment, the financial situation of the accused and the person who gives bail and their character. When the bail is accepted, the person who pays must be informed that if the suspect does not fulfil his/her obligation the bail shall pass to the State.

A seizure of documents as a provisional measure may be applied by a decision of a prosecutor. The passport, the identity card, the driver's licence may be seized from the suspect. After the seizure of the documents, the suspect shall be issued a certificate stating which document has been taken from him/her.

The exercise of a special right is prohibited during the suspension of that special right. The suspension of the special right as a provisional measure was introduced in 2019.[20]

A suspect may be obligated to report regularly to the police. The decision must contain the address of the police institution, the days of the week and the month, and the time when the suspect must report to the police institution.

A recognizance shall be a written obligation by a suspect not to leave his/her place of residence or temporary residence without permission to leave of a prosecutor, a judge or the court. The suspect may also be obliged not to visit certain places and not to communicate and to seek out contact with certain persons.

Placing of the suspect who is a soldier under the observation by the command of a military unit shall be application of measures provided by the military service statute[21] with a view to ensuring a proper behaviour of the suspect and his/her appearance when summonsed by the pre-trial investigator, the prosecutor, the judge or the court.

A committal of a juvenile suspect into care of his/her parents, foster parents also placing him/her under observation by the administration of a children's institution shall be a written undertaking by any of the aforesaid persons or of the administration of a children institution to ensure a proper behaviour of a juvenile suspect and his/her appearance when summonsed by the pre-trial investigator, the prosecutor and the court.

Estonian law also introduces alternatives to pre-trial detention during pre-trial stage. For example, according to the Article 128 of the CCP, the most lenient alternative to pre-trial detention is a prohibition of departure from residence. Article 135 of the CCP also lets the judge or the court, with the consent of the suspect or accused to substitute cash bail for committal to custody. Cash bail means a sum of money paid, as a compliance enforcement measure, to a prescribed account by the suspect or accused or by another person on their behalf. When setting the amount of cash bail, the court has regard to the severity of the punishment that may be imposed, the extent of the harm caused by the criminal offence, and the financial situation of the

20 Lietuvos Respublikos baudžiamojo proceso kodekso 120, 121 straipsnių pakeitimo ir Kodekso papildymo 134(1) straipsniu įstatymas. TAR, 2019-01-21, Nr. 868.

21 Lietuvos Respublikos karo tarnybos statutas, *Valstybės žinios*, 2008, No. 30-1057.

suspect or accused. Moreover, Article 137[1] of the CCP provides that on an application of the suspect, the accused or the prosecutor, the judge or the court may also substitute pre-trial detention with the obligation to submit to electronic monitoring. Finally, there are also some measures to be applied only to specific subjects in Estonia. For example, Article 129 of the CCP states that if the suspect or accused is a member of the defence forces serving in compulsory military service may, by way of a preventive measure, be subjected to the supervision of the command staff of his or her military unit. Furthemore, where a minor is committed to custody, the court in accordance with Article 131 of the CCP may order the minor's committal to be substituted by placement in a closed children's institution and state, in the order, the closed children's institution where the minor who has been committed to custody is to be placed.

The Slovak law also introduces alternatives to pre-trial detention, which are of financial or non-financial nature. For example, the judge may decide on application of guarantee the essence of which is that the called "trustworthy person" or "citizens' interests association" guarantee for the further behaviour of the accused person. According to Article 80 of the CCP, the judge can also decide to replace the pre-trial detention with another measure, so called written promise, by which the accused undertakes to lead an orderly life. The content of this measure is the promise of the accused person that s(he) will not commit criminal act (offence) during his/her stay at liberty and that s(he) fulfil his/her obligations and accepts restrictions imposed by the court. Moreover, supervision by a probation and mediation officer is another alternative measure that can be applied by the judge instead of pre-trial detention in Slovakia. Article 80 of the CCP provides that it can be applied with or without e-monitoring. Finally, in accordance with Article 81 of the CCP, the judge in pre-trial proceedings can decide on the release of the accused person if a sum of money, the amount of which has been determined by the court, was deposited (e.g. bail).

The alternative measures to pre-trial detention in the Romanian legislation are house arrest, judicial control, and judicial control with bail. During the criminal investigation or trial, a prosecutor, judge or the court may order these measures against a defendant, if such preventive measures are necessary and sufficient for the attainment of the purpose set for the preventive measures.

