

© 2025 Albi Gjoka

This is an open access article licensed under the Creative Commons Attribution-NonCommercial 4.0 International License (<https://creativecommons.org/licenses/by-nc/4.0/>)

## Comparison of Criminal Penalties in Albania and Germany

MSc. Albi Gjoka

University of Tirana, Albania

DOI: <https://doi.org/10.2478/bjir-2025-0009>

### Abstract

Penalties are significant to keep and preserve a society where law and order prevail. In different cultures penalties are also different, where in some places are harsher and in others not so much. This manuscript makes a small comparison between criminal punishment in Albania and in Germany pointing out their similarities and also differences. While both jurisdictions follow the ideas of legality and proportionality, Germany gives more power to the idea of rehabilitation and alternative sanctions. It gives more importance to helping people change rather than using imprisonment. This is considered as having a lot of good sides but also it carries a lot of expenses and is seen as a not very productive way. Albania on the other side has a stricter way to approach crimes. This study is based on legal writings to analyze the difference between both countries and their approach to protecting their society.

**Keywords:** Criminal law, alternative sanctions, legal system, imprisonment & parole, legal comparison.

### 1. Introduction

Criminal Law is an important part of any legal system and serves as one of the most fundamental pillars of a well-organized society. While almost all legal system have punishments for crimes, the way they are implemented and organized differentiate a lot from the country's history, adaption with international laws and also what society truly needs. Albania and Germany are both part of the European legal tradition but even though they have similarities in the European legal law, they still have different approaches on criminal penalties. Those differences arise from historical views, legal philosophies, and the role of Rehabilitation in the legal system. The evolution of both criminal penalties is different. Albania has undergone a huge transformation from a social legal system to a modern European one, trying to adapt the EU Resolutions and mixing punishment with Rehabilitation. Germany on the other hand has long undergone this adaption and has been focused not only in punishing but also on

alternative sanctions (Schönke and Schröder, 2019). These differences raise important questions about which system works the best and which system is more effective. Main questions that arise include the integration of these criminals in the society.

## 2. Criminal Penalties in Albania

Criminal Penalties are designed to ensure justice. The Albanian system seeks to balance the protection of public safety as its priority. When the committed crimes are serious felonies than the criminal penalty is imprisonment. In cases than where the committed crime is not as serious than the lawmaker focuses to impose fines or other penalties which do not impose imprisonment.

Primary penalties are very common and the ones who aim to punish the convicted individual. Those penalties are relatively determined and can vary from the minimum of time in prison until the maximum or life imprisonment which is typically 25 years. Those crimes are typically horrendous crimes such as: murder, terrorism, treason.

Another type of penalty is the fixed term sentence which is typically addressed to crimes which are less severe than those deserving life sentence. Those penalties have a minimum and a maximum sentence which is combined also and defined simultaneously in the Law. Art. 143/2 of the Albanian Criminal Code regulates Fraud and sanctions an imprisonment from three to ten years (Hoxha, Kaçupi and Haxhia, 2018).

Supplementary penalties are additional punishments that restrict the freedom of the offender or also help to prevent another chance of doing the same offense again. As mentioned above the sanction is accompanied with years in prison or also a fee.

Asset confiscation is commonly used for financial crimes like corruption. It involves the confiscation of assets and properties which are acquired through illegal means. This sanction helps to discourage people to commit further activities like money laundering or drug trafficking. A good thing is that part of the confiscated money will be used by the legal system to update and also help the legal environment to flourish. In 2021, around 3 million euros were confiscated from different groups used for different benefits of the legal system.<sup>1</sup>

Prohibition of civic participation is another penalty that helps to make sure that people who are convicted of serious crimes such as the ones mentioned above, will not harm the community in the future. This means they cannot run for office, hold public or government positions. This helps identify the ones, who broke the trust and law of the public once, not to do harm again and keep the untrustworthy out of the government. The ban can be temporary, but it can be also permanent. This is always based on how bad the crime was.

Alternative Penalties are used instead of prison for people who have committed minor crimes and have also shown the will to change. These alternative penalties have the scope of changing the person and to try to put him in the right path by giving a second chance.