While under judicial control, a defendant shall comply with the following obligations: (a) to appear before the criminal investigation body, the judge or the court any time they are called; (b) to inform forthwith the judicial bodies having ordered the measure or with which their case is pending on any change of domicile; (c) to appear before the law enforcement body appointed to supervise them by the judicial bodies having ordered the measure, according to the supervision schedule prepared by the law enforcement body or whenever they are called. Moreover, judicial bodies having ordered the measure may require that the defendant, during the judicial control, comply with one or more of the following obligations: (a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval; (b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these; (c) to permanently wear an electronic surveillance system; (d) not to return to their family's dwelling, not to get close to the victim or the members of their family, to other participants in the committed offense, witnesses or experts or to other persons

specified by the judicial bodies and not to communicate with these in any way, be it directly or indirectly; (e) not to practice a profession, craft or activity during the practice or performance of which they committed the act; (f) to periodically provide information their living means; (g) to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification; (h) not to take part in sports or cultural events or to other public gatherings; (i) not to drive specific vehicles established by the judicial bodies; j) not to hold, use or carry weapons; (k) not to issue cheques.

During the criminal investigation, judicial control on bail may be ordered against a defendant, if the defendant, *inter alia*, deposits a bail the value of which is established by the judicial bodies. Bail shall be posted in the defendant's name, by depositing a set amount of money with the judicial bodies or by posting a property bond, in securities or real estate, within the limits of the set money amount, in favor of the same judicial bodies. The value of a bail is of at least RON 1,000 and is determined based on the seriousness of the accusation brought against the defendant, their material situation and their legal obligations.

When imposing house arrest, the judge or court must assess the threat level posed by the offense, the purpose of such measure, the health condition, age, family status and other circumstances related to the person against whom such measure is taken. House arrest may not be ordered against a defendant in whose respect there is a reasonable suspicion that he committed an offense against a family member and in relation to which the defendant previously received a final conviction for an escape offense. Article 221 of the CCP regulates the content of the house arrest, consisting of the obligation, for a determined period, not to leave the building where the defendant lives, without permission from the judicial bodies having ordered it. During house arrest, the defendant has the following obligations: (a) appear before criminal investigation bodies, the judge or the court (whenever they are called); (b) not to communicate with the victim or with members of their family, with other participants in the commission of the offense, with witnesses or experts, as well as with other persons established by the judicial bodies; (c) (if ordered) to permanently wear an electronic surveillance system.

In 2016, according to the Report of the European Union Agency for Fundamental Rights[22], the lacking alternatives to pre-trial detention were social rehabilitation (Estonia, Romania, Lithuania and Slovakia), electronic monitoring (Estonia, Lithuania and Slovakia), seizure of documents (Estonia, Romania and Slovakia) and financial surety (Estonia and Romania). It should be noted that currently the laws of all countries provide for electronic monitoring as an independent provisional measure (Lithuania), a certain component of another provisional measure (Lithuania, Estonia, Romania) or a criminal law measure (Lithuania, Estonia, Slovakia). However, the application of this measure in all states is limited and does not meet planned expectations for various

22 Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfer. European Union Agency for Fundamental Rights, 2016, p. 63. Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers (europa.eu) accessed on January 2, 2024.

reasons. For example, in Romania, it's provided, that in the context of provisional measures of judicial control, judicial control on bail and house arrest, the defendant could be forced to permanently wear an electronic surveillance system. However, S. Bogdan emphasized that, in the national legislation, at that time, there was no rule to explain exactly what these electronic surveillance systems are, how they work, or what they actually entail. Finally, these aspects were mostly clarified only 7 years later, when Law no. 146/2021 regarding electronic monitoring in the framework of criminal and executive proceedings came into force. It is expected that in Romania from a system-wide average of 3,300 inmates in open prisons, it is estimated that 300 working inmates will be subject to electronic monitoring. Moreover, electronic monitoring can have a significant impact on the remand population, since of the current 2,400 pre-trial detainees, up to 480 could receive a community or restraining order with electronic monitoring.[23]

Meanwhile, in Slovakia, between 2016 and 2019 the number of persons controlled by electronic monitoring was more than 400 and the number of persons protected was more than 50. As regards the control of persons serving custodial sentence, in 2018 and 2019 the control concerned more than 500 persons.[24] In any case, in the opinion of L. Klimek, these results are better, but still not according to the original expectations.

Comparing the lists of alternative provisional measures mentioned above it seems that the Lithuanian law provides the biggest variety of alternatives to detention in pre-trial stage. The analysis also shows that in Slovakia all pre-trial measures can be applied only by a judge (similar as in Estonia) while in Lithuania and Romania some measures can be applied by the court, others by prosecutors and some even by pre-trial investigators. Finally, in Lithuania and Romania alternative measures to pre-trial detention are more often applied as primary measures, while in Estonia and Slovakia, they are usually applied as a measure changing an initially applied pre-trial detention.

The discussions as to the sufficiency of the existing measures in the analysed countries are of different nature. For example, in case of Lithuania the list of alternatives to pre-trial detention at the moment is sufficient, however, the existing provisional measures do not always function well in practice. Moreover, according to some authors, cases where no provisional measures are used in a pre-trial stage can be described as rare. This situation may be explained by the restrictive mentality of pre-trial investigators or prosecutors and, moreover, the situation may sometimes also be facilitated by regulation (some alternative measures to pre-trial detention may be applied even by pre-trial investigators (i.e. decision of the court or prosecutor are not needed).[25]

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23 HALCHIN, D. Romanian prison system makes invaluable advances through foreign support. Romanian prison system makes invaluable advances through foreign support - JUSTICE TRENDS Magazine (justice-trends.press)

24 KLATIK, J. – VIRDZEK, T. – VALENTINOVIČ, Z. – BORSEKOVA, K. – KIKA, M. *Elektronický monitoring na Slovensku: výsledky národného prieskumu a odporúčania pre tvorcov politík a prax* [Electronic Monitoring in Slovakia: Results of a National Survey and Recommendations for Policy Makers and Practitioners]. Banská Bystrica : Belianum, 2020, 138 pages.

25 BIKELIS, S. – PAJAUJIS, V. DETOUR. *Towards Pre-trail Detention as Ultima Ratio. 2nd Lithuanian National Report on Expert Interviews*. Vilnius : Teisės institutas, 2017, p. 20-21.

Meanwhile, in the opinion of J. Ginter, there is still a place for the introduction of new alternative measures to pre-trial detention into the Estonian law. For example, in some situations, in which the main reason for pre-trial detention would be preventing absconding for some suspects and accused persons confiscation of travel documents could be used as an alternative to pre-trial detention. Moreover, in case of minors, personal guarantee of their parents could also be used.

The main reason why house arrest and judicial control are not a more popular provisional measures in Romania, according to the opinion of S. Bogdan, is that the public does not consider the level of interference these measures provide in preserving public safety, as most people demanding strict infringements on the liberty of defendants during the pre-trial stage.

According to L. Klimek, at the moment there are no huge discussions in Slovakia whether the set of alternative measures has to be expanded. On the other hand, more efficient enforcement of law is needed in Slovakia. This is a condition which cannot be reached by amendment of any law. What is more, it seems that some of the already introduced measures are less popular in practice than the others. For example, the guarantee measure usually functions in the form of "trustworthy person", but not "interest association or citizens". The financial guarantee as alternative measure in pre-trial proceedings is "affordable" to persons with higher incomes, on the contrary in the cases of those with low incomes it is absolutely not functioning. L. Klimek states that the prisons in the Slovakia are overcrowded and in 2019 the capacity of Slovak punishment institutions reached 99,66%. The solution to this problem (at least in part) can be a proper application of the electronic monitoring in pre-trial stage as well as towards sentenced individuals. L. Klimek also claims supervision by the probation and mediation officer causes problems. If supervision is ordered without control by technical means, it is limited to the control of restrictions and the fulfilment of duties only by regular meetings, which are separated by time intervals, sometimes long in months.[26] It is also interesting to mention, that the alternatives to pre-trial detention can not be applied in cases where pre-trial detention was applied were there were reasons to believe that the accused person will act on witnesses, experts, co-accused or otherwise prevent clarification of facts important for criminal prosecution (so called "collusive detention"). What is more, there is a disagreement on this matter between Supreme Court of Slovakia and Constitutional Court of Slovakia. According to the decision of the Constitutional Court of Slovakia,[27] Article 5(3) of the European Convention on Human Rights requires the application of alternatives to pre-trial detention also in case of collusive detention. The Constitutional Court of Slovakia points to the analysis of the jurisprudence of the European Court of Human Rights, namely the judgment of 8 February 2020 in case of Caballero versus

26 KURILOVSKA, L. – BLAŽEK, R. – ĽORKO, J. *Hodnotenie implementácie a budúceho vývoja sankčného mechanizmu po 10 rokoch účinnosti trestných kódexov v Slovenskej republike* [Evaluation of the Implementation and Future Development of the Sanctioning Mechanism after 10 Years of Effectiveness of Criminal Codes in the Slovak Republic]. Bratislava : Univerzita Komenského, 2020, pp. 171-175.