<sup>1</sup> SPAK annual report 2022. (Online) Available: [https://spak.gov.al/wp-content/uploads/2023/05/raporti-vjetor-2022\\_Publikuar.pdf](https://spak.gov.al/wp-content/uploads/2023/05/raporti-vjetor-2022_Publikuar.pdf)

Partial freedom is another alternative penalty, that is specific for Albania and it is not regulated in the German Criminal Code. This is the first type of alternative imprisonment, and it shows the idea of the fragmentation of the prison sentence. This helps offenders who have a maximum sentence of one year to not completely remove them from their social responsibilities and medical treatments. This sentence is implemented in the cases when the offender has minor children under his/her care or is responsible for their parents or other individuals unable to work and for the fact that the offender might be the only provider for the family or when the income generated by their work is crucial for the family.<sup>2</sup>

Community Service is applied when the imprisonment of the person for a longer period is evaluated as unnecessary. The Criminal Code sets the offender to do unpaid work which serves the general good for the society and community where the offender lives and those are jobs which are given and regulated by the tribunal. The core idea of this work is the reintegration of the offender in the public life.<sup>3</sup>

Individuals that present low levels of risk due to factors such as age, health and other mental conditions or have different problematic circumstances correlated to family, education or employment, given also the gravity of their offense and their behaviour towards may receive a probation penalty rather than an imprisonment time. This type of measure is generally used for offenders who are minor in age or individuals over 60 years (Art. 59 of the Albanian Criminal Code).

Home confinement is another alternative form of imprisonment which is considered as a middle ground. This type of alternative focuses also on considering the needs of the offender or their family members. In the First Paragraph of Article 59 of the Albanian Criminal Code is explained that for prison sentences of up to two years the court may decide for the sentence to be served in the convicted persons home or another residence.

Early release on parole is the last and final alternative to imprisonment, which together with the suspension of the prison sentence and probation have remained the most applied in Albanian practice. There are only specific reasons why the offender can get an early release on parole and these are regulated in Article 64 of the Albanian Criminal Code.

## 2. Criminal Penalties in Germany

As mentioned earlier the legal system in Germany is carefully structured to balance punishment with rehabilitation. The Rehabilitation helps the offender to reintegrate in the society. Germany's approach is different and softer compared to punitive systems. This is also because of bigger expenses in social and also rehabilitation system. The German Criminal Code (StGB) is focused on punishments which provide

<sup>2</sup> Manual regulating the application of the alternative sanctions (OSCE), (2010), (Online) (Available) <https://www.osce.org/files/f/documents/0/1/72037.pdf>

<sup>3</sup> Manual regulating the alternative sanctions in the Republic of Albania (2020). (Online) Available: <https://socialcontractinstitute.org/wp-content/uploads/2021/06/Manual-mbi-Denimet-Alternative-ne-Republiken-e-Shqiperise.pdf>

the reintegration in the society.

Imprisonment and fines are the so-called primary penalties. The legal system uses imprisonment only when it is necessary. Imprisonment in Germany is structured to balance the punishment and rehabilitation with the shortest imprisonment of one month and the most severe penalty which is life imprisonment, which is of course served for very serious crimes such as murder. Life sentences do not always mean that the offender should stay in prison forever. In most cases after 15 years the court can review the case and decide whether the person can be released or not (BVerfG, 1977). This of course is based on how the person has behaved all this time in prison. In this sense there are similarities in the 2 legal systems.

Supplementary Penalties are extra measures that aim to restrict the offenders' rights and prevent the repetition of the offense.

Asset confiscation is commonly used to fight financial crimes, corruption and money laundering. The confiscated money from illegal activities is recovered and used for public benefits. This does not only punish criminals but also discourages them to commit other crimes in the future (German Federal Criminal Police, 2021). Authorities can also take properties and other materials that are a resource of the organized crime.

After committing a crime and getting their punishment some offenders may lose some of their rights like holding public offices. This type of punishment is used for those who are convicted for crimes against the state, corruption and also other types of abuse of power. However, the duration of those crimes sometimes may vary on how severe was the crime committed by those offenders (ECHR, 2015).

Alternative Penalties are widely prioritized in Germany for the fact that they promote Rehabilitation and reduce the negative effects of incarceration. There is a debate on the efficiency of this solution with experts who analyze that this solution contributes to lower recidivism rates compared to traditional imprisonment.

On the other side, there are experts who strongly disagree with this solution and analyze that those alternatives may be too soft, especially for repeated offenders.

Another alternative sanction is Probation, which is a widely used measure in Germany that offers non-violent offenders a second chance while also holding them accountable. To avoid imprisonment and to stay on track the offenders must follow strict rules and should attend counselling programs. If they don't pursue this sanction, they must serve their original sentence (German Federal Court Decisions, 2022).

Community Service is another common alternative to imprisonment, requiring offenders to do unpaid work and contribute in the society rather than being confined in a prison cell. This may help the offenders to accept their failed actions and to have a chance to do better while assisting in public maintenance projects and environmental initiatives.

Electronic Monitoring (elektronische Fußfessel) is used as an intermediate measure that balances the public safety and the Rehabilitation of offenders. This method allows individuals to serve their sentence at home under electronic surveillance, ensuring compliance with legal restrictions.

In Germany there is also the early release and parole which is only targeted to people who have shown a good will to change and really want to integrate in the community. This allows offenders who have served two-thirds of their sentence to be eligible for parole if they are no longer considered a threat to the society (Art. 57 of the German Criminal Code). The judicial process analyses carefully each case, considering different factors such as the nature of the offense, the offender's conduction in prison and also their chance of committing a different crime or the same crime.

### **3. Short comparison between Germany and Albania**

Based on the above presentation, similarities and differences between both legal systems can be seen. Albania follows a more punitive approach and focuses on strict punishment as its primary response to criminality. Germany in contrast prioritises rehabilitation and reintegration, using a milder and more alternative approach, which debatable may or may not help to reintegrate into society. Similarities include the application of additional penalties such as asset confiscation to combat financial crimes preventing criminals to benefit and hold their assets from illegal activities. Another similarity is the way that an offender might earn his freedom after 15 years of imprisonment if a good will and an ability to change is shown. Those are similarities which are also shaped by European Core values which represent both countries. Even though both countries are shaped by those values there are still differences which impact both societies based on assets, ability to fight crime and adaptation. Albania has the partial freedom penalty which is something that does not exist in Germany. The fact that the social system is not so developed in Albania, has made the lawmaker to come with ideas on how not to break the financial help of the family if the main provider ends up in jail. On the other hand, in Germany there is no such idea that tends to soften the jail time or come with a pact between offender and lawmakers, so that the family of the offender can still have food on the table. The family members will receive their social help without any strings attached.

### **4. Conclusion**

This manuscript concludes that Albania and Germany have different approaches to criminal penalties, shaped by their unique legal philosophies and social needs. As mentioned above Albania adopts a more punitive ideology, focusing on strict punishments and limited rehabilitation policies. On the other hand, Germany emphasizes in rehabilitation and reintegration, offering alternative sections to reduce negative effects of imprisonment. Although both countries share some similarities, such as asset confiscation and parole for good behaviour, their differences reflect the priorities in balancing public safety and offender rehabilitation.

## References

- BVerfG (1977). Decision on Life Imprisonment and Human Dignity. German Federal Constitutional Court.
- European Court of Human Rights (2015).
- European Convention on Human Rights (ECHR) (1950).
- Federal Parole Board of Germany (2020). Risk Assessment in Parole Decisions.
- German Federal Criminal Police Office (2021). Annual Report on Financial Crimes.
- German Federal Court Decisions (2022). Parole and Public Safety Considerations.
- German Ministry of Interior (2021). Implementation of Electronic Monitoring Systems.
- Hoxha, D. Kaçupi, S. Haxhia, M. (2018). E drejta penale : Pjesa e përgjithshme.
- Manual regulating the alternative sanctions in the Republic of Albania (2020). (Online) Available: <https://socialcontractinstitute.org/wp-content/uploads/2021/06/Manual-mbi-Denimet-Alternative-ne-Republiken-e-Shqiperise.pdf>
- Max Planck Institute for Criminal Law (2022). Community Service as an Alternative to Imprisonment.
- OSCE (2010). Manual regulating the application of the alternative sanctions <https://www.osce.org/files/f/documents/0/1/72037.pdf>
- Schönke, A. Schröder, H. (2019). German Penal Code (StGB), 30th ed.
- SPAK Annual report (2022) (Online) Available: [https://spak.gov.al/wp-content/uploads/2023/05/raporti-vjetor-2022\\_Publikuar.pdf](https://spak.gov.al/wp-content/uploads/2023/05/raporti-vjetor-2022_Publikuar.pdf)