27 Findings of the Constitutional Court of the Slovak Republic of 8 October 2004, Ref. No. I. ÚS 100/04.

United Kingdom[28] and in judgment of 19 June 2001 in case of S. B. C. versus United Kingdom.[29] However, the practice of the Supreme Court of Slovakia is incompatible with mentioned constitutional jurisprudence.

All of the analysed countries struggle with the collection of statistics on the application of alternatives to detention in pre-trial stage. There are no detailed statistics available with regard to application of all alternatives to pre-trail detention in Estonia, Slovakia and Romania. J. Ginter states that there are only occasional data available in Estonia, for example, in 2019 18 674 criminal processes had started, in which: (a) in 1124 cases pre-trial detention was used; (b) in 1489 cases prohibition of departure from residence was used; and (c) in 25 cases on electronic monitoring was used.[30] There is some data about e-monitoring which shows, that the latter is not used often in Estonia. As J. Ginter states, because this measure helps to prevent absconding but is much less effective against committing new crimes and/or influencing the prospective witnesses.

In Lithuania, there is statistical data on application of alternatives to pre-trial detention in pre-trial stage (see Table 3).

Table 3. Statistics of application of provisional measures in Lithuania (2013-2022)[31]

YEAR	Home arrest	Intensive supervision	Bail	Obligation to reside separately and (or) prohibition to approach the victim	Seizure of documents	Supension of special right	Obligation to periodically register at the police office	Recognizance
2013	38	-	139	882	1 347	-	3 129	17 592
2014	28	-	162	683	1 362	-	3 257	18 134
2015	39	-	154	617	1 153	-	2 349	16 274
2016	28	-	109	402	7 19	-	1 173	8 579
2017	22	-	101	601	1 507	-	1 124	9 263
2018	11	-	70	474	1 528	-	776	7 004
2019	10	-	88	315	1 179	-	633	5 970
2020	9	10	49	302	982	205	490	5 615
2021	7	27	63	275	870	766	353	4 866
2022	1	35	77	371	775	730	363	4 489

28 Judgment of the European Court of Human Rights of 8 February 2020 – *Caballero versus United Kingdom* (application No. 2819/96).

29 Judgment of the European Court of Human Rights of 19 June 2001 – *S. B. C. versus United Kingdom* (application No. 39360/98).

30 Confederation of European Probation, Summary of the replies to the questionnaire on the "Use of alternatives to pre-trial detention" in EU Member States, https://www.cep-probation.org/wp-content/uploads/2020/10/Summary-replies-questionnaire-Alternatives-to-Pre-trial-detention-1.pdf, accessed 30 December 2023.

31 The presented data should be evaluated critically, since statistics on the application of the mildest provisional measures may not be carefully recorded due to their relatively small significance.

Nevertheless, some conclusions can be made. A recognizance is the least severe and most often used provisional measure in Lithuania. Other commonly used alternative provisional measures for pre-trial detention are traditional, easily implemented measures such as obligation to periodically register at the police office, suspension of special right, also seizure of documents. While a committal of a juvenile suspect into the care of their parents, foster parents, as well as placing them under observation by of a children's institution administration has been among the least often applied provisional measures for many years in Lithuania.[32] This is partially due to the fact that the number of crimes committed by minors as well as the number of suspected and accused minors in Lithuania has been in decline for many years. House arrest is one of the most severe measures following pre-trial detention, so theoretically, it could be treated as a main alternative to pre-trial detention. However, the statistics show that for about 10 years the application of house arrest in Lithuania has been decreasing and this goes in line with the skeptical view on house arrest among prosecutors, who indicated these reasons: (a) it is more complicated to organize this measure compared to the other measures; (b) institution capacity to control this measure is often doubted; (c) the effectiveness of this measure is similar to the effectiveness of a complex made up of less severe measures; (d) the possibility to apply this measure for homeless or foreign suspects is doubted, etc.[33] Moreover, bail, in theory, is often described as a good alternative to pre-trial detention, however statistics have shown a decrease in its application. Possibly due to the fact that it is seen as an inappropriate measure in situations where suspects are financially poor, or where the measure is mostly suitable to be applied in specific cases, for example, smuggling, "white collar" crimes, etc. Intensive supervision also is often described as more of an option for gradual transition from pre-trial detention than a primary provisional measure.[34] Still, there is not enough data to determine whether the intensive supervision is to become a more popular provisional measure in Lithuania. However, statistics of last three years (2020-2022) show that the application of this particular measure has been growing, yet it remains among the least popular provisional measures.

Thus, the analysis of the legal regulation of alternative provisional measures for pre-trial detention in Estonia, Lithuania, Romania and Slovakia, also available statistical data on their application allows us to state that the practice of application alternative provisional measures does not depend on the size of the list and variety of these measures. In addition, in practice, traditional, easiest-to-implement provisional measures, whose effectiveness is trusted by prosecutors and judges, are usually applied (e.g. prohibition of departure from the residence (recognizance), obligation to periodically register at the police office, seizure of documents, bail, etc.). Meanwhile, such new alternative provisional measures as electronic monitoring (intensive

32 Committal of a juvenile suspect into care of his/her parents, foster parents also placing him/her under observation by the administration of a children's institution was applied in 2013-268 persons; in 2016-85; in 2018-63; 2020-53; 2022-37.

33 BIKELIS, S. – PAJAUJIS, V. DETOUR. *Towards Pre-trail Detention as Ultima Ratio. 2nd Lithuanian National Report on Expert Interviews.* Vilnius: Teisės institutas, 2017, p. 25-26.

34 BIKELIS, S. Suėmimo taikymo pokyčiai Lietuvoje: teisinės kultūros perspektyva. In *Kriminologijos studijo*s, 2018, vol. 6, p. 27-28.

supervision) are currently not popular in Baltic countries and Central European states for various reasons; prosecutors and judges rarely apply them during pre-trial investigation.

Conclusions

Summarizing the article, the following essential conclusions can be drawn:

1. The legal regulation of grounds of the pre-trial detention, also initial length of pre-trial detention and its extension are regulated quite similarly in all Baltic countries and Central European states. Meanwhile, the method of determining the maximum duration of the pre-trial detention is regulated differently in all states, but this also does not create any significant fundamental differences. On the other hand, the statistics of the application of the pre-trial detention show fairly significant differences between the Baltic countries and Central European states. In Baltic countries during 2013-2021 application of the pre-trial detention decreased almost twice. While, in Romania the application of the pre-trial detention remained quite stable during 2013-2021, and in Slovakia the application of the pre-trial detention increased by even 25% during this period.

2. Assessment of the comparison of the increasing or decreasing trends of total number of imprisoned persons and the application of the pre-trial detention in absolute numbers, allows us to conclude that the application of the pre-trial detention did not have a significant impact on the reduction of the total number of imprisoned persons in Baltic countries (Estonia and Lithuania) and Central European states (Romania and Slovakia).

3. Assessment of the legal regulation of alternative provisional measures for pre-trial detention in Baltic countires and Central European states, also available statistical data on their application allows us to state that the practice of application alternative provisional measures does not depend on the size of the list and variety of these measures. Moreover, in practice, traditional, easiest-to-implement provisional measures, whose effectiveness is trusted by prosecutors and judges, are usually applied. Meanwhile, such new alternative provisional measures, the essence of which is electronic monitoring, are currently not popular and are rarely applied by prosecutors and judges in Baltic countries and Central European states.

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Summary: Pre-Trial Detention and Its Alternatives in Lithuania, Estonia, Romania and Slovakia

The article deals with the legal regulation of grounds of the pre-trial detention and the initial length of pre-trial detention and its extension, which are quite similar in the Baltic and Central European states. The maximum duration of the pre-trial detention is regulated differently in all states, but this does not create any significant differences.

Statistical data of the application of the pre-trial detention during 2013-2021 shows fairly significant differences between the Baltic and Central European countries: in Baltic countries, the application of the pre-trial detention decreased almost twice, in Romania – remained quite stable, and in Slovakia – increased by even 25%.
Furthermore, the comparison of the total number of imprisoned persons and the application of the pre-trial detention provides basis for the conclusion that the application of the pre-trial detention did not have a significant impact on the reduction of the total number of imprisoned persons in Baltic countries and Central European states. Assessment of the alternative measures for pre-trial detention in Baltic countries and Central European states, as well as the available statistical data on their application allows to state that the application of the alternative measures does not depend on the size of the list and variety of these measures. Meanwhile, such alternative measures, the essence of which is electronic monitoring, are currently not popular and are rarely applied in Baltic countries and Central European states.

Gintaras Švedas, Professor, habilitated doctor of law
Vilnius university
Law faculty, Criminal Justice Department
Saulėtekio av. 9, I-building, LT-10222 Vilnius
Lithuania
email: gintaras.svedas@tf.vu.lt

Justyna Levon, Docent, doctor of law
Vilnius university
Law faculty, Criminal Justice Department
Saulėtekio av. 9, I-building, LT-10222 Vilnius
Lithuania
email: justyna.levon@tf.vu.lt